2022 EOFY and Tax Minimisation Strategies

INDIVIDUALS
BUSINESS
SUPERANNUATION & PENSIONS

IMAGINE ACCOUNTING

DISCLAIMER

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INDIVIDUALS

SUBSTANTIATION OF RECORDS
- When your total work-related claims exceed $300
- Logbooks for Motor vehicles and phone usage
- Travel diaries and written evidence (e.g. receipts, bank/credit card statements, BPAY ref numbers)
- Keep for 5 years from the due date of lodgement of the tax return

WORK RELATED EXPENSES
- travel costs, clothing expenses, self-education expenses, union fees, home computer and phone expenses, internet, reference books, journals and magazines, work-related portion of tools and equipment and professional libraries, subscriptions, and business associations

HOME OFFICE EXPENSES
- Can be computed in three methods – shortcut (available until 30/6/22), fixed rate and actual cost
- Running costs vs Occupancy costs

MOTOR VEHICLE EXPENSES
- Can be computed in either Log Book method or Cents per km method

TRUST DISTRIBUTIONS
- The ATO announced a major crackdown on family trust's taxation especially where they are used to make distributions to adult dependent children paying tax at lower rates or company beneficiaries
- Family groups need to reconsider the use of their family trust as the new ATO regulation could apply retrospectively

OTHER DEDUCTIONS
- Donations (ensure to a DGR), income protection insurance, superannuation concessional (deductible) contributions

OTHER STRATEGIES
- Salary sacrifice, bonus payments, travel allowances, and Private Health cover

PREPAY EXPENSES AND INTEREST
- Expenses relating to investment activities
- Claim a tax deduction this FY for up to 12 months of interest on a loan for a property or share investment
- Rental property repairs, memberships, subscriptions, journals, and tax agent/ accounting fees

RENTAL PROPERTIES
- Rental property repairs (deductible) vs improvements (capital) – ensure you have a Property Depreciation Report

DEFER INVESTMENT INCOME AND CAPITAL GAINS
- Arrange receipt and contract date (not Settlement Date) to occur after 30 June 2022
- Consider 50% discount – must hold asset > 12 months

REALISE CAPITAL LOSSES
- Sell non-performing investments before 30 June - capital losses can be carried forward to offset future capital gains

OWNERSHIP OF INVESTMENTS
- Always review – asset protection and tax planning
- Consider CGT and stamp duty implications
- Invest in lower income earner name or using a Trust

BUSINESS

NO. 1 TOOL – STRUCTURE

- Do you have the optimum structure?
- Consider risks, professional requirements, size & growth

CONSEQUENCES OF CHANGING YOUR STRUCTURE – RESTRUCTURING/SELLING

- CGT, stamp duty, value shifting, small business CGT concessions, CGT rollover concessions, formation expenses and adviser fees
- Consider practical implications of changing (trading, contracts, loans, etc) and timing
- When CGT triggered, ability to pay dividends (45-day rule)
- Cost/ benefit analysis

SPLITTING BUSINESS ASSETS FROM TRADING ENTITY

- Goodwill, IP, property, equipment, vehicles
- Use an asset holding entity or service entity and license agreements
- Better asset protection
- Split PSI
- Consider finance implications
- Consider Immediate Asset Write-Off – entity needs to be 'in business'

TRUST DISTRIBUTIONS – ASSESS BENEFICIARIES

- Check trust deed
- Avoid family trust distribution tax
- Consider forming a bucket company (must be formed before 30 June)
- Preferable to pay cash across
- Avoid div 7A, better asset protection
- Gifting to non - DGR can be via a trust distribution if entity is income tax exempt

TRUST DISTRIBUTIONS – STREAMING

- Review Trust Deed
- 3 categories of income stream - capital gains, franked dividends, other income

TRUST RESOLUTIONS

- Must be made by 30 June
- New beneficiaries of trusts for the y/e 30 June 2022 – trustee must notify ATO with a TFN declaration by 31 July 2022.

TRUST DISTRIBUTIONS

- Family groups will urgently need to reconsider how they are using their family trust.

COMPANY - DIFFERENT SHARE CLASSES

- Check if Company Constitution needs amendment
- Consider voting, dividend and capital rights, value shifting
- Impact on CGT small business concessions

COMPANY DIVIDENDS

- Reduce BRE tax rate to 25% from the 2021/22 income year and therefore franking credits on dividends paid
- Move 'frankable' profits from a trading entity to a bucket company (Need another company or Trust as shareholder)
- Review Accounting depreciation/ asset write-off treatment
- Consider available profits/ retained earnings and 'distributable surplus' under Div 7A (private company loan) rules

BUSINESS

DIVISION 7A LOANS

- Strategy to defer/ spread tax on dividends/ getting cash out of a company over a number of years
- Benchmark interest rate for 30 June 2022 – 4.52%
- Loan documents are in place
- Minimum loan repayments and interest has been paid
- Franked dividends have been declared – ideally pay 1st July (reduces interest)
- Ensure re-borrowings do not occur
- The ATO has released new draft guidance on treating the UPE's as simply loans for Division 7A

TEMPORARY FULL EXPENSING OF DEPRECIATING ASSETS

- Assets must be first held, and first used or installed ready for use between 6 Oct 2020 and 30 Jun 2023
- Turnover <$50m: fully deduct the business portion of new & second-hand depreciating assets
- if >$50m new assets only
- Claim business portion of improvements incurred between 6 Oct 2020 and 30 Jun 2023
- Consider car limit ($60,733 ex GST for FY22)
- Can fully deduct cost of non - passenger vehicles
- Temporary full expensing will cease to apply after 30 Jun 2023 unless another extension by the government
- Small businesses (<$10m) will get an automatic tax deduction for the balance of all undeducted depreciating assets
- Cannot opt out of temporary full expensing for assets to which the simplified depreciation rules (eg pooling) apply
- Can choose to opt-out of temporary full expensing for an income year on an asset-by-asset basis and claim a deduction using other depreciation rules. The choice is unchangeable

INSTANT ASSET WRITE-OFF

- Can be used if a depreciating asset is not eligible for temporary full expensing or if you opt out of temporary full expensing – the enhanced instant asset write-off rules can apply
- Applicable for businesses with turnover of up to $500m – assets purchased by 31 Dec 2020 – first used or installed ready for use between 12 Mar 2020 to 30 Jun 2021 – up to $150k

LOSS CARRY BACK TAX OFFSET

- Refundable tax offset for companies with <$5b turnover in FY21, FY22 & FY23 company tax returns
- Use current year losses to obtain a refund of taxes paid in prior years
- Limited by franking account balance at end of claim year
- Can choose not to carry back a loss, and the loss may be C/F to use in a later income year

ELIGIBILITY – LOSS CARRY BACK TAX OFFSET

- You can claim the tax offset if you made tax losses in FY20 to FY23, had an income tax liability for income years FY19 to FY22, and have met your tax return lodgment obligations

PAYROLL TAX AND OTHER CONSIDERATIONS

- Tax planning impact - Payroll tax
  - Be aware of thresholds and rates
  - Ensure you're up to date with your annual payroll tax reconciliation
  - Review and consider the use of contractors
- Tax planning impact - Other payroll considerations
  - Ensure you've declared your finalised STP by 14 July
  - If you have ESS, you must report employees' interests to relevant employees and the ATO by 14 July

BUSINESS

FRINGE BENEFITS TAX

- FBT rate is 47% - generally want to avoid
- Calculating FBT liability may be impacted by travel restrictions and mandatory workplace closures
- Tax planning impact - FBT calculations should be reviewed as part of year-end tax planning

PERSONAL SERVICES INCOME

- PSI may have limited deductions that can be claimed so as to match those generally available to salaried employees
- PSI rules do not apply if you are considered to be carrying on a PSB
- Tax planning impact – Consider whether one of the exemptions apply, being the results test or the 80% rule. If circumstance are unusual, consider applying for a PSB determination

SBE TAX PLANNING STRATEGIES

- Understand your Asset write-off/ depreciation position
- Govt stimulus payments – assess taxable (job keeper) and non-assessment/ tax exempt (cash flow boost)
- Accrue business expenses in FY22 such as gross salary amounts, directors' fees (a resolution should be made by the shareholders and not the directors by 30 June), staff bonuses, commissions, accrued rent and interest expenses
- Maximising prepayment deductions in FY22
- Superannuation contributions – must be received by the S/F by 30 June 2022 to be deductible
- Review trade debtors and write-off bad debts
- Revenue recognition (defer invoicing from June into July, split off any 'Income in Advance').
- Trading stock valuations (businesses and SBEs can value stock at cost, market selling value, or replacement value but SBEs with <$5k stock movement can ignore)
- Year-end stock take / work in progress (write-off any obsolete stock items)
- Pay wages to children over 14
- Claim travel allowances
- SBEs can claim professional expenses associated with starting a new business in the same year incurred
- Small business income tax offset may reduce tax payable relating to your small business income by 13% (FY20/21) [16% from 21/22 onwards], up to $1k each year

OTHER STRATEGIES

- Utilise an SMSF to acquire business premises (can borrow)
- Minimise non-deductible debt, maximise deductible debt
- Utilise loan splitting to separate
- Avoid 'tainting' any deductible debt with repayments/ non-deductible drawdowns (use offset accounts not redrawing)
- Foreign exchange gains and losses are only taxed when realised
- Assess eligibility for R&D tax offset (consider a restructure or using a new entity when become profitable)
- Be aware of Non-deductibility of 'non-ABN' payment, salary/ wages/ director Fees/ contractor payments - if no PAYG withholding and late paid superannuation!
- Inter-entity transactions (profit and loss planning)
- Professional practice business (PSI) - review your salary and distribution policies to ensure the risk is mitigated within acceptable ATO levels
- Ensure understanding of private company loans and Division 7A

BUSINESS

SMALL BUSINESS CGT CONCESSIONS

- 4 CGT concessions: small business 15-year exemption, small business 50% reduction, small business retirement exemption, and small business roll-over
- Available to businesses with an aggregated turnover of <$2m or on business assets <$6m

RESEARCH AND DEVELOPMENT TAX INCENTIVE

- Companies with >$20m turnover receive a 43.5% refundable tax offset (can be a tax refund)
- All other eligible companies receive a 38.5% non-refundable tax offset to help reduce the tax they pay
- Only expenditure incurred on your registered R&D activities can be claimed through the tax offset. Amounts which you can claim under the program are called eligible notional deductions.

TAX-FREE STATUS OF COVID-19 GRANTS

- Two types of government grant and support programs, under which COVID-19 payments to support businesses may be non taxable (NANE). These are:
  1. state and territory grants relating to the recovery from COVID-19
  2. Australian Government support payments established under the COVID-19 Business Assistance Program.

SUPERANNUATION AND PENSIONS

WHY GET MONEY INTO SUPER?

- Tax, Asset Protection, Estate Planning

CONCESSIONAL (DEDUCTIBLE) SUPER CONTRIBUTIONS

- $27.5k cap for everyone from 1/7/2021
- If age 67-75 – must pass work test (will be abolished from 1/7/22)
- 15% tax – therefore beneficial if personal tax rate 19% or more
- If adjusted taxable income > $250k: Division 293 tax applies = 30% tax (rather than 15%) on CC's [adjusted taxable income = taxable income + taxable super contributions + reportable fringe benefits]
- ***From 1 July 2018:***
- **'Catch-up' concessional contributions**: If super balance < $500k at end of a FY; can accrue annual $25 cap and make catch-up CC's over a 5-year rolling period (eg FY22 - $100k (4 yrs cap) if no CC's in FY19, FY20 and FY21)

NON-CONCESSIONAL (NON-DEDUCTIBLE) CONTRIBUTIONS

- From 1/7/2021: $110k cap for everyone under age 75
- Cap is nil if total super balance is >$1.7m
- '3-year bring forward rule' (ie $330k in NCC's) can apply if under age 67 at any time during FY
- From 1/7/2022: If < 75 years of age at any time in a FY can use '3-year bring forward rule'

SPOUSE SUPER CONTRIBUTIONS/ CONTRIBUTION SPLITTING

- Tax offset of up to $540 on super contributions of up to $3k that you make on behalf of your spouse if spouse's income is <$37k
- Can split up to 85% of a FY's taxable splittable (CC's) contributions with your spouse
- Can help equalise the balance of your super accounts and increase the amount you and your spouse have in the retirement phase.
- Each person can have up to $1.6m in the retirement phase ($3.2m combined tax-free at retirement)
- Split contributions are counted towards your concessional cap
- Spouse must be either less than the preservation age that applies to them, or aged between their preservation age and 65 years, and not retired

SUPER CO-CONTRIBUTIONS

- If you earn less than $56,112 in the FY22, and at least 10% is from your job or a business, you can make an after-tax super contribution and the Govt may make a 'co-contribution' of up to $500 into your super account
- Maximum co-contribution is available if you contribute $1,000 and earn $41,122 pa or less
- May receive a lower amount if you contribute less than $1,000 and/or earn between $41,112 and $56,112 pa.

THE DOWNSIZER CONTRIBUTION – OPPORTUNITIES

- To increase super by $600k ($300 p.p.)
- Aged 65+ can top up super with **no work test** requirement (from 1/7/22 age 60+)
- Aged 75+ can top up super (no upper age limit)
- Caution: Potential Impact on Age Pension/Centrelink entitlements (principal residence ordinarily excluded and superannuation assets and/or pension income will count for eligibility)

SUPERANNUATION AND PENSIONS

THE DOWNSIZER CONTRIBUTION

- Downsizer contributions: persons aged 65+ can make extra NCC's up to $300k each
- Must come from the proceeds of the sale of member's home (owned 10 years+)
- Can only do once
- No requirement to purchase another home
- Applies to contracts of sale from 1 July 2018
- Non-owner spouse is eligible
- Contribution must be made within 90 days of settlement (or longer as permitted by the Commissioner of Tax)
- Can still be made if member balance > $1.6m (unlike NCC)

PENSIONS - ENSURE MINIMUM PENSION STANDARDS ARE MET

- Account based pensions must be paid at least the minimum amount from their pension account in cash before the end of the FY
- If not paid, pension ceases and lose tax free benefit
- Minimum pension amounts reduced by 50% in FY20, FY21 and now FY22

01 JULY 2022 ONWARDS

CHANGES AFFECTING INDIVIDUALS

LOW AND MIDDLE INCOME EARNERS

- One off extra $420 back in their 2021/22 tax returns on top of the existing low and middle tax offset, which equates to $1500 back at tax time
- If your taxable income is $126,000 or more, you will not receive the LMITO.

SUPER GUARANTEE RATE INCREASE TO 10.5%

- Starting 1 Jul 2022, SG rate will rise from 10% to 10.5% (will then steadily increase each year until it reaches 12% on 1 July 2025)
- Ensure employee salary packages are properly costed

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

- From 1 July 2017, you can make voluntary concessional (before-tax) and voluntary non-concessional (after-tax) contributions into your super fund to save for your first home
- At present, the maximum amount of voluntary contributions you can make and withdraw is $30,000.
- From 1 July 2022, the maximum amount will increase to $50,000. The benefit of this scheme is the concessional tax treatment of superannuation.
- Note: The annual limit is $15k per financial year.

CHANGES AFFECTING BUSINESS TAXPAYERS

$450 SUPER GUARANTEE THRESHOLD REMOVED

- Starting 1 Jul 2022
- Employees aged 18 or over will need to be paid superannuation guarantee regardless of how much they earn
- Ensure that your payroll system accommodates this change so you do not inadvertently underpay superannuation

PROFITS OF PROFESSIONAL SERVICES FIRMS

- From 1 Jul 2022 – a new method of assessing the level of risk associated with profits generated by a professional services firm and how they flow through to individual practitioners and their related parties will come into effect
- It will be used to determine an individual's risk factor regarding profit allocation which influences the level of engagement individual professional practitioners can expect from the ATO regarding their payment arrangement
- From 1 Jul 2022, firms will need to assess structures to understand their risk rating, and either make changes to reduce their risks level or ensure appropriate documentation is in place to justify their position

LOWERING TAX INSTALMENTS FOR SMALL BUSINESS – PAYG

- For FY22-23 income year, the Government has set the 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 2022-23 income year
- Up to $10m annual aggregated turnover for GST, and $50m annual aggregated turnover for PAYG instalments
- Small businesses using this PAYG instalment method will have more cash during the year to utilise
- The actual tax owing on the tax return will not change, just the amount you need to contribute during the year.

TRUST DISTRIBUTIONS TO COMPANIES

- ATO 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, these amounts can be treated as deemed unfranked dividends for tax purposes and taxable at the taxpayer's marginal tax rate
- After 1 Jul 2022, the new guidance applies to trust entitlements

DIVISION 7A – PROPOSED CHANGES DEFERRED (ON HOLD – WERE TO BE FROM 1ST JULY 2022)

- 10-year term across all complying loans (including 25-year loans)
- Higher interest rate (currently 4.52%) – may be better off borrowing from the bank
- Principal required to be repaid in equal instalments across 10 years
- Increase in cashflow pressure for taxpayers (particularly if interest is not tax deductible)
- No longer a requirement for "formal" written loan agreement
- Special rules to apply for existing arrangements, however still under proposal

SUPERANNUATION CHANGES

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

- From 1 Jul 2022, individuals aged younger than 75 years don't have to work-test and 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
- Those aged under 75 be able to access the 'bring forward rule' if your total superannuation balance allows
- The rule enables you to contribute up to 3 years' worth of non-concessional contributions to your super in one year
- Eligibility to use this rule will still depend on the contributor's TSB as at 30 Jun of the previous year and the total of non-concessional contributions made over the past two financial years

THE DOWNSIZER CONTRIBUTION

- From 1 July this year, the age for downsizer contributions was already set to be reduced to age 60 from the current 65.
- These contributions allow individuals to contribute up to $300k from the proceeds of the sale or part sale of their home into their superannuation fund, where they meet the eligibility criteria
- Couples will be eligible to contribute up to $300k each

ACCOUNT-BASED PENSIONS

- The govt has extended the temporary reduction in the minimum drawdown rates by 50% for account-based pensions and similar products in the FY22-23

FEDERAL ELECTION – LABOR POLICIES

1. Electric Cars – From 1 July 2022 no import tariffs and no FBT for electric cars below the luxury car threshold ($72k)! Could equate to $2k cheaper purchase price; $9k annual saving
2. $1 billion Critical Technologies Fund – business opportunities
3. Super home loan scheme have been replaced with Labor’s Help to Buy scheme. The govt will be buying 30 or 40% of a property with the owner. That percentage of the property could be bought off the govt by the homeowner over time.
4. Labor announced last year it would support the final stage of the tax cuts if it wins the election. The "stage 3" tax cuts will see everyone earning between $45k and $200k paying 30% in tax from 2024.
5. Labor promised more generous childcare subsidies. Including raising the maximum subsidy rate to cap it at 90% for the first child in care.
6. Labor matched both the Coalition's policies on freeze deeming rates for pensioners and other payments for two years as well as expanding the eligibility for the Commonwealth Seniors Health Card by raising the income threshold.

Note: These measures will not be effective until enacted by the incoming government

OTHER PENDING MEASURES

The future of tax changes announced by the previous government is unknown. In particular:

- Downsizer superannuation contributions: expanding to make downsizer contributions to individuals aged over 55 from 1 July 2022. As currently legislated, the eligibility age will reduce from 65 to 60 years of age from 1 July 2022.
- Digital games tax offset: 30% refundable tax offset for qualifying Australian development expenditure on eligible games, due to commence from 1 July 2022.
- Car parking fringe benefits: modifications to the definition of "commercial parking station" to better reflect the policy intention for car parking fringe benefits.

Not yet law and are subject to decisions from the new Government:

  - Small Business Technology Investment Boost – bonus 20% claim in FY22/23
  - Small Business Skills and Training Boost – bonus 20% claim in FY22/23

ATO ANNOUNCES AREAS OF FOCUS AT TAX TIME

- The four areas of focus are recordkeeping, work-related expenses, rental property income and deductions, and capital gains from crypto-assets, property, and shares

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