Year-end tax planning toolkit

For the year ending 30 June 2021

pitcher.com.au

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Glossary

AIIR	Annual Investment Income Report
AMIT	Attribution managed investment trust
ATO	Australian Taxation Office
BAS	Business activity statement
CFC	Controlled foreign company
CFI	Conduit foreign income
CGT	Capital gains tax
CIV	Collective investment vehicle
CRS	Common Reporting Standard
DTA	Double tax agreement
ESIC	Early stage investment company
ESVCLP	Early stage venture capital limited partnership
ETP	Employment termination payment
FAT	Financial acquisitions threshold
FATCA	Foreign Account Compliance Act
FBT	Fringe benefits tax
FHSS	First home super saver scheme
FITO	Foreign income tax offset
GPFS	General purpose financial statements
GST	Goods and services tax
HELP	Higher Education Loan Program
IDS	International Dealings Schedule
IMR	Investment manager regime
IRS	Internal Revenue Service
LAFH	Living away from home
LITO	Low income tax offset
LMITO	Low and middle income tax offset
MIT	Managed investment trust
MYR	Minimum loan repayments

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NANE	Non-assessable non-exempt
OTE	Ordinary time earnings
PAYG	Pay-as-you-go
PE	Permanent establishment
Pitcher Partners	Pitcher Partners Advisors Proprietary Limited
PSB	Personal services business
PSI	Personal services income
R&D	Research and development
RTP	Reportable tax position
SBE	Small business entity (an entity with an aggregated turnover less than $10 million)
SG	Superannuation guarantee
TFN	Tax file number
TOFA	Taxation of Financial Arrangements
TSL	Trade Support Loan
UPE	Unpaid present entitlement

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Section 1
Introduction

[1A] Year-end tax planning

As the financial year ends, it is time to start thinking about whether your year-end tax planning is in order. Tax planning not only requires consideration of income and deductions for the year, but also requires you to consider whether your compliance requirements have been met. This includes whether appropriate elections have been made on a timely basis, the preparation and maintenance of appropriate documentation (such as trust minutes) and forward planning of your tax affairs. Our tax toolkit is here to assist you in this process. In preparation for a discussion with your Pitcher Partners representative, you can personalise this document by including your details at [2A], checking items that you would like to discuss and include any additional notes in the space provided at the foot of each section.

[1B] Tax planning toolkit

This document has been created as an interactive PDF. This means you can check boxes, record notes and submit this back to Pitcher Partners for discussion.

[1C] What this document does

This document provides an outline of tax issues that can be considered before year-end. This document has been updated for new developments and, where relevant, the 2021/22 Budget announcements. This toolkit is specifically tailored for taxpayers in the middle market and covers both corporate taxpayers and private groups.

[1D] What this document doesn't do

This toolkit is not intended to be a comprehensive and complete document covering all taxation issues that require consideration. Each taxpayer's circumstances are unique. This document is only intended to provide you with a broad overview of a range of issues for consideration before the end of the financial year.

[1E] Take care about tax planning

Tax planning may often result in a taxpayer paying less income tax in a given income year. It is noted that the definition of a tax benefit under the tax anti-avoidance provisions is broad enough to cover a reduction in assessable income, a deferral of income tax, or the creation of a deduction. Therefore, the tax anti-avoidance provisions must always be considered as part of your year-end tax planning. We have highlighted several anti-avoidance or integrity provisions for your consideration in Section 16 – Tax administration and integrity of this toolkit.

[1F] How will you find what you are looking for?

To assist you in quickly locating the area of tax that is relevant to you, this document has been divided into sections. Section 3 to Section 5 cover general tax planning considerations for all taxpayers. Section 6 to Section 9 cover tax planning considerations for specific entity types (e.g. companies or trusts). Section 11 to Section 15 provides additional tax planning considerations for specific tax specialisation areas (e.g. capital gains tax and international tax). Finally, Section 16 outlines tax integrity measures that are looked at by the ATO.

We trust you will find this document useful when considering your 30 June 2021 tax planning.
Please contact your Pitcher Partners representative for more information or to clarify any of the issues raised in this document.

[1G] Disclaimer

The contents of this document are for general information only and do not consider your personal circumstances or situation. Furthermore, this document does not contain a detailed or complete explanation of the law, as provisions or explanations have been summarised and simplified. This document is not intended to be used, and should not be used, as professional advice.

The contents of this document do not constitute financial product advice and should not be used in making decisions with respect to a financial product. Taxation is only one of the matters that must be considered when deciding on a financial product. You should consider seeking financial advice from the holder of an Australian Financial Services License before deciding on a financial product.

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If you have any questions or are interested in considering any item contained in this document further, please consult with your Pitcher Partners representative to obtain advice in relation to your circumstances. Pitcher Partners disclaims all liability for any loss or damage arising from reliance upon any information contained in this document.

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Section 2

Client details

[2A] Tax planning toolkit

Enter your details

If you are completing this document and wish to submit this to your Pitcher Partners representative, please complete your details in the following boxes.

Name	
Contact details	

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Section 3

COVID

Tax planning is always important for taxpayers each 30 June. As a part of your 30 June 2021 year-end tax planning, there are a number of COVID-19 related items that should be considered.

Income tax treatment of cash flow boost

Cash flow boost payments are treated as non-assessable non-exempt (NANE) income to the recipient. For a company, distribution of these amounts to shareholders could give rise to unfranked dividends. Excessive payments to directors can also give rise to assessable amounts to the recipients. You may consider franking these distributions if the company has surplus franking credits (e.g. due to changes in the company tax rates). Alternatively, amounts could potentially pass out as concessional distributions on a liquidation of the entity.

For a trust, receipt of the cash flow boost could result in a greater accounting profit than taxable income. In the case of a unit trust, there is an exception to CGT event E4 for the non-assessable part that relates to NANE if paid to unit holders (capital gain or reduced cost base). For a discretionary trust, the amount generally may be distributed tax free. If the amount is retained in the trust, consider tracking reserves to preserve this exception for distributions of NANE in future years.

Deductions relating to cash flow boost

Professional fees relating to the cash flow boost (e.g. advice) may not be deductible where they have a nexus to NANE income and are not considered a cost of managing tax affairs under section 25-5.

Private companies who pass on the cash flow boost to associates as a wage or bonus should also consider whether a deduction for these payments would be limited under section 109 of the ITAA 1936. For partnerships, section 26-35 limits deductions for payments to related entities to an amount the Commissioner considers reasonable.

Treatment of JobKeeper payments (to the entity)

Receipt of the JobKeeper payment for eligible employees will be assessable income of the recipient as a subsidy (assessed on receipt) unless it is also ordinary income (assessed when derived). The ATO confirmed that derivation occurs in the month following the JobKeeper fortnight (rather than at the end of the relevant fortnight) due to various requirements needing to be performed after month-end to satisfy the conditions of entitlement. Accordingly, you should consider your treatment of the amounts “accrued” for the prior year and ensure they have been appropriately adjusted in 2021.

Where a business has received JobKeeper payments for an eligible business participant, distribution of that payment to the relevant individual is not required. Instead, the entity may choose to retain the funds, or use for any purpose. Please note that the payment of this amount by a company could give rise to a deemed dividend.

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Section 4

Income

This section deals specifically with the treatment of income that you may have received or derived during the income year and whether such income should be recognised in the current income year or subsequent years.

[4A] Accounting for your business income

If you carry on a business, you may be able to legitimately bring forward or defer sales invoicing (in appropriate circumstances). Whether business income has been derived for tax purposes depends on the legal arrangements governing entitlement to the amount. Typically, business income would be recognised for taxation purposes at the time when everything has been done that is required to be done to earn the amount and create a recoverable debt. This may be different to the time at which an invoice is raised, or cash is received. Amounts recorded as accrued or unearned income should be reviewed to determine when the amount should be recognised for tax purposes. ☐

[4B] Construction contracts and different methods of accounting

The ATO accepts different methods of recognising income and deductions (e.g. the basic approach or the estimate profits approach) for businesses that involve constructing a building or other asset for clients (and the activities do not constitute the sale and supply of trading stock). The methods chosen can have a significant impact on your taxable income in different circumstances. Whichever method is chosen should be applied on a consistent basis. ☐

[4C] Rental or leasing income timing

You should consider whether rental income received is passive in nature (and therefore assessable on a cash basis) or is derived in carrying on a business (and therefore possibly assessable on an accruals basis). Where the entity is not a company, a higher threshold will generally apply in determining whether the entity (including an individual) carries on the business of rental. For example, the holding of one or two residential properties is unlikely to constitute a business, while the management of a significant commercial building or shopping centre and its tenants could potentially be more indicative of a business. ☐

[4D] Interest income and timing

Typically, interest is recognised as income for tax purposes on a receipt's basis. However, interest arising in the ordinary course of carrying on a business or from certain financial arrangements (e.g., under TOFA or in respect of debt type arrangements that allow interest to be deferred by more than 12 months) may need to be recognised on an accrual's basis for income tax purposes. ☐

[4E] Dividend income and timing

Dividends (together with any attached franking credits) are included in assessable income when paid. For this purpose, a dividend is taken to be paid when it is credited to the shareholder in the company's records. ☐

[4F] Determine if amounts are capital or revenue

Where you have received material amounts that you are treating on capital account, you should properly consider whether your position on characterisation is correct and defendable. Many receipts (even where derived outside of the ordinary course of business) can be assessable under ordinary concepts. ☐

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[4G] Treatment of grants, bounties and subsidies

Recent government grants including JobKeeper payments, are considered ordinary income while other payments may be non-assessable including the Cash Flow Boost and some Victorian Government grants announced after 13 September 2020 including the third round of the Business Support Fund. You should consider whether the amounts are assessable and (if so) when the assessable amounts should be recognised for tax purposes. ☐

[4H] Disaster relief amounts and potential concessions

Concessional tax treatment may apply to money received in connection with a natural disaster. ☐

[4I] Calculate trust amounts for the year

Concessional tax treatment may apply to money received in connection with a natural disaster. ☐

[4J] Check your treatment of foreign denominated income

Generally, income denominated in a foreign currency must be translated into Australian dollars using the exchange rate allowable for tax purposes. ☐

[4K] Calculate foreign exchange gains on foreign currency amounts

If you held a foreign currency denominated bank account or entered into transactions denominated in a foreign currency, you may be required to include foreign exchange gains in calculating your taxable income. Foreign exchange gains can arise even where the relevant transaction occurs wholly in a foreign currency. ☐

[4L] Claim tax offsets for foreign taxes (paid on your behalf or on foreign income)

If you received income that has been subject to foreign tax (regardless of when the tax is paid), you should determine whether you need to gross-up the income for the foreign tax and whether a foreign income tax offset (FITO) can be claimed to reduce the Australian tax on such income. ☐

[4M] Review income that may not otherwise be assessable

Several provisions of the tax law treat receipts as not being assessable income. Examples include, Cash Flow Boost payments and certain Victorian Government business grants, non-portfolio dividends received by companies, foreign income (other than employment income) earned by temporary residents and mutual receipts of certain member-based organisations. ☐

[4N] Consider whether you derived personal services income

If you provide your services through a trust or company, the PSI rules may apply to require you to include the amount received by the entity in your assessable income and limit the deductions that you may claim (unless you are conducting a PSB). ☐

[4O] Review extraordinary items

If you have received extraordinary (or significant) amounts during the year, these should be examined closely to determine the proper tax treatment. ☐

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Section 5

Deductions

This section deals specifically with the expenses that you may have incurred during the income year and whether such expenses can give rise to a deduction for the current income year or should be deferred to subsequent years.

[5A]	Review major expenditure for deductibility	
	Consider all material expense items to determine whether there is any risk that certain amounts may not be deductible or whether a specific deduction provision can be applied.	☐

[5B]	Check the timing of deductions	
	Generally, a loss or outgoing will be deductible when the amount is incurred. However, in certain circumstances, deductions may be denied (e.g. fines or penalties) or deferred (e.g. prepayments, accrued expenses, leave entitlements or bonus payments).	☐

[5C]	No deductions for payments that do not comply with the PAYG rules	
	Taxpayers may be unable to claim tax deductions for payments to employees where they have not withheld under the PAYG regime or payments to contractors where they have not withheld under the no- ABN withholding regime.	☐

[5D]	Review whether items involve capital expenditure	
	Where an amount is regarded as non-deductible capital expenditure (other than expenditure on a depreciating asset - refer 5H), you should consider whether a deduction is available under the blackhole provisions or the amount should be included in the cost base of an asset.	☐

[5E]	Claiming deductions for bad debts	
	If you have genuine doubtful debts, you may be able to bring forward a deduction if they are written off as bad debts for tax purposes before the end of the income year. Evidence that a decision to write off the debt was made before year-end should be created and retained to substantiate the deduction.	☐

[5F]	Using trading stock valuations to change taxable income	
	For taxation purposes, trading stock on hand at year-end can be valued at cost, market selling value or replacement value on an item-by-item basis. The value chosen can have the effect of bringing forward deductions or shifting amounts to the following year.	☐

[5G]	Review capital allowance deductions	
	A deduction for the cost of a depreciating asset may be available over time or accelerated under one or other of the instant asset write off, backing business investment or temporary full expensing incentives. Further information is available on the Pitcher Partners website. If you have identified capital expenditure that is not included in the cost of a depreciating asset or otherwise deductible, you should consider whether a deduction is available as a project pool cost.	☐

[5H]	Ensure you do not overclaim deductions for rental properties	
	Decline in value deductions in respect of depreciating assets in rental properties (that are not new residential properties) may no longer be available. Furthermore, travel expenses that relate to rental property may also no longer be claimed. There are exceptions where the taxpayer's rental activities amount to the carrying on of a business, or the taxpayer is a company, superannuation entity (other than self-managed superannuation funds) or managed investment trust.	☐

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[5I] Consider whether costs relating to vacant land are deductible

A deduction may be denied for costs of holding vacant land unless, at the time the cost was incurred, the land was used or available for use in a business carried on by the landowner or certain related entities. For these purposes, land is considered vacant while premises are being constructed or substantially renovated. These rules do not apply to companies, superannuation entities (other than self-managed superannuation funds) and managed investment trusts. This can impact taxpayers that land-bank in certain entities and can deny substantial deductions. ☐

[5J] Consider whether you need to capitalise internal labour costs

Where you use employees to construct assets, you may be required to capitalise labour costs for tax purposes. If you capitalise labour costs for accounting purposes (or would otherwise be required to do so) you should carefully consider the basis of any different tax treatment. This issue should be particularly considered for large products involving IT and software implementation, as well as the construction or development of depreciating assets (both tangible and intangible). ☐

[5K] Review employee bonuses provisions

An employee bonus will be deductible only if, on or before 30 June, the employer becomes definitively committed to paying the bonus (e.g. by passing a properly authorised resolution) or by incurring a quantifiable legal liability to pay the bonus. ☐

[5L] Review expenses and whether they relate to earning exempt-type income

Expenses that relate to exempt-type income (such as cash flow boost amounts) may be non-deductible. ☐

[5M] Check your treatment of foreign denominated expenses

Generally, deductions denominated in a foreign currency must be translated into Australian dollars using exchange rates allowable for tax purposes. ☐

[5N] Review deductions claimed for foreign exchange losses

If you held a foreign currency denominated bank account or entered into transactions denominated in a foreign currency, you may be able to include foreign exchange losses in calculating your taxable income. Foreign exchange losses can arise even where the relevant transaction occurs wholly in a foreign currency. ☐

[5O] Claiming deductions for gifts and donations

A tax deduction is available for a gift or donation of money or property (valued at $2 or more) made to a deductible gift recipient provided appropriate documentary evidence has been retained. The deduction is reduced to the extent that the amount thereof would result in, or increase, a tax loss for the income year. A taxpayer may be able to elect to amortise the amount over a period of up to five years. ☐

[5P] Review interest deductions

If you have significant interest (or debt) costs during the year, you should consider whether you are precluded from deducting some or all of the costs. See Section 12 – Finance issues for further detail. ☐

[5Q] Consider whether prepayments can be deducted upfront

An upfront deduction is generally not available for prepaid expenditure. Subject to certain exceptions, such expenditure is apportioned over the shorter of 10 years or the period during which the services are to be provided. It may be possible to commit to audit fees prior to 30 June and incur a deduction for the total of the fees payable[1]. ☐

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[1] See IT 2625, paragraph 8, dot points 5 and 6.

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[5R] Review service and management fees to associated entities

If fees are charged between your group entities, you should ensure agreements and other relevant paperwork to substantiate deductibility is in place before year-end, that the amounts are commercially justifiable and not paid because of losses of the recipient. ☐

[5S] Check superannuation expenses to be paid before year end

You may be able to claim a deduction for superannuation contributions by ensuring the amounts are received by the superannuation fund before year-end. ☐

[5T] Related party deductions can be denied

Where transactions involving related parties result in a mismatch between the year in which a deduction is claimed and when income is recognised, anti-avoidance provisions may defer the deduction. ☐

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Section 6

Individuals

This section outlines a number of specific year-end taxation considerations that could apply for individual taxpayers.

[6A] Be aware of ATO compliance activity

The ATO has indicated[2] that cryptocurrency transactions will be a particular focus this year and, to that end, have expanded the range of cryptocurrency service providers involved in data matching programs. The ATO is also continuing to scrutinise claims made by individuals for work-related expenses, rental property expenses and expenses relating to "lifestyle" activities (aircraft, horse breeding and racing and high value motor vehicles and boats), as well as ensuring that income is declared correctly. The ATO has developed an app (available for download here) that allows taxpayers to compare the level of proposed deductions against the ATO's average claims (provided by industry code, expense type and income threshold). ☐

[6B] Review income tax rates for the year ending 30 June 2021

For an individual resident taxpayer, the average tax rate (including Medicare levy) on a taxable income of $165,922 for the year ending 30 June 2021 is 30%. A taxable income of that amount equates to a dividend of $116,146 fully franked at 30%. A taxable income of $115,765 (which equates to a dividend of $85,666 fully franked at 26%) would result in an average rate for such an individual of 26%. ☐

[6C] Note the Medicare levy changes

The Medicare levy is an additional 2% charge on a taxpayer's taxable income. This rate applies where an individual's taxable income for the current year exceeds $22,801. ☐

[6D] Claiming deductions for home office expenses

Home office expenses include running expenses (heating, cooling, and lighting); depreciation of computers, phones, and desks; costs of work-related phone calls and internet usage. The ATO allows you to claim actual amounts, an amount based on a rate of 52 cents per hour (plus the decline in value of depreciating assets) or an amount based on a rate of 80 cents per hour. Additional occupancy expenses (rent or mortgage interest, council rates and house insurance premiums) can only be claimed where your home office is a place of business. ☐

[6E] Claiming work-related car expenses

The deduction available for work-related motor vehicle uses may be calculated using the "cents per km method" (at a rate of 68c per km for business use of up to 5,000 km) or the "logbook method". ☐

[6F] Other work-related deductions

Review the potential for work related deductions, including depreciation on tools of your trade, protective items, computers, software, reasonable overtime meal allowance amounts, substantiated work-related travel, and the cost of buying or cleaning specific occupational protective clothes and uniforms. The ATO has published information (here) on other types of work-related expenses that may be claimed as well as substantiation requirements. ☐

[6G] Self-education deductions

Review whether education expenses are deductible and consider the non-deductible threshold of $250 which may apply. ☐

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[2] https://www.ato.gov.au/Media-centre/Media-releases/Cryptocurrency-under-the-microscope-this-tax-time/.

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[6H] Work-related expenses you cannot claim

Expenses associated with your work that you cannot claim include: travel between your home and your primary workplace; expenses for a uniform consisting of conventional clothing; entertainment (e.g. buying a meal for a client or colleague); fines or penalties; childcare expenses; and fees paid to social clubs. ☐

[6I] Claiming superannuation contributions

Individuals should consider whether making additional personal contributions is appropriate. If a contribution is made, a notice of intention to claim a deduction must be given to and acknowledged by the fund before the earlier of the day the individual's tax return is lodged and 30 June of the next income tax year. ☐

[6J] Claiming tax offsets for investments in ESICs and ESVCLPs

Investing in an ESVCLP or an ESIC may provide a non-refundable carry-forward tax offset to reduce tax otherwise payable for the current income tax year. ☐

[6K] Check the treatment of employee share schemes

The discount on shares, stapled securities and right/options acquired under an ESS is generally subject to tax to the individual. Review your ESS arrangements to determine if you can defer the discount or whether it will fall to be assessable in the current year. ☐

[6L] Non-commercial losses may not be deductible

An individual may be unable to deduct a loss generated from a business (other than a primary production or professional arts business) where the individual earns less than $250,000 unless one of several "exceptions" is satisfied or the Commissioner exercises of his discretion. ☐

[6M] Deductions may be denied if they relate to personal services income

Where you have provided services (see [4N]), you need to consider the possible application of the PSI rules and how this may affect your ability to claim deductions. ☐

[6N] Reducing income through a living away from home allowance

Where an employee is required to live away from their usual home in Australia for the purposes of their employment, the taxable value of any LAFH allowance may be reduced. The home must be available for the duration of their time away (i.e. it cannot be rented out). The ability to reduce the taxable value is limited to a maximum period of 12 months for an employee at any one work location. ☐

Additional notes

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Section 7

Trusts

This section outlines a number of specific year-end taxation considerations that could apply to trust taxpayers.

[7A]	Be aware of ATO compliance activity	
	The main issues that the ATO are targeting include arrangements that direct income entitlements to a low-tax beneficiary while the benefits are enjoyed by others; arrangements that exploit differences between trust and taxable income; revenue activities are mischaracterised to achieve concessional capital gains tax treatment; changes being made to trust deeds or other constituent documents to achieve a tax planning benefit; reporting of capital gains by non-resident beneficiaries[3].	☐

[7B]	Trustee can be taxed at 47%	
	To help reduce the risk of a trustee assessment at a rate of 47%, ensure that beneficiaries are made presently entitled to all the income of the trust before 30 June (or an earlier time if required by the trust deed). You should consider using percentages or a "balance beneficiary". You may also consider distributing an unknown balance to a corporate beneficiary which may help to reduce the risk of top up marginal tax rate on the balance of taxable income derived by the trust.	☐

[7C]	Review trust deeds before you make distributions	
	You should review your trust deed before year-end to ensure that: (a) the period during which the trust exists has not ended; (b) the proposed distributions are permitted by the deed (for example, that the deed allows for distributions of capital gains); (c) proposed distributions are to eligible beneficiaries; (d) that you properly understand the definition of income; and (e) the requirements for valid distributions will be satisfied (e.g. approval by the appointor or the guardian or the relevant unit holders).	☐

[7D]	Ensure trustee resolutions are made before year end	
	Trustee resolutions may not need to be fully documented by 30 June unless specifically required by the trust deed. However, you should be able to evidence decisions have been made by the trustee in a timely manner. Distribution resolutions or plans should be completed before year-end (or earlier if required by the trust deed).	☐

[7E]	Ensure resolutions of corporate trustees are valid	
	Where the trustee is a company, resolutions must comply with the requirements of the company's constitution (e.g., it may require two director signoff) and be recorded in the company's minute book within one month of the decision.	☐

[7F]	Understand the meaning of income of the trust estate	
	It is important to review the trust deed to determine how income is defined to ensure the resolutions are effective in order to avoid an unintended trustee assessment. Where allowed, using a definition of "income" that equates to "taxable income", can help to minimise differences between distributions to beneficiaries and the amounts on which they are taxable under the trust taxation provisions.	☐

3 Activities of the Tax Avoidance Taskforce – Trusts https://www.ato.gov.au/general/trusts/in-detail/compliance/tax-avoidance-taskforce---trusts/.

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[7G] Consider cost base reductions for timing difference distributions

If the amount paid to a unitholder for an income year exceeds their share of the trust's (taxable) net income for that year, the cost base of the unit is required to be reduced. If the cost base has been exhausted, a capital gain may arise (under CGT event E4 or CGT event E10). You may be able to reduce this risk by aligning trust income to "taxable income" (if permitted by your trust deed). ☐

[7H] Division 7A can apply to distributions to companies

If the amount paid to a unitholder for an income year exceeds their share of the trust's (taxable) net income for that year, the cost base of the unit is required to be reduced. If the cost base has been exhausted, a capital gain may arise (under CGT event E4 or CGT event E10). You may be able to reduce this risk by aligning trust income to "taxable income" (if permitted by your trust deed). ☐

[7I] Trust streaming requires special rules to be satisfied

Ensure that you have considered Division 7A when distributing income (directly or indirectly) to a corporate beneficiary if the amount thereof remains unpaid (a UPE) (see [8P]). Where a UPE exists, the UPE may result in a deemed dividend if not placed on complying Division 7A terms or Investment Agreement terms. Further, loans, payments or other benefits provided by the trust may also result in a deemed dividend to the ultimate recipient. ☐

[7J] ATO is focusing on developers claiming capital gains in trusts

The ATO may seek to treat capital gains as on revenue account and deny access to capital gains tax concessions (such as the 50% CGT discount). The ATO is focusing on this area for property development entities holding assets on capital account. You should ensure your position is correct and defendable. ☐

[7K] Satisfying the trust loss and bad debt deduction rules

In the absence of a family trust election (FTE), the trust loss provisions operate to disallow deductions for current or prior year revenue losses or bad debts unless certain tests for changes in ownership and control are satisfied. The application of the tests depends on whether the trust is a fixed or non-fixed trust and is modified where a valid FTE is in place. The downside of making an FTE is that the trust will be liable to Family Trust Distributions Tax if a distribution is made to a person who is not a member of the family group. ☐

[7L] Franking credits may not flow through a trust: ensure trustee is a qualified person

Where a trust (other than a fixed trust) holds shares that were acquired after 31 December 1997, franking credits can only be passed through the trust to a beneficiary if both the trustee and beneficiary are qualified persons (unless an exception applies). This generally requires that the 45-day holding period test is satisfied (or 90 days for certain preferred equities). It is practically difficult (if not impossible) to satisfy the fixed trust test without requesting the ATO to exercise its discretion, which can be obtained through a private binding ruling. ☐

[7M] Review distributions from foreign trusts

In two taxation determinations dealing with capital gains made by trustees of foreign trusts in respect of assets that are not taxable Australian property, the ATO sets out its view that such capital gains will be assessable to an Australian resident beneficiary as trust income. This view results in the denial of the general 50% CGT discount and prevents the beneficiary offsetting capital losses against the gain. ☐

[7N] Review foreign beneficiary exclusion clauses

Newer trust deeds may (for stamp duty or land tax reasons) exclude foreign persons or other trusts that may have foreign beneficiaries from benefiting from the trust. Ensure that you have checked this prior to 30 June. ☐

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[7O] Deductions can be denied where income is injected into a loss trust

Where income is to be injected into a trust (for example, as a distribution from another trust), losses and deductions otherwise available to the receiving trust may be denied and the trustee taxed on the income injected in the absence of an FTE. If an FTE is made, the trust will be liable to Family Trust Distributions Tax if a distribution is made to a person who is not a member of the family group. ☐

[7P] Deductions can be denied where income is injected into a loss company

If the trust is distributing taxable income to a loss company, extreme care needs to be taken where the taxable amount exceeds the amount of cash to be distributed to the company. Tax losses may be limited under the income injection rule to the extent of the injected amount (i.e. the distribution) and to the extent that the Commissioner believes it is fair and reasonable, even where an FTE has been made. This can result in a denial of tax losses in such case. ☐

[7Q] Interest expenses may be denied where they fund distributions

The ATO holds the view that interest on borrowings to fund contemporaneous distributions is not deductible. A similar view is also held where borrowings are used to fund the repayment of beneficiary loans or unpaid entitlements created from asset revaluation reserves of the trust. ☐

[7R] Denial of interest deductions on money used to make interest free loans

Where a beneficiary of a discretionary trust borrows money (at interest) and on-lends (interest free) to the trust, the interest expenditure may not be deductible even if the beneficiary will receive trust distributions. Instead, you should consider charging interest on such loans for 30 June. ☐

[7S] Review family trust elections

Make sure all new trusts have made an election to be within the family group. The ATO takes the view that a valid FTE cannot be made before the end of the first year for which it is to operate. As an FTE may not be possible where the test individual dies, you should consider whether any spare trusts should be created before 30 June which have made FTEs with respect to the test individual (especially where the group is large). ☐

[7T] Obtain TFNs before year end to avoid TFN withholding

Where a beneficiary has not provided their TFN to the trustee prior to receiving, or being made presently entitled to, a trust distribution, the trustee is required to withhold 47%. Trustees should obtain TFNs from beneficiaries who have not previously been entitled to a distribution to avoid this. Details of new beneficiaries need to be reported to the ATO by 31 July. ☐

[7U] Superannuation deductions can be denied for directors of corporate trustees

Superannuation contributions for a director of a corporate trustee of a trust will generally only be deductible if the director is a common law employee of the trust and engaged in producing the assessable income of the trust. ☐

[7V] Trust distributions to a superannuation fund can result in 45% tax

Non-arm's length income derived by a superannuation fund (which may include discretionary trust distributions or private company dividends) can be taxed at a rate of 45% in a superannuation fund. This may also apply to distributions from unit trusts that are not fixed in accordance with TR 2006/7. ☐

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[7W] Trust distributions to exempt entities can trigger anti-avoidance rules

Specific anti-avoidance rules can apply where distributions are made to tax exempt beneficiaries (e.g., a charity). If a distribution is intended to be made to an exempt entity, you will need to consider these provisions. ☐

[7X] Trust stripping (reimbursement agreements) can result in 47% tax

The trustee may be liable to tax at 47% where income is distributed to one beneficiary (that pays little or no tax) and the economic benefits of the distribution are provided to a different taxpayer. An example may be where adult children beneficiaries are used, where the money is provided to the parents. The provisions have an unlimited amendment period. The ATO is currently drafting a ruling on this issue and is expected to commence activity in this area soon. Please refer to the ATO fact sheet (issued in 2014) which provides examples of when the ATO may seek to apply the reimbursement agreements provision. ☐

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Section 8

Companies

This section outlines a number of specific year-end taxation considerations that could apply to corporate taxpayers.

[8A] Be aware of ATO compliance activity

Areas targeted include: exploitation of COVID-19 stimulus measures (loss carry back, instant asset write off or temporary full expensing measures)[4]; contrived arrangements designed to gain access to the reduced company tax rate; situations where the performance of the company is not comparable to similar businesses; there is low transparency of tax affairs; there are large, one-off or unusual transactions; a history of aggressive tax planning; choosing not to comply or regularly taking controversial interpretations of the law; where the lifestyle of the owners is not supported by after-tax income; private assets treated as business assets and poor governance and risk management systems[5]. You should consider whether any of your arrangements are those that have been identified by the ATO, and, if required, consider taking appropriate action. ☐

[8B] Consider whether to carry-back a current year tax loss

Corporate tax entities with an aggregated turnover of less than $5 billion that have a tax loss of the income years ended 30 June 2020 or 30 June 2021 should consider whether to elect to carry back the loss to an earlier profitable income years (being the income year ended 30 June 2019 and 2020) and generate a refundable tax offset. ☐

[8C] Check your corporate tax rate is either 26% or 30% for 30 June 2021

For the 2020/21 income year, a company can be subject to either the 26% tax rate or the 30% tax rate. The lower tax rate can be available where the company's aggregated turnover for the year is less than $50 million and no more than 80% of the company's assessable income for the year is passive income. Passive income includes dividends (including franking credits), interest, rent, royalties, capital gains as well as the assessable amount of a partnership or trust distribution to the extent that it is referable (directly or indirectly through one or more interposed partnerships or trust estates) to another amount that is passive income. All other corporate tax entities are subject to tax at a rate of 30%. ☐

[8D] Check the franking rate for dividends to be paid before 30 June

If you are paying a franked dividend before 30 June, you should determine whether the maximum franking credit will be set having regard to the 26% tax rate or the 30% tax rate. The rules are similar to those outlined in [8C] above, however the company must use the actual turnover of the company for the prior financial year. This can result in a company being required to pay dividends franked to 26%, even though the profits out of which the dividend is paid were taxed at 30%. Further, if it is the company's first year, the franking rate can be deemed to be 26%. ☐

[8E] Check the franking rate for dividends to be paid after 30 June

Similarly, a company may be subject to a franking rate of 25% from 1 July 2021, where its aggregated turnover for 30 June 2021 was less than $50 million and the company did not breach the 80% passive income test for that year. This may mean that tax could be payable to 30 June 2021 at the 26% tax rate, yet dividends paid on or after 1 July 2021 could be subject to a 25% franking rate. ☐

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[4] https://www.ato.gov.au/General/Tax-planning/In-detail/Economic-stimulus-measures---compliance-and-integrity/?=redirected_compliancemeasures.

[5] Privately owned and wealthy group reviews - https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/What-attracts-our-attention/.

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[8F] Anticipating the effect of a future change in tax rate

If you expect aggregated turnover of the company for 30 June 2021 to be below $50 million, the company may be subject to the 25% franking rate for 30 June 2022. This may result in a potential loss of up to 5% of franking credits on retained earnings (i.e. where such profits have previously been subject to 30% tax). Where retained earnings and the franking account balance are significant, you should consider whether those franking credits can be legitimately preserved (e.g., by paying a dividend or whether the company may revert to a 30% company in the future). ☐

[8G] Payment of franked dividends and sufficient profits

If you are seeking to pay a franked dividend where you have retained losses or a current year loss, you may not have "profits" to be able to pay a franked dividend. This issue can generally be managed where appropriate actions are taken before the signing the accounts for the current year (e.g., by not applying the relevant loss against profits, or placing profits in a separate profit reserve). ☐

[8H] Distribution statements for franked distributions

A company that has made a franked distribution must provide the recipient with a distribution statement. The statement must be provided on or before the day of distribution for public companies and within four months of the end of the income year for private companies. The extension of time for private companies is only in respect of the preparation of the distribution statement and not an extension of time to resolve to pay a dividend. ☐

[8I] Disclosing changes to the benchmark percentage for franked distributions

The benchmark rate refers to the percentage to which a dividend has been declared to be franked. The benchmark percentage is set at the time of making the first distribution for the relevant franking period – the income year in the case of a private company and each six-month period during the income year for a public company. Once set, all dividends paid during the same franking period must be franked to that franking percentage, with disclosures required if the percentage varies by more than 20% from one franking period to the next. ☐

[8J] Review your franking account balance for a franking deficit

While a company can take into account franking credits expected to arise by 30 June in determining the extent to which a distribution is franked, care is needed to ensure that this does not create a franking deficit which can result in franking deficit tax and penalties. An exception can occur if the dividend is paid in the first year in which company tax becomes payable by the company. ☐

[8K] Distributions funded by raising capital may not be frankable

Companies that are seeking to pay franked distributions to shareholders should ensure that these are not funded by raising share capital (as the dividend may be unfrankable). ☐

[8L] ATO is targeting franking credit trading arrangements

You should review any arrangement that purports to provide a return that is calculated by reference to franking credits. Such arrangements may fall foul of specific franking credit benefit provisions. ☐

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[8M] Debt that can be treated like equity

All loans made to companies during the current year should be reviewed to ensure that they are on terms that allow them to be treated as debt for tax purposes. The loan agreement will typically require a 10-year repayment period or an appropriate interest rate. An exception also exists for some small businesses that have at call loans. Failure to satisfy the debt provisions can result in interest payments and loan repayments being treated as non-deductible unfranked dividends. ☐

[8N] Review 10-year loan agreements that are due to be repaid

Loans to companies made under loan agreements with a 10-year repayment period may be due for repayment by 30 June. If such loans are not repaid (e.g. the term is simply extended), the ATO may take the view that such loans are to be treated as equity for tax purposes with the consequences outlined above at [8M] ☐

[8O] Review Division 7A and identify transactions

Where a private company pays an amount, makes a loan or forgives a debt owed by a shareholder or their associate (and ex-associate in some cases) a Division 7A deemed dividend may arise equal to the value of the benefit provided. The use of a company's assets (for example, a company yacht) for private purposes at less than their market value can constitute a payment for these purposes. You should identify all transactions between a company and any other associated entity (individual, trust, company or partnership). ☐

[8P] Consider Division 7A for trust distribution to companies

Division 7A may apply where income of a trust is distributed to a company but not actually paid, creating a UPE to the company. It is currently the ATO practice to treat UPEs made on or after 16 December 2009 (directly or indirectly) to a corporate beneficiary as a loan from the company to the trust. ☐

[8Q] Ensure Division 7A loan agreements and investment agreements are in place

Ensure that appropriate agreements are in place for any new loans made to shareholders or their associates. Consider whether new UPEs should be placed on complying investment agreements or treated as loans before the lodgement date of the trust's tax return. ☐

[8R] Be careful on drafting new loan agreements

A new loan agreement that replaces a Division 7A loan agreement may constitute a new loan, breach the refinancing rule and result in a deemed dividend. A new loan agreement may also only apply from the time it is entered into and may be ineffective. Ensure you properly consider these issues when implementing new loan agreements. ☐

[8S] Ensure payment of Division 7A MYRs and interest charges

Ensure that MYRs are made before 30 June in respect of Division 7A loans made in prior years. Where dividends need to be declared by 30 June to enable MYRs to be made, ensure necessary resolutions are made and offset agreements entered into before year end. For prior year UPEs that have been placed on investment agreements, ensure that appropriate amounts of interest have been recorded and that the interest has been paid in cash. ☐

[8T] Review for benefits provided indirectly by companies

Division 7A contains interposed entity provisions that may apply where a loan or payment is made from a company to an entity (for example, another company) which, in turn, provides a loan to a target entity. They can also apply where a company guarantees a loan for or on behalf of another entity or where a company has a UPE from a trust. These provisions may also apply to payments or loans made by a private company to another entity where the payment or loan is an ordinary commercial transaction such as a dividend. ☐

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[8U] Review Division 7A for any re-borrowings that occur

Ensure that payments of interest and principal under Division 7A compliant arrangements are not, directly or indirectly, re-borrowed from the same company. ☐

[8V] ATO is targeting Division 7A for capitalisation of unit trusts or companies

We understand that the ATO is focusing on companies that capitalise unit trusts (from both a Division 7A and reimbursement agreement perspective). Please ensure you have properly considered these provisions and the potential high risk of ATO scrutiny. ☐

[8W] Claiming deductions for losses and bad debts

If you are utilising prior year tax losses, or have tax losses in the current year, you should consider whether the company has satisfied the continuity of ownership test and the business continuity test (consisting of the same and similar business tests). If you have made a loss in the 2016 or later income years, you should also consider whether the similar business test may provide a better opportunity to utilise losses in the future than the same business test. ☐

[8X] Schemes to take advantage of deductions or capital losses

A specific integrity provision can operate where an amount of income or a capital gain ("the injected amount") accrues to a company which would not have accrued if the company did not have a tax loss, other deduction or capital loss. For example, if the company becomes entitled to income or a capital gain of a discretionary trust. ☐

[8Y] Making tax consolidation choice on time

If you are making a choice to consolidate, you need to record your choice in writing and lodge a separate notification form with the ATO. Both the notification form and the choice to consolidate must be made by the time the tax return for the year is lodged. You will also need to consider whether tax funding and tax sharing agreements are put in place before (or close to) year-end. ☐

[8Z] Ensure you update tax cost calculations for tax consolidation

If a tax consolidated group was formed during the year or entities joined an existing tax consolidated group during the year, you should ensure that you have recalculated the tax cost base of assets and liabilities, as this could materially impact your income tax calculations. ☐

[8AA] Ensure exit calculations for disposals of subsidiaries

If entities have left a tax consolidated group, the cost base of the shares needs to be recalculated based on the underlying tax cost of assets and liabilities of the leaving entity. This can have a material impact on any capital gain or loss derived on sale of the leaving entity. ☐

[8BB] Consider the reductions in accelerated depreciation under tax consolidation

You should review whether the cost of depreciating assets brought into a tax consolidated group has been deducted by the joining entity under accelerated depreciation measures (including instant asset write off and temporary full expensing). The tax cost setting amount for such assets cannot exceed their termination value with any reduction not re-allocated among other assets. ☐

[8CC] Research and Development Tax Incentive

Depending on its size, a company undertaking eligible R&D activities may qualify for either a refundable 43.5% R&D tax offset (for smaller entities with an aggregated turnover of less than $20 million) or a non-refundable 38.5% tax offset (for all other entities). The company's business records must be sufficient to verify the nature and eligibility of the R&D activities, the amount of expenditure incurred on those activities and the relationship between the expenditure and the R&D activities. These records should have been maintained contemporaneously. ☐

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[8DD] Research and Development considerations

Make sure have considered specific issues relating to R&D claims including: reducing wages expenditure for JobKeeper payments, reducing claims in respect of expenditure to an associate that remain unpaid at year end, obtaining an overseas (advance) finding in respect of R&D activities carried out overseas, and record keeping requirements (an area of ATO focus). ☐

[8EE] Varying the pay-as-you-go income tax instalments

Determine whether the PAYG instalment for the final quarter of the year can be varied. ☐

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Section 9

Partnerships

This section outlines several specific year-end taxation considerations that could apply to partnerships.

[9A]	Comply with the ATO guidelines for professional practices	
	In March 2021, the ATO released draft revised guidelines for the allocation of profits within professional practices. As currently drafted, the revised guidelines will not apply in relation to profit allocation arrangements entered into before 14 December 2017 that continue to comply with the previous guidelines and do not exhibit high risk factors until 30 June 2023. While consultation on the revised guidelines is ongoing, distributions and payments relating to income of a partnership should be considered for the current 30 June in light of the draft.	☐

[9B]	Review changes in partners for no-goodwill professional practices	
	Administrative practices exist for the transfer of interests (practice interests) in no-goodwill professional partnerships, trusts and incorporated practices (practices). The administrative practices do not apply where a partner assigns their partnership interest to a related entity. All no-goodwill professional practices should consider the application of the ATO's administrative views on their structures.	☐

[9C]	Varying distribution amounts to partners	
	For common law partnerships, consider the ability to vary income distribution entitlements before 30 June (provided this is allowed under the partnership agreement).	☐

[9D]	Review Division 7A for contributions made by a company	
	You should review partnership accounts to ensure that amounts of partnership equity and undrawn profits owing to a company are not inadvertently recorded as loans. You should consider whether Division 7A applies to any payments made by the company to the partnership (or to entities through the partnership).	☐

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Section 10

Managed investment trusts

This section outlines several specific year-end taxation considerations that could apply to managed investment trusts (MIT).

[10A] Determine which regime applies for the income year

You should determine whether you are going to apply the AMIT regime or the non-AMIT regime for the current year. Please note that once you have elected into the AMIT regime and meet the qualification requirements, the election is irrevocable. ☐

[10B] Complying with the AMIT provisions for AMITs

If it is your first year that you are applying the AMIT regime, ensure that your systems and processes are in place to deal with the distribution review, including reconciliations that are required to avoid the trustee being taxed on certain unreconciled amounts. AMMA (investor) statements are generally required to be given to investors no later than 3 months after the end of the income year. ☐

[10C] MIT fund payments

The withholding tax rate on fund payments to non-residents during the 2021 income year is equal to 15% for exchange of information (EOI) countries and 30% for non-EOI countries. A special rate of 10% applies to distributions related to certain energy efficient buildings. A payment can only be treated as a fund payment if is made during the income year, three months after the income year or within six months if ATO agreement is sought. The higher 30% withholding rate also applies to fund payments to non-residents that are attributable to non-concessional MIT income (including income from certain stapled structures, farming operations and underlying trading trust income). ☐

[10D] Completing your CRS and FATCA reports

CRS and FATCA scheme documents must be provided to the ATO by 31 July 2021. Please note that the ATO has developed a tool to assist in the preparation of the CRS report for lodgement via the ATO Portal for smaller fund operators. If you have not completed your due diligence procedures, you need to ensure that these are completed in time for reporting. ☐

[10E] Lodging TFN reports

Investment bodies are required to lodge a Quarterly tax file number (QTFN) and Australian business number (ABN) report for any quarter in which they accept a new TFN or ABN quotation from an investor. The report should be lodged no later than 28 days after the end of each quarter. ☐

[10F] Distributing income of the Fund

Where the Fund is not an AMIT, ensure you have considered the trust deed before year end and considered the quantum of income that is distributed under the trust deed. If a lesser amount is to be distributed, ensure that appropriate resolutions are in place. If there is a risk that the Fund is a Division 6C trust for the income year, consider the implications for distributions of the Fund. ☐

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Section 11

Capital gains tax

This section considers several year-end considerations for capital gains that may have been derived during the income year.

[11A] Consider whether the sale of property is revenue or capital

The ATO continues to closely scrutinise whether receipts from property developments should be on revenue account rather than capital account. Ensure that you consider the ATO's guidelines for determining whether a gain or loss is on revenue account or capital account. ☐

[11B] Review your entitlement to the CGT discount

A capital gain can be reduced by 50% where it is in respect of a CGT asset held by a resident individual or trust for more than 12 months prior to the CGT event happening (subject to certain exceptions). Not all CGT events qualify for the 50% CGT discount. A partial CGT discount may be available for non-resident individuals and temporary resident individuals in some circumstances. ☐

[11C] Small business CGT concessions

Capital gains on active assets may qualify for the small business CGT concessions if you can satisfy the $6 million net assets test (on a connected entity and affiliate inclusive basis) or the $2 million turnover test (on a connected entity and affiliate inclusive basis). As the ATO is targeting and reviewing compliance with these provisions, you should review your ability to apply these concessions to capital gains derived during the income year. The CGT concession stakeholder rule is dependent on distributions for the income year (which may need to be considered in your planning). ☐

[11D] Deferring capital gains under earnout arrangements

Special rules apply where the consideration in a sale and purchase of a business includes an earnout arrangement, which allow taxpayers to defer their capital gain on a sale. As the rules only apply in a narrow set of circumstances, you should carefully consider their application. ☐

[11E] Review CGT exemptions that may apply

There are several CGT exemptions that can apply to reduce capital gains and losses made during an income year. You should carefully consider each capital gain that has been made and whether an exemption may apply. ☐

[11F] Review CGT rollovers that may apply

There are several CGT rollovers that can apply to defer capital gains and losses made during an income year. You should carefully consider each capital gain that has been derived and whether a rollover may apply. ☐

[11G] Applying the main residence exemption

A capital gain made from the sale of a dwelling that was your main residence may be reduced if you qualify for the main residence exemption. Special rules apply in a range of circumstances. You should ensure you have properly considered these rules. ☐

[11H] Review wash sale arrangements

Where CGT assets (e.g. shares) are sold for a capital loss and substantially the same assets are reacquired shortly thereafter, the ATO may seek apply Part IVA (the general anti-avoidance provision). Be careful in implementing wash sale arrangements, especially if the transactions occur close to 30 June. ☐

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Section 12

Finance issues

This section considers several year-end considerations for financial transactions and financial type entities for the income year.

[12A] Consider tax issues on loan rationalisations

It is common to rationalise intra-group loans at year-end to simplify arrangements and Division 7A compliance. However, loan rationalisation can give rise to significant tax consequences (e.g. indirect Division 7A issues), and may cause other tax issues if one of the entities involved has a deficiency in net assets (e.g. debt forgiveness or tainting type issues). Ensure you have properly considered any offset arrangements planned for year-end. ☐

[12B] Review deductibility of interest

If you have incurred significant financing costs during the year, you should consider whether you may be precluded from deducting some or all of the costs (where you cannot trace the borrowing to income producing assets). Loans used to finance repayments of UPEs may give rise to non-deductible debt. ☐

[12C] Interest that exceeds the benchmark may be non-deductible

Where interest charged on a debt instrument exceeds the benchmark rate of return plus 150 basis points, the interest expense may be treated as non-deductible. This can occur for instruments charging significantly high interest rates (e.g. mezzanine debt). ☐

[12D] Review capital protected borrowings

Interest deductions may be denied in respect of funding capital protected shares, units or stapled securities. You should review capital protected arrangements. ☐

[12E] Consider the taxation of financial arrangements provisions for large groups

The TOFA provisions apply to taxpayers that have an aggregated turnover of $100 million or more, financial assets greater than $100 million or gross assets greater than $300 million and certain other categories of taxpayers. The provisions require gains and losses (e.g. interest) to be accrued. ☐

[12F] TOFA may apply to smaller groups

TOFA may also apply where a taxpayer is party to an arrangement that is a qualifying security (for example, a loan that has deferred interest and has a term of more than 12 months). On an annual basis, you need to consider whether the provisions will start to apply to your entity or group of entities. ☐

[12G] Consider using the TOFA elections

The TOFA provisons allow taxpayers to make a number of elections that allow the tax treatment of financial instruments to be aligned with accounting positions. This can simplify compliance (e.g. for forex transactions), but may bring forward the taxing point (e.g. unrealised forex gains). Elections generally need to be made before 30 June. ☐

[12H] ATO is focusing on TOFA compliance

The ATO is conducting ongoing compliance activity. Accordingly, if your group is subject to TOFA, you should ensure you are comfortable with your TOFA positions. ☐

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[12l] Reporting CRS information to the ATO for investment entities

If you run a family office or a managed investment scheme, you may need to disclose information to the ATO by 31 July for accounts held by foreign tax residents. ☐

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Section 13

International tax

This section considers a number of year-end considerations where you have international transactions, or inbound or outbound investments.

[13A] Be aware of ATO compliance activity

The ATO is targeting international transactions and has received substantial funding for its Tax Avoidance Taskforce, targeting both High Wealth Individuals and multinationals. You should carefully consider whether your arrangements with international parties are likely to be scrutinised by the ATO. ☐

[13B] ATO will data match your foreign income under CRS

If you are an Australian resident for tax purposes, the ATO will be receiving CRS tax information from other jurisdictions. You should ensure that you have fully included all income from foreign financial accounts in your Australian income tax return. ☐

[13C] Tax residency

Ensure you have checked the residency of both resident and non-resident persons (especially foreign incorporated companies). This can impact the amount of income included in your tax return and may also impact on the operation of other provisions. A change in residency can also trigger taxable events. ☐

[13D] Determine if you are subject to the hybrid mismatch rules

The hybrid mismatch rules can apply where two tax jurisdictions treat entities, instruments or branches differently. The rules may permanently deny or defer a deduction or include an amount in a taxpayer's assessable income and may result in material tax adjustments in many cases. Broadly, the provisions operate where the same payment results in a deduction in two countries or where a deduction is provided for a payment in one country that exceeds the amount that is subject to tax in the recipient country. These rules **must be considered** by anyone with foreign income and/or expenses. ☐

[13E] Reducing your income if you are a temporary resident

Subject to an applicable DTA, a foreign national who is considered to be an Australian tax resident could be liable to Australian tax on their worldwide income. However, there is an exception for most income if an individual is considered a "temporary resident". Certain temporary residents may also be exempt from the Medicare Levy. ☐

[13F] Special tax rates for working holiday makers

If you are a working holiday maker, the first $37,000 of income will be taxed at 15%, with the remainder taxed at ordinary resident rates. If you employ or are planning to employ working holiday makers, you need to register as an employer of working holiday makers before making payments to them. In addition, you will need to withhold tax at working holiday maker rates. ☐

[13G] Distributions to non-Australian resident beneficiaries

Foreign sourced capital gains and capital gains relating to assets that are not taxable Australian property that are distributed to non-residents through an Australian trust can be taxable to the non-resident. Care therefore needs to be taken in distributing such amounts to non-residents on or before 30 June. ☐

[13H] Passing conduit foreign income through Australia tax-free

The CFI provisions may allow unfranked dividends to be paid by an Australian resident company to non-resident shareholders free of withholding tax provided certain conditions are met. Certain time constraints apply to the CFI distribution to a non-resident through a chain of entities. ☐

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[13I] Review your entitlements to foreign income tax offsets

The FITO rules allow a taxpayer to claim a tax offset against their Australian tax for foreign income tax paid on their foreign income regardless of when it is paid. FITOs available on foreign capital gains may be reduced where the gain is subject to the CGT discount or other concessions or reduced by losses. ☐

[13J] Consider whether foreign distributions or gains to a company can be exempt

Provided certain conditions are satisfied, an Australian corporate tax entity may not be subject to Australian tax on: (1) profits of a foreign branch (including those received indirectly through a partnership or trust); (2) foreign equity distributions (including those received indirectly through a partnership or trust); and (3) capital gains made on the disposal of a shareholding in an active foreign company. ☐

[13K] Indirect foreign distributions may not be exempt

The ATO has taken the view that, in relation to foreign equity distributions received indirectly through a partnership or trust, the Australian corporate tax entity must be entitled to the income at the time the dividend is received by the partnership or trust. This can present particular difficulties where the interposed trust is a discretionary trust. It is critical you identify this issue before 30 June. ☐

[13L] Review the tax treatment of sales of assets by non-residents

Non-residents and temporary residents can dispose of certain Australian assets without tax consequences. However, non-residents and temporary residents are no longer eligible for the 50% CGT discount (subject to transitional rules). In addition, with only limited exceptions, a non-resident will be denied the ability to claim the main residence exemption. ☐

[13M] Review deductions incurred in earning foreign income

Generally, a deduction may be denied for a loss or outgoing incurred in earning exempt or NANE income. Debt deductions incurred in respect of income previously attributed under the CFC regime as well as foreign non-portfolio equity distributions paid to a company are exceptions to that general rule. ☐

[13N] Deemed dividends from non-resident CFCs

Integrity provisions can operate to deem there to be an unfranked dividend where certain benefits are provided by a CFC to a shareholder or associate of the shareholder. These provisions are similar to, but take precedence over, Division 7A and can operate even where the transactions are at an arm's length price. ☐

[13O] Denial of deductions where withholding tax is not paid

A deduction may be deferred or denied if applicable withholding tax obligations are not satisfied (e.g. interest or royalty withholding tax). ☐

[13P] Consider the impact of distributions to non-resident beneficiaries

If a trust has a non-resident beneficiary that is presently entitled to the income of the trust, the trustee will be assessed on that non-resident beneficiary's share of the net (taxable) income of the trust. Where the income consists of interest, dividends, royalties or CFI, special withholding tax rates may apply. The full 50% CGT discount is not available for a capital gain (generally accruing after 8 May 2012) included in the taxable income of a trust distributed to a non-resident or temporary resident. ☐

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[13Q] Deemed income from non-resident trusts, CFCs and other offshore assets

If you hold an investment in, or have provided property or services to, a foreign trust or company, you should consider whether you need to bring to account accrued assessable income under provisions such the transferor trust rules or the CFC provisions for 30 June. The CFC regime can apply to attribute the income of a foreign company that is controlled by an Australian resident(s) and can result in material tax adjustments in many cases. The provisions can also apply to Australian taxpayers that hold a minority interest in a CFC. ☐

[13R] Review foreign exchange gains or losses

Consider whether the (tax) foreign exchange provisions will apply. Consider if there are any opportunities to reduce compliance under the provisions by making certain elections before year-end. The treatment of foreign exchange gains and losses is considered at [4K] and [5N]. ☐

[13S] Reducing your income if you are a temporary resident

Subject to an applicable DTA, a foreign national who is considered to be an Australian tax resident could be liable to Australian tax on their worldwide income. However, there is an exception for most income if an individual is considered a "temporary resident". Certain temporary residents may also be exempt from the Medicare Levy. ☐

[13T] Special tax rates for working holiday makers

If you are a working holiday maker, the first $37,000 of income will be taxed at 15%, with the remainder taxed at ordinary resident rates. If you employ or are planning to employ working holiday makers, you need to register as an employer of working holiday makers before making payments to them. In addition, you will need to withhold tax at working holiday maker rates. ☐

[13U] Consider requirement to lodge partnership tax returns for US & UK foreign hybrids

Australian residents who invest via foreign hybrid companies or limited partnerships in the US and UK that are treated as fiscally transparent entities may be required to lodge an Australian partnership tax return on behalf of the foreign hybrid ☐

Additional notes

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Section 14

Transfer pricing and cross border

This section considers several significant integrity measures that apply to international groups, including the transfer pricing regime. It is critical that you consider this section if you have cross-border transactions.

[14A] Review your compliance with the transfer pricing regime

All taxpayers with international dealings must have evidence to demonstrate that they have applied the transfer pricing provisions. All international related party dealings are captured, and an entity needs to self-assess adjustments to their tax return where arm's length conditions (rather than the actual conditions) may provide for different results. The ATO will continue to target this area. ☐

[14B] Ensure contemporaneous documentation for transfer pricing

Taxpayers are precluded from receiving relief from penalties in the event of an ATO initiated transfer pricing adjustment if they do not have contemporaneous documentation in place at the time of lodging their income tax return. In preparing an income tax return, taxpayers are required to complete an IDS and disclose the percentage of their related party transactions that are covered by contemporaneous transfer pricing documentation. It is the public officer's responsibility to ensure they do not make a false or misleading statement in the tax return. ☐

[14C] Accessing simplified record keeping for transfer pricing

The ATO has developed two key categories of simplified record keeping obligations for certain taxpayers. Broadly, the first category includes options for particular classes of taxpayers (i.e. distributors and small business taxpayers). The second category includes options for particular classes of international related party dealings, including transactions based on certain materiality levels, low value adding intragroup services, technical services and certain inbound / outbound low-level loans. ☐

[14D] Determine your ATO risk rating for international arrangements

The ATO has released guidance on its compliance approach to the transfer pricing outcomes associated with inbound distributors, offshore hubs and cross border financing that categorises the risk of an ATO transfer pricing investigation. You should be determining your risk rating with respect to your arrangements. ☐

[14E] Determine if you are a significant global entity (SGE)

An SGE is (a) an entity that has an annual income of $1 billion or more; or (b) a member of a group of entities that is consolidated for accounting purposes and has a consolidated annual income of $1 billion or more. SGEs are subject to several specific reporting and penalty measures. The definition of SGEs includes entities that are headed by trusts, partnerships and individuals and entities that are not otherwise consolidated (due to certain exceptions in accounting standards). ☐

[14F] Consider the multinational anti-avoidance law for SGEs

If you are an SGE, consider whether your arrangements are within the scope of the multinational anti-avoidance law (MAAL). Generally, the MAAL can apply to cross border transactions that result in an Australian tax benefit or a foreign tax benefit. The ATO are heavily targeting such transactions. ☐

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[14G] Diverted profits tax for SGEs

The diverted profits tax (DPT) can broadly apply to arrangements entered into with a foreign associate that has the principal purpose, or one of the principal purposes, of obtaining an Australian tax benefit or foreign tax benefit. There are some exceptions that can be applied. If you are an SGE, consider whether your arrangements are within scope of the DPT. ☐

[14H] Country-by-country reporting for CBC reporting entities

If you are a CbCRE, you will be required to compile a master file (i.e. a statement relating to the global operations and activities of the CBC reporting entity) and local file (i.e. a statement relating to the Australian entity's operations, activities, dealings and transactions) for lodgment with the ATO and a CbC report (i.e. a statement relating to the allocation between countries of the income and activities of, and taxes paid by the Australian entity and other members of the group) to be filed by the parent entity with the tax authority in its country of residence. ☐

[14I] Consider the multinational anti-avoidance law for SGEs

If you are an SGE, consider whether your arrangements are within the scope of the multinational anti-avoidance law (MAAL). Generally, the MAAL can apply to cross border transactions that result in an Australian tax benefit or a foreign tax benefit. The ATO are heavily targeting such transactions. ☐

[14J] Diverted profits tax for SGEs

The diverted profits tax (DPT) can broadly apply to arrangements entered into with a foreign associate that has the principal purpose, or one of the principal purposes, of obtaining an Australian tax benefit or foreign tax benefit. There are some exceptions that can be applied. If you are an SGE, consider whether your arrangements are within scope of the DPT. ☐

[14K] Thin capitalisation

The thin capitalisation provisions may permanently deny deductions for interest and other debt deductions of Australian entities that have foreign operations or controlled foreign entities (outbound investors) and of foreign entities that have Australian operations or controlled Australian entities (inbound investors). The provisions broadly limit deductions by applying a safe harbour debt to equity ratio. Consider examining your tax gearing ratios before 30 June as there are strategies to minimise the extent of the denied deduction. ☐

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Section 15

Superannuation funds

This section outlines several specific year-end taxation considerations that could apply to superannuation funds.

[15A] Be aware of ATO compliance activity

The ATO is likely to begin enforcing administrative penalties for compliance breaches by SMSF trustees with a lesser willingness to remit those penalties than has been common over the past year in recognition of the impacts of COVID-19. Other areas of ATO focus are likely to include valuation and holding confirmations for unlisted investments, whether residential and commercial lease terms are being met (particularly if the tenant is a related entity), whether documentation supporting any COVID-19 rent relief, or Limited Recourse Borrowing Arrangement repayment relief, is in place to substantiate adjustments granted by the SMSF and whether fund investment strategies are being complied with and regularly reviewed. ☐

[15B] Employer deductions for superannuation contributions

For an employer to be entitled to a deduction for superannuation contributions, the contribution must be received by the superannuation fund on or before 30 June. The SG contribution rate for the current year remains unchanged at 9.5% of an employee's OTE but is legislated to increase to 10% from 1 July 2021. An employer does not have to make SG contributions in respect of employee's salary over a "maximum salary base". For the year ending 30 June 2021, the maximum salary base is $57,090 per quarter. ☐

[15C] Non-deductible superannuation guarantee charge

Employers who fail to pay contributions within 28 days of the end of the quarter are liable to pay a non-deductible SG charge. ☐

[15D] Review compliance with the concessional contributions cap

Make sure you have complied with the annual concessional contribution cap ($25,000 for the income year ended 30 June 2021) and consider whether additional concessional contributions could be made before 30 June. You should consider whether you are eligible to make catch-up concessional contributions as noted in section 15E below. ☐

[15E] Review compliance with the non-concessional contributions cap

The annual non-concessional contributions cap is $100,000. Individuals with a total superannuation balance in excess of $1.6 million (at 30 June 2019) will have a non-concessional contribution cap of $nil. Taxpayers under the age of 65 can, in certain situations, bring forward up to two years' worth of non-concessional contributions provided the brought forward amount does not result in the individual's total superannuation balance exceeding $1.6 million. ☐

[15F] Making low income spouse superannuation contribution

If you have a spouse with a low income, you may be entitled to a tax offset of up to $540 per year if you make contributions to their superannuation account. If your spouse has income (including reportable fringe benefits and reportable employer superannuation contributions) of less than $40,000, consider the implications of making contributions before 30 June. ☐

[15G] Consider the cap on superannuation transfers into retirement products

If you are currently running pensions, or are about to commence pensions, consider the implications of the $1.6 million transfer balance cap on your superannuation account balances, and whether you will need to transfer excess amounts to an accumulation account. Also consider the timing of commencing a pension in light of the increase of the transfer balance cap to $1.7 million from 1 July 2021, for example would the better approach be to commence a pension before 30 June or wait until after 30 June 2021. ☐

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[15H] Additional contributions tax for higher income earners

Individuals with income exceeding $250,000 are liable to an additional 15% contributions tax (i.e. bringing the total rate to 30%) on contributions for the year. You should take this into consideration when making superannuation contributions prior to year-end. ☐

[15I] Withdrawing super amounts under the first home super saver scheme

The FHSS Scheme allows voluntary concessional and voluntary non-concessional contributions made after 1 July 2017 (along with associated deemed earnings) to be withdrawn from 1 July 2018 to assist with the purchase of an individual's first home. The maximum amount that can be withdrawn is $30,000. ☐

[15J] Contributing the proceeds of downsizing to superannuation

Individuals over the age of 65 who enter into a contract to sell their home on or after 1 July 2018 may be able to contribute the proceeds from selling their home, up to a maximum of $300,000, into their superannuation fund. The individual (or their spouse) must have owned the home for at least 10 years and be eligible for a full or partial exemption under the CGT main residence exemption. Strict timeframes apply when contributing these amounts into your superannuation fund. ☐

Additional notes

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Section 16

Tax administration and integrity

This section considers a number of integrity measures that should be considered with your year-end planning.

[16A] Part IVA	
As tax planning strategies may reduce taxable income, it is always prudent to consider whether Part IVA could apply in relation to any material tax planning strategies that may have been implemented.	☐

[16B] Promoted schemes	
Be careful of schemes that are promoted to taxpayers around year-end to reduce taxable income for the year. The ATO has produced guidance on what to look out for and what attracts its attention.	☐

[16C] Phoenix activity	
Illegal phoenix activity is broadly defined as causing a new company to be created to continue the business of a company that has been deliberately liquidated to avoid paying its debts, including taxes and employee entitlements. The ATO continually conducts reviews where such activity is suspected. Be wary of schemes that promote deliberately liquidating companies to avoid paying debts.	☐

[16D] Black economy	
You should ensure that you appropriately report your tax and superannuation obligations to the ATO and other relevant authorities as there are serious consequences for avoiding tax.	☐

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Section 17

Appendix – Tax rates

Resident individual rates

2020/21	
Taxable income	**Tax payable**
$0 - $18,200	Nil
$18,201 - $45,000	19% of excess over $18,200
$45,001 - $120,000	$5,092 + 32.5% of excess over $45,000
$120,001 - $180,000	$29,467 + 37% of excess over $120,000
$180,001+	$51,667 + 45% of excess over $180,000

2021/22	
Taxable income	**Tax payable**
$0 - $18,200	Nil
$18,201 - $45,000	19% of excess over $18,200
$45,001 - $120,000	$5,092 + 32.5% of excess over $45,000
$120,001 - $180,000	$29,467 + 37% of excess over $120,000
$180,001+	$51,667 + 45% of excess over $180,000

Resident minor rates

2020/21	
Tax Rates	**Tax Rates**
$0 - $416	Nil
$417 - $1,307	66% of excess over $416
$1,308+	45% of total income that is not excepted income#
# Excepted income includes employment income	

2021/22	
Taxable income	**Tax payable**
$0 - $416	Nil
$417 - $1,307	66% of excess over $416
$1,308+	45% of total income that is not excepted income#
# Excepted income includes employment income	

Medicare levy rates – taxpayers eligible for the seniors and pensioners tax offset

2020/21	
Taxable income	**Levy payable**
$0 - $36,705	Nil
$36,706 - $45,881	10% of excess over $36,705
$45,882	2% of entire amount
The rates may change if the taxpayer has a spouse on 30 June and family income is below $51,094 plus $3,597 for each dependant child or student	

2021/22	
Taxable income	**Levy payable**
$0 - $36,705	Nil
$36,706 - $45,881	10% of excess over $36,705
$45,882	2% of entire amount
The rates may change if the taxpayer has a spouse on 30 June and family income is below $51,094 plus $3,597 for each dependant child or student	

* if the individual received a lump sum superannuation payment and is entitled to a tax offset in respect thereof, taxable income is reduced by so much of the taxable component of the payment as does not exceed the low rate cap.

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Medicare levy rates – other individuals

2020/21	
Taxable income*	Levy payable
$0 - $23,226	Nil
$23,227 - $29,032	10% of excess over $23,226
$29,033	2% of entire amount
The rates may change if the taxpayer has a spouse on 30 June and family income is below $39,167 plus $3,597 for each dependant child or student	

2021/22	
Taxable income	Levy payable
$0 - $23,226	Nil
$23,227 - $29,032	10% of excess over $23,226
$29,033	2% of entire amount
The rates may change if the taxpayer has a spouse on 30 June and family income is below $39,167 plus $3,597 for each dependant child or student	

* if the individual received a lump sum superannuation payment and is entitled to a tax offset in respect thereof, taxable income is reduced by so much of the taxable component of the payment as does not exceed the low rate cap.

Medicare levy surcharge thresholds

2020/21		
Singles	Families	Rate#
$0 - $90,000	$0 - $180,000	0.00%
$90,001 - $105,000	$180,001 - $210,000	1.00%
$105,001 - $140,000	$210,001 - $280,000	1.25%
$140,001+	$280,000+	1.50%
# While the surcharge is calculated on taxable income, liability to the surcharge is based on income for surcharge purposes exceeding the thresholds		

2021/22		
Singles	Families	Rate#
$0 - $90,000	$0 - $180,000	0.00%
$90,001 - $105,000	$180,001 - $210,000	1.00%
$105,001 - $140,000	$210,001 - $280,000	1.25%
$140,001+	$280,000+	1.50%
# While the surcharge is calculated on taxable income, liability to the surcharge is based on income for surcharge purposes exceeding the thresholds		

Low income tax offset

2020/21	
Taxable income	Tax offset
$0 - $37,000	$700
$37,001- $45,000	$700 less 5 cents for each $1 of income over $37,000
$45,001 - $66,667	$325 less 1.5 cents for each $1 of income over $45,000
$66,668+	Nil

2021/22	
Taxable income	Tax offset
$0 - $37,000	$700
$37,001- $45,000	$700 less 5 cents for each $1 of income over $37,000
$45,001 - $66,667	$325 less 1.5 cents for each $1 of income over $45,000
$66,668+	Nil

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Low and middle income tax offset

2020/21	
Taxable income	**Tax offset**
$0 - $37,000	$255
$37,001- $48,000	$255 plus 7.5 cents for each $1 of income over $37,000
$48,001 - $90,000	$1,080
$90,001 - $126,000	$1,080 less 3 cents for each $1 of income over $90,000
$126,001+	Nil

2021/22 (last year of application)	
Taxable income	**Tax offset**
$0 - $37,000	$255
$37,001- $48,000	$255 plus 7.5 cents for each $1 of income over $37,000
$48,001 - $90,000	$1,080
$90,001 - $126,000	$1,080 less 3 cents for each $1 of income over $90,000
$126,001+	Nil

Non-resident individual rates

2020/21	
Taxable income	**Tax payable**
$0 - $120,000	32.5%
$120,001 - $180,000	$39,000 + 37% of excess over $120,000
$180,001+	$61,200 + 45% of excess over $180,000

2021/22	
Taxable income	**Tax payable**
$0 - $120,000	32.5%
$120,001 - $180,000	$39,000 + 37% of excess over $120,000
$180,001+	$61,200 + 45% of excess over $180,000

Working holiday maker rates

2020/21	
Taxable income	**Tax payable**
$0 - $45,000	15%
$45,001 - $120,000	$6,750 + 32.5% of excess over $45,000
$120,001 - $180,000	$31,125 + 37% of excess over $120,000
$180,001+	$53,325 + 45% of excess over $180,000

2021/22	
Taxable income	**Tax payable**
$0 - $45,000	15%
$45,001 - $120,000	$6,750 + 32.5% of excess over $45,000
$120,001 - $180,000	$31,125 + 37% of excess over $120,000
$180,001+	$53,325 + 45% of excess over $180,000

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Company tax rates

2020/21	
Small business entity	**26%**
Aggregated turnover less than $50m and passive income no more than 80% of total assessable income	
All other companies	**30.0%**
The franking rate for dividends paid in the 2020/21 year will be 26% if the paying company's aggregated turnover for 2019/20 was less than $50m and its passive income for 2019/20 was no more than 80% of total assessable income for 2019/20	

2021/22	
Small business entity	**25%**
Aggregated turnover less than $50m and passive income no more than 80% of total assessable income	
All other companies	**30.0%**
The franking rate for dividends paid in the 2021/22 year will be 25% if the paying company's aggregated turnover for 2020/21 was less than $50m and its passive income for 2020/21 was no more than 80% of total assessable income for 2020/21	

Private company loans (Division 7A)

Income Year	%	Reference
2021/22	4.52	
2020/21	4.52	

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