

PINNACLE Newsletter



VIEW FROM THE PEAK

with Damian Knoblanche

With a new federal government in place, many Australians will be wondering what a Labor government is likely to tackle over the next term.

One big tax policy Labor took to the election was the commitment to ensuring multi-nationals pay their fair share of tax.

Labor also promised to reduce the cost of child care by lifting the maximum child care subsidy rate to 90% for those with a first child in care and retaining the higher child care subsidy rates for second and additional children in care.

The new government also made announcements during the campaign that will affect individuals and businesses, both big and small. These include more security for gig economy workers, making wage theft illegal, and training more apprentices. Interesting times continue.

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Framed | Stephanie Woods

ATO puts heat on Directors.

Throughout March, the ATO sent letters to directors who are potentially in breach of their obligations to ensure that the company they represent has met its PAYG withholding, super guarantee charge, or GST obligations. These letters are a warning shot and should not be ignored.

The director penalty regime ensures that directors are personally liable for certain debts of the company if the debts are not actively managed. The liability applies to both current and former directors.

To recover this debt, the ATO will issue a director penalty notice to the individual directors. The ATO can then take action to recover the unpaid amount, including:

- by issuing garnishee notices,
- by offsetting tax credits owed to the director against the penalty, or
- by initiating legal recovery proceedings against the director.

In some cases it is possible for the penalty to be remitted, but this depends on when the amounts are reported to the ATO. For example, the penalty may be remitted if an administrator or small business

restructuring practitioner is appointed to the company, or the company begins to be wound up.

However, this is normally only possible for PAYGW and GST amounts if they are reported to the ATO within three months of the due date. For SGC, amounts this is only possible if the unpaid amount is reported by the due date of the SGC statement.

If the unpaid amounts are not reported to the ATO by the relevant deadline, the only way for the penalty to be remitted is for the debt to be paid in full. Winding up the company at this stage will not make the liability of the directors go away.

If you have received a warning letter from the ATO or a Director Penalty Notice, you should contact us immediately.

Ch,ch,ch,changes from 01 July 2022.

In what looks to be an annual event now, a series of tax and superannuation reforms and changes will commence on 01 July 2022. Here's what is coming up (noting that some of these changes may not go ahead if the new Federal Government has a change of mind):

For business

SUPER GUARANTEE INCREASES TO 10.5%

The Superannuation Guarantee (SG) rate will rise from 10% to 10.5% on 01 July 2022.

If you have employees, what this will mean depends on your employment agreements. If the employment agreement states the employee is paid on a 'total remuneration' basis (base plus SG and any other allowances), then their take home pay might be reduced by 0.5%. That is, a greater percentage of their total remuneration will be directed to their superannuation fund.

For employees paid a rate plus super, then their take home pay will remain the same and the 0.5% increase will be added to their SG payments.

\$450 SUPER GUARANTEE THRESHOLD REMOVED

From 01 July 2022, the \$450 threshold test will be removed and all employees aged 18 or over will need to be paid superannuation guarantee regardless of how much they earn. It's important to ensure that your payroll system accommodates this change so you do not inadvertently underpay staff super.

For employees under the age of 18, super guarantee is only paid if the employee works more than 30 hours per week.

LOWERING TAX INSTALMENTS FOR SMALL BUSINESS – PAY AS YOU GO (PAYG)

PAYG instalments are regular prepayments made during the year of the tax on business and investment income. The actual amount owing is then reconciled at the end of the income year when the tax return is lodged.

Normally, GST and PAYG instalment amounts are adjusted using a GDP adjustment or uplift. For the 2022-2023 year, the Government has set this uplift factor at 2% instead of the 10% that would have applied. The 2% uplift rate will apply to small to medium enterprises eligible to use the relevant instalment methods for instalments for the 2022-2023 income year:

- up to \$10 million annual aggregated turnover for GST instalments, and
- \$50 million annual aggregated turnover for PAYG instalments

The effect of the change is that small businesses using this PAYG instalment method will have more cash to use during the year. However, the actual amount of tax owing on the tax return will not change, just the amount you contribute during the year.



TRUST DISTRIBUTIONS TO COMPANIES

The ATO recently released a draft tax determination dealing specifically with unpaid distributions owed by trusts to corporate beneficiaries.

If the amount owed by the trust is deemed to be a loan then it can potentially fall within the scope of the integrity provisions in Division 7A. If certain steps are not taken, such as placing the unpaid amount under a complying loan agreement, these amounts can be treated as deemed unfranked dividends for tax purposes and taxable at the taxpayer's marginal tax rate.

The ATO guidance deals specifically with, and potentially changes, when an unpaid entitlement to trust income will start being treated as a loan depending on the wording of the resolution to pay a distribution. The new guidance applies to trust entitlements arising on or after 01 July 2022.



More changes from 01 July 2022.

For you and your family

HOME LOAN GUARANTEE SCHEME EXTENDED

The Home Guarantee Scheme guarantees part of an eligible buyer's home loan, enabling people to buy a home with a smaller deposit and without the need for lenders mortgage insurance.

An additional 25,000 guarantees will be available for eligible first home owners (35,000 per year), and 2,500 additional single parent family home guarantees (5,000 per year).

Your superannuation

WORK-TEST SCRAPPED – ENABLING THOSE UNDER 75 TO CONTRIBUTE TO SUPER

Currently, a work test applies to superannuation contributions made by people aged 67 or over. In general, the work test requires that you are gainfully employed for at least 40 hours over a 30 day period in the financial year.

From 01 July 2022, the work-test has been scrapped and individuals aged younger than 75 years will be able to make or receive non-concessional (including under the bring-forward rule) or salary sacrifice superannuation contributions without meeting the work test, subject to existing contribution caps.

The work test will still apply to personal deductible contributions.

This change will also see those aged under 75 be able to access the 'bring forward rule' if your total superannuation balance allows. The bring forward rule enables you to contribute up to three years' worth of non-concessional contributions to your super in one year.

DOWNSIZER CONTRIBUTIONS FROM AGE 60

From 01 July 2022, eligible individuals aged 60 years or older can choose to make a 'downsizer contribution' into their superannuation of up to \$300,000 per person (\$600,000 per couple) from the proceeds of selling their home. Currently, you need to be 65 years or older to utilise downsizer contributions.

Downsizer contributions can be made from the sale of your principal residence that you have owned for the past ten or more years. These contributions are excluded from the age test, work test and your total superannuation balance (but not exempt from your transfer balance cap).

FIRST HOME SAVER SCHEME – USING SUPER TO SAVE FOR A FIRST HOME

The First Home Super Saver Scheme enables first home buyers to withdraw voluntary contributions they have made to superannuation and any associated earnings, to put toward the cost of a first home.

At present, the maximum amount of voluntary contributions you can make and withdraw is \$30,000. From 01 July, 2022, the maximum amount will increase to \$50,000.

The benefit of this scheme is the concessional tax treatment of superannuation.

REMEMBER: While the majority of the changes in this article have been legislated, some were planned by the previous government and may not get the green light from the incoming government.

Employees vs Contractors: more clarity coming.

FOR MANY BUSINESSES, the line between employees and contractors is becoming increasingly blurred, partly due to the rise of the gig economy. However, businesses need to be careful, as incorrectly classifying employees as contractors may be illegal and expose the business to various penalties and charges.

Recently, the High Court handed down a significant decision in a case involving the distinction between employees and contractors. In the case, a labourer had signed an Administrative Services Agreement (ASA) with a labour hire company to work as a "self-employed contractor" on various construction sites.

The Full Federal Court had initially determined that the labourer was an independent contractor after applying a "multifactorial" approach by reference to the terms of the ASA, among other things. The High Court, however, overturned that decision and held that the labourer was an employee of the labour hire company.

The High Court argued that the critical question was whether the supposed employee performed work while working in the business of the engaging entity. That is, whether the worker performed their work in the labour hire firm's business or in an enterprise or business of their own.

As a result of the decision, the ATO has said it will review relevant rulings, including super guarantee rulings on work arranged by intermediaries and who is an employee, as well as income tax rulings in the areas of PAYG withholding and the identification of employer for tax treaties.

If you run a business and you're not sure if your workers are employees or contractors, it's best to get clarification sooner rather than later. As a starting point, contact one of our Business and Accounting Advisers for some common sense guidance.

120% deduction for training and tech costs.



Great headline, isn't it? Spend \$100 and get a \$120 tax deduction. Days after the Federal Budget announcement that businesses will be able to claim a 120% deduction for expenditure on training and technology costs, emails encouraging businesses to spend now to access the deduction started to flood in.

But there are a few problems. Firstly, the announcement is just that (it's not yet law). More importantly, incoming Federal Government (at the time of this publication) is yet to announce its position on this measure. Even if the new Government is supportive, we are yet to see draft legislation or the details to determine the practical application of the measure.

WHAT WAS ANNOUNCED?

The 2022-2023 Federal Budget announced two 'Investment Boosts' available to small businesses with an aggregated annual turnover of less than \$50 million.

The **Skills and Training Boost** is intended to apply to expenditure from Budget night (Tuesday, 29 March 2022) until 30 June 2024. The business, however, will not be able to claim the deduction until the 2023 tax return. That is, for expenditure between 29 March 2022 and 30 June 2022, the boost (the additional 20%) will not be claimable until the 2022-2023 tax return, assuming the announced start dates are maintained if and when the legislation passes Parliament.

The **Technology Investment Boost** is intended to apply to expenditure from Budget night until 30 June 2023. As with the Skills and Training Boost, the additional 20% deduction for eligible expenditure incurred by 30 June 2022 will be claimed in the 2022-2023 tax return.

The boost for eligible expenditure incurred on or after 01 July 2022 will be included in the income year in which the expenditure is incurred.

TECHNOLOGY INVESTMENT BOOST

A 120% tax deduction for expenditure incurred by small businesses on business expenses and depreciating assets that support their digital adoption, such as portable payment devices, cyber security systems, or subscriptions to cloud-based services, capped at \$100,000 per annum.

There have been a lot of questions about the specific expenditure the boost might apply to – for example, does it cover website development or SEO services? Until we see the legislation, nothing is certain.

SKILLS AND TRAINING BOOST

A 120% tax deduction for expenditure incurred by small businesses on external training courses provided to employees. External training courses will need to be provided to employees in Australia or online, and delivered by entities registered in Australia.

Some exclusions will apply, such as in-house or on-the-job training and expenditure on external training courses for persons other than employees.

We are waiting on further details of this initiative to be released to confirm whether there will need to be a nexus between the training program and the current employment activities of the employees undertaking the course. So once again, until we have something more than the announcement, we cannot confirm how the measure will apply in practice or how broad the definition of skills training is.

WHAT HAPPENS IF YOUR BUSINESS HAS ALREADY SPENT MONEY ON TRAINING AND TECH IN ANTICIPATION OF THE 120% DEDUCTION?

If the measure becomes law, and the start date of the measure remains the same, we expect that any qualifying expenditure incurred in the 2021-2022 financial year will be claimed in your tax return.

But remember, the 'boost' – the extra 20% – will not be claimable until the 2022-2023 financial year.

If the measure does not come to fruition, you should be able to claim a deduction under normal rules for the actual training and/or technology-related business expense.

ATO urges vigilance: new TFN and ABN scams on the web



The ATO is urging people and businesses to be vigilant following an increase in reports of fake websites offering to provide Tax File Numbers (TFN) and Australian Business Numbers (ABN) for a fee, but failing to provide those services.

The fake TFN and ABN services are often advertised on Facebook, Twitter or Instagram. The scammers use the fraudulent websites they advertise to steal both money and personal information.

TIP: The ATO and Australian Business Register (ABR) do not charge fees for providing a TFN or an ABN. It's free, quick and easy to use government services online to apply for a TFN through the ATO, or apply for an ABN through the ABR.

The ATO is also still seeing scammers impersonating the ATO, making threats, demanding the payment of fake tax debts or claiming a TFN has been "suspended" due to fraud.

In 2021, more than 50,000 people reported various ATO impersonation scams, with victims losing a total of more than \$800,000.

Tips to protect yourself from scammers

- Know your tax affairs – You will be notified about your tax debt before it is due. Check if you have a legitimate debt by logging into your myGov account or calling your tax agent. Find the contact details for the ATO or your tax agent independently by searching online or using your own paper records – don't trust details provided by possible scammers.
- Guard your personal and financial information – Be careful when clicking on links, downloading files or opening attachments. Only give your personal information to people you trust and don't share it on social media.
- If you're not sure, don't engage – If a call, SMS or email leaves you wondering if it's genuine, don't reply. You can phone the ATO's dedicated scam line on 1800 008 540 to check if it is legitimate. You can also verify or report a scam online at www.ato.gov.au/scams and visit ScamWatch at www.scamwatch.gov.au to get information about scams (not just tax scams).
- Know legitimate ways to make payments – Scammers may use threatening tactics to trick you into paying fake debts via unusual methods. For example, they might demand pre-paid gift cards or transfers to non-ATO bank accounts. To check a payment method is legitimate, visit ato.gov.au/howtopay.

Talking about tax time.

June is notoriously a busy month for accountants, but it's a critical time for anyone wanting to minimise their business and personal tax liability and/or increase their potential tax return.

While there are the traditional 'no brainers' like postponing income until after 30 June and bringing expenses forward, tax legislation has undergone a number of changes – particularly following the impacts of COVID-19. The result is there are potential TAX PLANNING opportunities that haven't been so common in previous years.

This year, spending a little time with our Business and Accounting Advisers to discuss TAX PLANNING could be a wise investment. You can even book a session at www.peakpartnership.com.au/year-end-planning

Framed: Stephanie Woods

STEPHANIE WOODS, Client Services Officer in our Wealth Design area, has been with The Peak Partnership for just over 18 months – bringing her trademark efficiency and bubbly personality to the office every day.

Steph has racked up six years experience in the finance environment, having worked at a Toowoomba financial planning practice before joining The Peak. Prior to that, she worked in retail and hospitality – all while achieving her Diploma of Business Administration.

In her role, Steph works closely with our Financial Advisers to manage client relationships – arranging client review meetings and following up the outcomes of those meetings, managing client requests with our Advisers, co-ordinating investment research, etc.

Away from the office, Stephanie enjoys spending time with family and friends, reading, exploring new restaurants around Brisbane and catching up on reality television (especially cooking shows). Oddly enough, she's not a fan of cooking herself...that's our Steph, one of a kind!



COVID-related support and relief for SMSFs

Because of the financial impacts of COVID-19, you (in your role as trustee of an SMSF), or a related party of the fund, may provide or accept certain types of relief, which may allow contraventions of the super laws. You may also have been stranded overseas due to travel bans, which can affect your fund's residency status.

Recognising these issues, the ATO is offering support and relief to SMSF trustees for the 2020, 2021 and 2022 financial years. You must properly document the relief and provide your approved SMSF auditor with supporting evidence for the annual SMSF audit.

RENTAL RELIEF

Your fund, or a related party of your fund, may have offered rental relief to a tenant due to the financial impacts of COVID-19:

- if rent was reduced or waived, the ATO will not take any compliance action against your fund and/or ask your approved SMSF auditor to report any contraventions, as long as the relief is provided on comparable terms to relief offered by other landlords to unrelated tenants in similar circumstances; and
- if rent was deferred, relief granted by the ATO will ensure that the deferral does not cause a loan or investment to be an in-house asset of the fund in 2019-20, 2020-21 or 2021-22, and future financial years, provided certain conditions are met.

Temporary changes to a lease agreement to provide for rental relief need to be properly documented, together with the reasons for those changes.

Please contact us as a formal variation of the lease may need to be executed.

IN-HOUSE ASSET RELIEF

If the value of your fund's in-house assets exceeds 5% of the fund's total assets as at 30 June of an income year, you are required to prepare and execute a written plan to get below 5% by the end of the following income year.

However, if you have not been able to execute the plan because of the financial impacts of COVID-19:

- the ATO will not take any compliance action against your fund; and
- your approved SMSF auditor will not need to report any contravention of the in-house asset rules to the ATO.

LOAN REPAYMENT RELIEF

If your fund has offered loan repayment relief because the borrower had difficulty repaying the loan due to the financial impacts of COVID-19, the ATO will not take any compliance action and your approved SMSF auditor doesn't need to report any contravention of the super laws provided:

- the relief is offered on commercial terms; and
- the changes to the loan agreement are properly documented.

OTHER RELIEF

SMSF RESIDENCY RELIEF may be available where your fund no longer satisfies the residency rules because you were stranded overseas for an extended period.

LOAN REPAYMENT RELIEF may be available if your fund offered loan repayment relief because the borrower was experiencing difficulty repaying the loan due to the financial impacts of COVID-19.

LRBA RELIEF may be available if your SMSF has a Limited Recourse Borrowing Arrangement (LRBA) in place with a related party lender and the lender have offered loan repayment relief to the fund due to the financial impacts of COVID-19.

Please contact us if you want more information about the forms of relief offered to SMSFs by the ATO.

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