

client alert | explanatory memorandum

July 2025

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 23 June 2025.

Get it right this tax time: don't lodge your return too early

It might seem like a good idea to lodge your tax return as soon as the financial year ends – with costs of living rising you might be hoping for a refund, or you might just want to tick it off your to-do list for another 12 months. But the ATO has warned taxpayers that early July lodgers are twice as likely to make mistakes on their returns, and is encouraging taxpayers to take their time and get it right.

In 2024, over 140,000 people who lodged in the first two weeks of July had to lodge amendments, or had the ATO investigate and amend their returns to fix inaccuracies like income that hadn't been declared properly.

Taxpayers can, of course, lodge their tax returns as early as 1 July, but the ATO actually recommends that tax returns be submitted later in July.

Why?

Lodging towards the end of July allows time for information from employers, banks, health funds and government agencies (eg Centrelink) to be automatically pre-filled in your tax return if you lodge your own return via myTax or use a registered tax agent. While some pre-filled data's available from 1 July, most usually finalised by the end of July. Some data, like partnership or trust distributions, may be unavailable until even later. The ATO notes that early lodgers often make mistakes like not including interest from banks, dividend income, government agency income and health insurance details.

The ATO suggests that you take your time to properly prepare for lodging your returns while you wait for the relevant information to pre-fill. To prepare, you should:

- check contact and bank details are correct, as updating these after lodging a return can cause delays;
- gather all necessary records, including receipts, diaries and private health insurance details; and
- review the ATO's occupation guides to make sure you claim what you're entitled to.

You can check the "Pre-fill availability" of third-party information providers for pre-filling your tax return for 2024–2025 on the ATO website – links are provided to help you check for information from government agencies, health funds, financial institutions and companies. You should also check that your income statement from your employer/s (covering your year-to-date salary and wages, PAYG withholding tax and employer super contributions) has been marked "tax ready", as well as that your pre-fill data is available in myTax before you go on to lodge.

Once it's available, make sure you check that all the pre-filled information is complete and correct. Note that you can't delete or remove pre-filled government benefit data for Allowance or Pension payments (eg Jobseeker, Age Pension, Disability Support Pension), as the ATO's pre-fill service now provides greater certainty for benefit data. When accessing your pre-filled information, there'll be a marker where the record is "high certainty data". Gaps can arise where organisations may be delayed in providing information, the ATO hasn't been able to match the data to your record, or information hasn't passed all data quality checks. If you find errors in the information, you should contact the provider and make sure that corrections are sent through to the ATO.

Whether you lodge early in July or wait until later to ensure that you have all of your pre-filled data, the ATO understands that mistakes can sometimes happen. If you realise you've made a mistake after lodging your tax return, you can fix errors or omissions once the initial lodgement has been processed by going through the ATO online amendment process (accessible through myGov) or by speaking with your registered tax agent.

Source: www.ato.gov.au/media-centre/ato-warns-taxpayers-dont-lodge-yet

Regulations have changed for buy now pay later services

If you're one of the millions of Australians who use buy now pay later (BNPL) services, important changes are now in effect that will give you stronger consumer protections. Here's what you need to know about the new law and regulations that apply from 10 June 2025.

What's changed?

Under law changes that were passed in late 2024 and now apply, BNPL services are being regulated more like traditional credit products such as credit cards. Previously, BNPL services weren't regulated under the National Consumer Credit Act, leaving a gap in consumer protection. But now, all BNPL providers need to hold an Australian credit licence and comply with consumer protection requirements.

This means your BNPL provider needs to:

- hold a credit licence (or have applied for one by 10 June 2025);
- be a member of the Australian Financial Complaints Authority (AFCA);
- follow responsible lending practices; and
- meet other consumer protection requirements.

What does this mean for you?

These changes are designed to protect you while maintaining the benefits of BNPL services. The aim is that you'll have:

- better protection against becoming trapped by unaffordable lending;
- access to proper dispute resolution through AFCA;
- clearer processes for handling financial hardship; and
- more consistent consumer protections across all credit products.

The new framework recognises that BNPL services are generally lower-risk than traditional credit products. Most BNPL arrangements will be regulated as "low cost credit contracts", with modified requirements that balance consumer protection with the unique features of BNPL services.

Providers must meet responsible lending obligations when agreeing to a BNPL contract or credit limit increase for you, which generally includes seeking and verifying certain information about your financial situation and assessing whether their offering's unsuitable based on that information. You can ask your BNPL provider to see the assessment they make about your credit contract or limit increase; they must provide you with a free, written copy on request.

How can you check if your provider is licensed?

Now that the changes apply, you can verify if your BNPL provider is properly licensed using the Australian Securities and Investments Commission's (ASIC's) Professional Registers Search.

This free online tool lets you search by the provider's name or licence number to confirm:

- their licence status;
- what services they're authorised to provide;
- any conditions that have been placed on their licence; and
- their business address and other key details.

Why do these changes matter?

BNPL transactions now account for about \$19 billion annually in Australia, or roughly 2% of all card purchases. While BNPL services offer convenient payment options and support thousands of local jobs, these new regulations are designed to help prevent debt spirals and ensure you have proper protections when using these popular payment methods.

Need more information?

If you're concerned about your BNPL arrangements or want to know more about these changes, you can:

- contact your BNPL provider directly;
- visit ASIC's Moneysmart website for financial guidance; and
- check your provider's licence status through ASIC's Professional Registers Search.

These reforms aim to strike a balance between protecting consumers and maintaining the innovation and competition that BNPL services bring to the credit market. Stay informed about these changes to make the most of your BNPL services while keeping your finances healthy.

Source: www.legislation.gov.au/C2024A00138/asmade/text

<http://asic.gov.au/about-asic/news-centre/find-a-media-release/2025-releases/25-069mr-asic-releases-new-regulatory-guidance-to-support-buy-now-pay-later-industry-reforms/>

www.afca.org.au/news/supporting-2025-buy-now-pay-later-bnpl-reforms

When someone dies: the tax to-do list

If someone close to you dies and you are the one responsible for taking over their tax affairs, there are a number of steps you need to take to advise the ATO of their passing.

This starts with:

- establishing your identity with the ATO as the deceased's representative; and
- formally notifying the ATO of the death, with a death certificate of the deceased or a grant of probate or letters of administration.

Authorised representative

To have full authority to manage the tax issues of someone who has died – and to have complete access to their information and assets – you'll need to be their authorised legal personal representative (LPR). A person's LPR is usually the executor named in their will, or if no executor has been named, a court-appointed administrator (this can be the person's next of kin).

To be recognised as an LPR for tax purposes, you'll need a supreme court (in your state) to recognise that the deceased's will is legal, allowing you as the executor to represent the deceased's estate and distribute their assets according to the will.

Where there is no will, a grant of letters of administration are issued to the person (this is often the next of kin) to manage the estate, and they are appointed as the administrator of the estate.

Tax responsibilities of the LPR

The tax-related responsibilities of the LPR include:

- lodging a "date of death" tax return for the deceased person; and
- providing for any tax liabilities before the estate's assets are distributed to beneficiaries.

Checking business status

You will need to be aware of whether the deceased person carried on a business and, if they did, you'll need to seek specialised legal or tax advice.

In the case of a sole trader or a business partner, it's likely you'll need to lodge a business activity statement (BAS) for the final quarter of their life, and any outstanding BASs. You will need to pay any tax owing, which could include goods and services tax (GST) and capital gains tax (CGT) applicable on the sale of any business assets.

Lodging final tax returns

You also may need to lodge the deceased's final tax return, known as the "date of death" tax return, and check if any other years' tax returns are outstanding and arrange payment for those, with help from the ATO to access the deceased's person's tax information.

You must also finalise any tax obligations before distributing the assets of the estate to the beneficiaries.

A further tax task is to ascertain whether the estate of the deceased receives any income from assets such as rental property or shares, and/or is due to claim any tax refund or franking credits that are owed.

If this is the case then for tax purposes the estate is treated as a trust and you will need to lodge a trust tax return for the estate.

And finally ...

You need to ensure that all tax liabilities have been paid, that credits owing to the deceased person and their estate have been received, and that all tax registrations (such as ABNs and registration for GST) have been cancelled.

After all of these requirements have been met, you will then be able to distribute the assets of the estate to the beneficiaries following probate.

It's important to be aware that finalising the administration of an estate can take six to 12 months, or sometimes longer.

Source: www.ato.gov.au/individuals-and-families/deceased-estates/checklist-what-to-do-when-someone-dies

Accrued leave: take a holiday or take the payment?

If retirement is on the horizon for you and you have a large amount of accrued leave, you may well be contemplating whether to take a big holiday now, or just take the lump sum payment when you retire. There are some tax, super and possibly social security implications you should consider.

Superannuation

You receive superannuation guarantee contributions from your employer on the pay you receive while you're on holidays. However, no superannuation guarantee is payable on payments of lump sum leave entitlements upon your retirement. Currently the minimum superannuation guarantee rate is 11.5%, rising to 12% on 1 July 2025.

You could increase your retirement savings by a nice little bonus by taking those holidays before you retire!

Taking a holiday now could also extend the time you can contribute to super.

If you're aged 67 to 75 and are looking to contribute one last chunk of money to super after you retire, be aware of the "work test" that applies to claim a tax deduction for those super contributions. If you haven't worked for 40 hours in a 30-day consecutive period in the financial year when you make the contribution, you don't meet the work test that is required to claim a tax deduction for your personal super contributions.

However, there is once-off exception for people with less than \$300,000 in super, which allows them to use the "work test exemption". You can still claim tax deductions for your personal super contributions if you worked for 40 hours in a 30-day consecutive period in the financial year before the financial year of your contribution. This is designed for newly retired people to extend their eligibility for one more year.

By taking your holidays now (instead of taking your accrued leave as a lump sum payment), and clocking up 40 work hours in a month in the next financial year, you may be able to extend the time you have to contribute to super.

Tax

A lump sum payment of accrued leave is taxed in the year you receive it.

When deferring retirement into a new financial year by taking leave, you may increase the cap for concessional tax treatment of employment termination payments like golden handshakes.

Additionally, you may have a lower marginal tax bracket in the new financial year, if you don't have other taxable income after retiring.

Social security

If you're looking to claim the Age Pension when you retire, a lump sum received on retirement won't count towards the Centrelink income test, but it will be an assessable asset, depending on how you invest it. So taking that accrued leave as a lump sum could push some people over the assets limit to receive the Age Pension.

On the other hand, your pay while on holidays won't be counted in determining whether you qualify for Age Pension after you retire.

Conclusion

The decision between taking leave or a lump sum affects superannuation, tax and social security outcomes. Taking leave can provide more super contributions, tax flexibility and additional leave accrual, while taking the entitlement as a lump sum at retirement may allow earlier access to social security and, in some cases, favourable tax treatment.

Taking your accrued leave as a holiday or as a lump sum is just one of the myriad of financial considerations to make when retiring. Speaking with your tax adviser about your personal situation, well in advance of retirement, can pay off in so many ways.

What happens when SMSF trustees breach super laws?

Setting up your own self managed super fund (SMSF) can have its benefits, but it also comes with significant obligations.

These include appointing trust members, trustees and a registered super fund auditor; valuing assets each year; paying levies and taxes; ensuring audits are conducted and minimum payments are made annually; and making lawful investments. The list goes on.

Contraventions and audits

There's a lot to keep on top of. If you're a trustee and fail to comply with certain requirements under the super laws, your auditor will report the breach to the ATO within 28 days. This type of breach is known as a contravention.

Once you become aware of your contravention, you're required to correct it as soon as possible, with the help of your auditor or your SMSF adviser if needed.

If the contravention continues to be unrectified, you can use the ATO's "SMSF voluntary disclosure service". If this is done before the ATO conducts its own audit into your breach, the regulator will take this into account in their final deliberations.

Voluntary disclosure is a formal process involving completion of a detailed form and providing supporting documentation.

Undertaking

As the penalties can be quite serious, you may decide to try to mitigate the outcome by initiating an undertaking to remedy the contravention.

This needs to highlight your commitment to stopping the unlawful behaviour and addressing the action you'll take to rectify the breach.

More specifically, you need to document a timeframe and a breakdown of your proposed remedial action, and include strategies to ensure the contravention doesn't recur.

Possible penalties

There is a range of penalties the ATO can apply to a contravention depending on its severity, including:

- issuing a trustee or a director of a corporate trustee with a direction to rectify the contravention – this can lead to disqualification and/or the removal of the fund's complying status;
- applying administrative penalties – fines of thousands of dollars – can be imposed on trustees, which can't be paid from the fund;
- where a trustee illegally accesses their super, including this accessed amount in their assessable income;
- issuing the SMSF with a notice of non-compliance, with severe tax consequences;
- disqualifying an individual from acting as a trustee or director of a corporate trustee, preventing them from becoming a trustee again;
- freezing the SMSF's assets; and
- imposing civil and criminal penalties through the courts.

Winding up your SMSF in the event of a contravention will not stop the ATO's compliance action.

Factors in ATO assessment

When the ATO considers your SMSF contravention and the applicable penalties, it will take into account whether you intended to breach the law, how you communicated the contravention to the ATO and if you tried to repair it.

In a recent case, the Administrative Review Tribunal supported the ATO's decision to disqualify an SMSF trustee for multiple unauthorised withdrawals from the fund. Although he finally repaid the outstanding balance, he had ignored many warnings from the fund's auditor about these serious contraventions over several years. The fact he was also a qualified accountant strengthened the ATO's case that the contraventions were deliberate, he was aware of his unlawful behaviour and his lack of insight indicated an ongoing compliance risk.

If it's likely you have contravened a super law in your SMSF, the first step is to seek professional advice to ensure you keep your integrity as a trustee and the integrity of your fund intact.

Source: www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/smsf-regulation-and-compliance/smsf-compliance/our-smsf-non-compliance-actions

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