client alert | explanatory memorandum

September 2023

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 28 August 2023.

Tax time 2023: lodgment period underway

The ATO has given the green light for taxpayers with uncomplicated financial affairs to lodge their returns. It says that the information it collects from employers, banks, private health insurers, share registries and other institutions has now been pre-filled and is ready to go on either myTax (accessed through myGov) if taxpayers are lodging their own returns, or through tax portals of registered agents, if taxpayers are using those services.

The ATO notes that income such as amounts from rental properties, government payments, capital gains from the sale of investments, or other income from "side hustles" – in particular sharing economy platforms and any cash received for work performed – cannot be pre-filled, so will need to be manually entered. Taxpayers should note that there are multiple current data-matching programs being run by the ATO, for example in the areas of residential property and ride-sourcing, so it is important to get your income reporting right the first time this year.

Taxpayers ready to lodge their returns should also be aware of some changes this year which may negatively affect the amount of refund received, and in some cases may result in tax amounts payable.

The first of these changes is the cessation of the low and middle income tax offset (LMITO). This offset ended on 30 June 2022 and therefore doesn't apply to the current (2022–2023) income tax return. In the 2021–2022 income year, this offset reduced an individual's tax payable by a maximum of $1,500 for those earning between $48,001 and $90,000.

For the currently reporting (2022–2023) income year, only the low income tax offset (LITO) is available. This is for individuals earning up to $66,667, with a maximum offset of $700 for those earning $37,500 or less. That means taxpayers earning between $66,668 and $90,000 will generally be liable for $1,500 more in tax for 2022–2023 than in the previous income year.

The second change which taxpayers should be aware of is the new revised fixed rate method for calculating working from home (WFH) deductions. Previously, individuals could rely on using the shortcut method at a rate of 80 cents per hour worked from home, but that rate is no longer available. Individuals can now either claim a revised fixed rate of 67 cents per hour worked from home, or use the actual costs method.

To claim using the revised fixed rate, taxpayers need to meet specific record-keeping requirements, such as keeping a work diary or having timesheets to back up the calculation of their claimed WFH hours. On the other hand, people can still use the actual costs method to deduct WFH expenses, but this requires keeping detailed records for all expenses being claimed and is a more complex undertaking.

The ATO has warned taxpayers to carefully assess their circumstances this year, as it has noted that many more people are working from home less (and therefore incurring lower WFH costs) than they did the year before. When using either the revised fixed rate method or the actual costs method for your 2022–2023 tax return, you should not simply copy last year's calculation of your WFH hours or costs incurred.

Due to these and other changes, the ATO has advised taxpayers to remember that the initial tax estimate received from myTax or your registered tax agent may not match the final tax outcome. It recommends you wait for your finalised notice of assessment before making any plans for spending an anticipated tax refund.

Simplifying individual tax residency: government consultation

Movement may be afoot on the complex issue of individual tax residency in Australia. In 2019, the Board of Taxation released a report which contained a proposed model for modernising individual residency. It said the new framework was designed to simplify the tax system and reduce compliance costs for individuals and employers.

The Federal Government is now soliciting public feedback on the proposed model. The outcomes of the consultation will inform the government's decision on whether to proceed with the changes.

The model that the Board of Taxation proposed uses a two-step approach of primary tests and secondary tests. Apart from the government official test, which would replace the Commonwealth superannuation test, the main primary "bright line" test will be the 183-day test, in which a person who is physically present in Australia for 183 days or more in any income year would be considered an Australian tax resident.

Those individuals who do not meet the primary test would need to consider the secondary tests by applying the commencing residency test to determine whether they became a tax resident during the current income year. In addition, individuals who were tax residents in the previous year would need to apply one of three rules under the ceasing residency test to determine whether they have ceased being a tax resident in the current income year.

Currently, one of the secondary tests proposed by the Board would require an individual to be physically present in Australia for a minimum of 45 days in an income year before commencing residency, or a maximum of 45 days in an income year before ceasing residency. However, due to various global factors (eg the COVID-19 pandemic), the government is seeking views on whether this 45-day threshold is still appropriate and whether there are any circumstances where days spent in Australia should be disregarded for this threshold.

In addition to the 45-day threshold, the Board's secondary test includes the factor test, which focuses on four specific types of connection an individual may have to Australia. Any individual whose circumstances meet any of the four factors will be deemed to have a stronger connection to Australian than someone who does not. The four factors are as follows:

- having the right to reside permanently in Australia – this includes both citizenship and permanent residency;
- having an Australian family – an individual would meet this factor if their spouse or any of their children under the age of 18 lived in Australia on an ongoing basis at any time during the income year. This would not include other family relationships such as parents of adult children, adult siblings or grandchildren;
- having Australian residential accommodation – this includes a licence to occupy accommodation and property owned by an individual who moved overseas but retained access to the property, regardless of whether they have an intention to sell or rent it. It would generally exclude a mere expectation of living with a parent or relative when visiting Australia for short periods of time; however, notwithstanding the absence of a legal right to accommodation, an individual could still meet this factor if the nature of the arrangement was such that accommodation was available to them. Properties that are owned but rented out for the entire income year would be excluded; and
- having Australian economic interests – this includes employment in Australia, active participation in the carrying on of a business in Australia, and having direct or indirect interest in Australian assets; it also includes receiving Australian social security payments in the preceding income year.

As a part of the consultation, the government is seeking comments on whether any of these four factors should be defined differently, whether there are other factors better suited to identifying individuals strongly connected to Australia, and whether any additional factors should be included.

Source: https://treasury.gov.au/consultation/c2023-205344
https://taxboard.gov.au/consultation/reforming-individual-tax-residency-rules-a-model-for-modernisation

ATO crackdown on TPAR lodgments

This tax time, the ATO is cracking down on taxpayers not lodging their taxable payments annual report (TPAR) on time. It has recently issued more than 16,000 penalties for businesses who failed to lodge their TPARs for previous years despite receiving multiple reminders. The average penalty for non-lodgment was approximately $1,110. TPAR information is used to check for red flags, including not reporting income, not lodging tax returns or activity statements, overclaiming GST credits or misusing ABNs for contractors and sole traders.

The ATO has reminded relevant taxpayers that the deadline to lodge their TPAR was 28 August 2023; businesses that have not yet lodged should do so as soon as possible, or contact the ATO about the reasons for their inability to lodge in time. The ATO notes that the deadline for each year is firm, and those who fail to lodge their TPAR may be subject to penalties, the scale of which depends on the size of the entity and the period of time since the due date for lodgment.

As a reminder, the TPAR applies to businesses in the building and construction industry as well as businesses that provide cleaning, courier and road freight, information technology and security, investigation or surveillance services and have paid contractors in relation to those services.

For small entities, the failure to lodge (FTL) penalty is calculated at a rate of one penalty unit for each period of 28 days (or part thereof) that the return or statement is overdue, up to a maximum of five penalty units. From 1 July 2023, one penalty unit is $313, so the maximum penalty that small entities could be liable for would be $1,565. For medium entities (medium withholders for PAYG withholding purposes, or those with assessable income or current GST turnover of more than $1 million and less than $20 million) the penalty unit is multiplied by two, which means the maximum FTL penalty could be $3,130.

Similarly, for large entities (large withholders for PAYG withholding purposes, or those with an assessable income or current GST turnover of $20 million or more) the penalty unit is multiplied by five, meaning a maximum penalty of $7,825. In addition, for significant global entities the base penalty unit is multiplied by 500, meaning that the maximum penalty applicable could be $782,500.

“The ATO recently issued more than 16,000 penalties for businesses who didn’t lodge their TPARs for previous years, despite receiving multiple reminders. The average penalty for not lodging was approximately $1,110”, ATO Assistant Commissioner Tony Goding has said.

Businesses that may have received a reminder from the ATO to lodge a TPAR but do not actually need to lodge still need to submit a TPAR non-lodgment advice form to avoid an unnecessary follow-up. The form allows entities to notify the ATO of multiple years on the same form, as well as to advise that they will not need to lodge in the future.

According to the ATO, around $400 billion in payments made to almost 1.1 million contractors were reported in the TPAR system in the last financial year. The ATO uses the information obtained to check for red flags, including non-reporting of income, non- lodgment of tax returns or activity statements, overclaiming of GST credits or misusing of ABNs. The ATO cites a recent example where it used TPAR data to investigate a sole trader who failed to include more than $80,000 of income from three different companies and failed to lodge activity statements.

The ATO will also include information reported in the TPAR in its pre-filling service to help contractors get their income right in their tax returns. The pre-filled data will give taxpayers transparency about the data that has been provided to the ATO about their business transactions.

Small business bonus deduction: technology investment

Small businesses may be able to get a bonus 20% tax deduction for any business expenses and depreciating assets used to improve their digital operations. This includes digital enabling items such as computer software and hardware, digital media and marketing, e-commerce related goods or services, and systems or monitoring services related to cyber security. The bonus deduction applies to up to $100,000 of eligible expenditure incurred in each relevant period, with a maximum bonus deduction amount of $20,000 per income year or specified time period.

Small businesses can access a 20% bonus deduction for eligible expenditure incurred on business expenses and depreciating assets for the purposes of their digital operations or for digitising operations. The bonus deduction applies to up to $100,000 of eligible expenditure incurred in each period between 7:30pm on 29 March 2022 and 30 June 2023, with a maximum bonus deduction amount of $20,000 per income year or specified time period.

This bonus deduction is available to all entities that meet the definition of a small business entity – either those businesses with an aggregated annual turnover of less than $10 million or those that meet the definition where the $10 million threshold is replaced with $50 million.

Expenditure on digital operations or digitising operations may include the following:

- digital enabling items – computer and telecommunications hardware and equipment, software, internet costs, systems and services that form and facilitate the use of computer networks;
- digital media and marketing – audio and visual content that can be created, accessed, stored or viewed on digital devices, including web page design;
- e-commerce – goods or services supporting digitally ordered or platform-enabled online transactions, portable payment devices, digital inventory management, subscriptions to cloud-based services, and advice on digital operations or digitising operations, such as advice about digital tools to support business continuity and growth; or
- cyber security – cyber security systems, backup management and monitoring services.

It should be noted that the eligible small business’s expenditure on digital operations or digitising its operations is not necessarily limited to the items listed here. A broad range of expenditure could be eligible for the bonus deduction, provided:

- the expenditure itself is eligible for a deduction under another provision of taxation law (that is, the expenditure must be necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income);
- the expenditure is incurred between 7:30pm (by legal time in the ACT) on 29 March 2022 and 30 June 2023;
- if the expenditure is on a depreciating asset, that asset was first used or installed ready for use by 30 June 2023.

Any private-use portion of expenditure is not eligible for the bonus deduction as it cannot be deducted under another provision of tax law. Small businesses are also ineligible to claim the bonus deduction for expenditure on depreciating assets if any balancing adjustment event occurs to the asset while the entity holds it during the relevant period, unless the balancing adjustment event is an involuntary disposal. However, repair and improvement costs for depreciating assets are eligible for the bonus deduction, provided these costs are incurred during the relevant time period.

Other excluded expenditure in relation to the bonus deduction includes:

- salary and wage costs;
- capital works costs which can be deducted under Div 43 of the *Income Tax Assessment Act 1997*;
- financing costs;
- training and education costs; and
- expenditure that forms part of, or is included in, the cost of trading stock.

According to the government these types of expenditure are excluded because they are not directly related to digital operations or digitising operations, and the bonus deduction is not intended to cover general operating costs related to employing staff, raising capital, construction of business premises, and the cost of goods and services the business sells. Training and education costs are also excluded, as they are specifically covered under the skills and training boost measure (which provides a separate 20% bonus deduction).

Source: www.ato.gov.au/Business/Income-and-deductions-for-business/Deductions/Small-business-technology-investment-boost/

Small business energy incentive

The Federal Government has released plans to introduce a small business energy incentive to help small and medium businesses electrify and save on their energy bills. The proposal was in the consultation stage until late July, but once implemented it may see businesses with an aggregated annual turnover of less than $50 million gain access to a bonus 20% tax deduction for the cost of eligible depreciating assets that support electrification and more efficient use of energy. It is projected to apply for the 2023–2024 income year, with $20,000 being the maximum available bonus deduction amount.

Once implemented, the bonus deduction would apply to eligible assets first used or installed, and to eligible improvement costs incurred, between 1 July 2023 and 30 June 2024.

Eligible depreciating assets would include any asset that:

- uses electricity and there is a new reasonably comparable asset that uses a fossil fuel available in the market – for example, a electric reverse cycle air-conditioner in place of a gas heater may considered to be a eligible depreciating asset. However, the asset must be reasonably comparable to a new asset that uses fossil fuel available in the market at the time it is first used or installed ready for use. Assets will not qualify for the bonus deduction if the only reasonably comparable asset that uses a fossil fuel is a second-hand asset.
- uses electricity and is more energy efficient than the asset it is replacing or, if not a replacement, a new reasonably comparable asset available in the market – an asset that uses electricity may be eligible for the bonus deduction even if there is no comparable asset available on the market which uses a fossil fuel, in which case the energy efficiency of the asset will determine its eligibility. Otherwise the energy rating label could be used the compare energy efficiency.
- is an energy storage, demand management or efficiency-improving asset – an asset may be eligible for the bonus deduction if it enables the storage of electricity, or the storage of energy that is generated from a renewable source (eg batteries). Assets can also qualify if they allow energy to be used at a different time (eg time-shifting devices) or are used in monitoring energy use (eg data-logging devices).

In order to claim the bonus deduction, the business must make the expenditure for a taxable purpose; therefore, costs will need to be apportioned if the asset has a mix of private and business use. There are

also assets specifically excluded from the bonus deduction even where they would otherwise meet the requirements, consisting of:

- assets, and expenditure on assets, that can use a fossil fuel, unless the use is merely incidental (eg solar hot water systems that use gas to heat water when there is no solar-heated water available is not eligible);
- assets which have the sole or predominant purpose of generating electricity (eg solar panels);
- capital works;
- motor vehicles (including hybrid and electric vehicles) and expenditure on motor vehicles;
- assets and expenditure on an asset where expenditure on the asset is allocated to a software development pool; and
- financing costs, including interest, payments in the nature of interest and expenses of borrowing.

If both the small business and the asset meets eligibility requirements, the amount of bonus deduction is 20% of the total eligible cost, up to a maximum of $20,000 across the bonus period. The $20,000 cap is a limit on the total bonus deduction that may be claimed, even where the bonus deduction is claimed across more than one income year.

Source: https://treasury.gov.au/consultation/c2023-402752
https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/small-business-energy-incentive

Thomson Reuters would like to hear from you

Subscribers are invited to submit topics for articles for future publication. Information should be sent to:

Publisher – **Client Alert**

Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668
PO Box 3502, Rozelle NSW 2039

Tel: 1800 074 333

Email: SupportANZ@thomsonreuters.com

Website: www.thomsonreuters.com.au