



APRIL 2022

Flood Support

Disaster recovery payments

If your business was affected by the recent floods in NSW and Queensland, you may receive a recovery payment from a local, state or federal government agency. The ATO website advises that the income tax treatment of these support payments is as follows:

- *Australian Government Disaster Recovery Payment* (one off payment of \$1,000 per adult and \$400 for each child younger than 16) and *Australian Government Disaster Recovery Payment – Special Supplement* (a total of \$2,000 per adult and \$800 for each child under 16, paid in 2 instalments) — you don't pay income tax on these payments.
- *Disaster Recovery Allowance* (a short-term allowance for up to 13 weeks – the amount varies) — this payment is generally taxable.
- *Natural Disaster Relief and Recovery Arrangements* — payments under this scheme are generally taxable.
- *Ex gratia recovery payments* — whether you pay tax on these payments depends on the specific circumstances of the payments and whether the Commonwealth Government has determined to exempt such payments from tax.

Even if a disaster relief payment is not taxable, you may have to include it in your tax return.

If you provide emergency assistance to employees, you can claim a tax deduction for the payments. However, you are not required to withhold tax from the payments as the employee does not pay tax on them.

ATO help

The ATO can help businesses affected by the recent floods, including businesses not directly impacted.

Activity statements and instalment notices

Small businesses in affected local government areas (**LGAs**) in Queensland and NSW who need to lodge business activity statements and instalment notices with an original due date of 28 February 2022 or 21 March 2022 can lodge relevant returns up until 28 March 2022. They do not need to request a lodgement deferral if they are able to lodge by that date.

This does not apply to significant global entities or large businesses, who will need to contact the ATO to work through any lodgement concerns.

Lists of affected LGAs in Queensland and NSW can be found on the Services Australia website.

Be aware that:

- ATO systems will still reflect the original lodgement due date of these documents until they are lodged. The due date will only update after the lodgement has been received.
- You may see a penalty on your account until the ATO can complete the process of remitting associated penalties.
- The payment due date for these lodgements will not change. However, the ATO will take an empathetic approach to your situation. General interest charge (**GIC**) will still apply if payment is not made by the original payment due date. If you are not able to pay by the due date, you should contact the ATO to discuss payment options and request a remission of GIC.

If you were not able to lodge by 28 March 2022, you can apply for a deferral on a case-by-case basis. If you already have a deferral, it will remain in place.

Other ATO assistance

If you are affected by the floods, the ATO will fast track any GST refunds you are owed. In addition, the ATO may:

- give you extra time to pay a debt;
- set up a payment plan tailored to your particular circumstances, including an interest-free period;

- help you find your lost tax file number (TFN) after verifying your identity;
- re-issue tax returns, activity statements and notices of assessment;
- help you re-construct lost or damaged tax records; and
- remit penalties or interest charged during the time you have been affected.

You can also vary your PAYG instalments, as well as claim a credit at label 5B on your activity statement for previous instalments paid. The ATO has said that it will not apply penalties or charge interest on variations for the 2021–22 income year if you have taken reasonable care to estimate your end of year income tax liability.



What is new?

Budget announcements

The Treasurer announced that the following measures will form part of the Federal Budget 2022–23:

- the GDP uplift rate that applies to PAYG instalments and GST instalments will be set at 2% for the 2022–23 income year;

- PAYG instalment payments will be aligned with financial performance. Thus, if financial performance declines, companies may be able to get refunds of instalments paid automatically (the implementation date is 1 January 2024);
- the Government will facilitate sharing of Single Touch Payroll data with the State and Territory Governments on an ongoing basis to cater for pre-filing payroll tax returns;
- eligible businesses will have the option of reporting taxable payments at the same time as activity statements (the implementation date is 1 January 2024) — this will remove the requirement to lodge a yearly Taxable Payments Annual Report (TPAR);
- the Government will develop systems to ensure all trusts will have the option to lodge income tax returns electronically (the implementation date is 1 July 2024); and
- manufacturers, importers and distributors in the alcohol and fuel sectors with an annual turnover of less than \$50 million will be able to lodge and pay excise and excise-equivalent customs duty on a quarterly basis (from 1 July 2023).

Changes approved by Parliament

The following changes are now law:

- the extension of temporary full expensing (for depreciating assets) by 12 months to 30 June 2023 — so your business will be able to claim an outright deduction for the cost of depreciating assets you acquire (and install ready for use) before 1 July 2023 (this includes second hand assets if your business has an aggregated turnover of less than \$50 million);
- the extension of the loss carry back for companies to include the 2022–23 income year (a loss can be carried back as far as 2018–19);
- a change to the taxation of employee share scheme interests subject to deferred taxation;
- removing the Superannuation Guarantee \$450 monthly income threshold (from 1 July 2022).

Changes in the pipeline

Bills currently before Parliament will:

- allow a small business to apply to the Small Business Taxation Division of the Administrative Appeals Tribunal (AAT) for an order staying, or otherwise affecting, the operation of an ATO decision being reviewed by the AAT. For example, the AAT may direct the ATO not to take steps to collect a disputed debt that is being reviewed;
- make disaster recovery grants paid to small businesses and farmers in relation to Cyclone Seroja tax-free;

- reduce from 32.5% to 15% the effective tax rate on the first \$45,000 of net income (i.e. salary, wages, bonuses etc less deductions) earned (from 1 March 2022) by foreign resident workers participating in the Australian Agriculture Worker Program or the Pacific Australia Labour Mobility scheme — this will affect the amounts withheld by employers (it is likely that the ATO will make new withholding schedules available for employers);
- allow the ATO to require a taxpayer to complete an approved record-keeping course where the ATO reasonably believes the taxpayer has failed to comply with laws governing tax records — this will be an alternative to paying an administrative penalty; and
- allow a business to self-assess, for depreciation purposes, the effective life of most intangible assets, e.g. copyright (other than copyright in a film), patents and in-house software, but not for assets held before 1 July 2023.

Of course, these measures may not be passed by the Parliament before the next Federal election (which will be held in May). If that happens, it is reasonable to assume they will be re-introduced in the next Parliament since they are uncontroversial and should receive bi-partisan support regardless of which party forms government.

Deduction for COVID-19 tests

The Government has announced that legislation will be introduced to make it clear that work-related COVID-19 test expenses incurred by individuals will be tax deductible. This will include Polymerase Chain Reaction ('PCR') tests and Rapid Antigen Tests ('RATs').

If you provide COVID-19 testing to your employees, FBT will not be payable.



From the ATO

Tax losses

Before you claim a tax loss, make sure you have correctly claimed expenses that you are entitled to. Overclaiming expenses can put your business in an incorrect tax loss situation.

Keeping accurate and complete records will help you keep track of your tax losses. It can help you avoid incorrectly carrying back a tax loss or carrying forward tax losses to deduct in future years.

If your business makes a tax loss in the current year, you can generally carry forward that loss and claim a deduction for your business in a future year (subject to satisfying either the continuity of ownership or the business continuity test).

Companies and entities taxed as companies (e.g. corporate limited partnerships) may be able to claim the loss carry back tax offset. You can carry back losses made in the 2019–20, 2020–21, 2021–22 and 2022–23 income years to an earlier income year (but no further back than 2018-19) and claim an income tax offset in the company's 2021, 2022 or 2023 income tax return.

If you're carrying on a non-commercial business activity as an individual, either alone or in a partnership, and your business makes a loss, you must check to see how the non-commercial loss rules apply to you.

Changing loss carry back choice

If your company has chosen to carry back a loss from one year to an earlier year (but not before 2018–19), it may want to change how much of the tax loss it carries back. This needs to be done on the approved ATO form and within the time limit for amending the relevant tax assessment.

The change will take effect from the day your company made the original loss carry back choice.

The ATO provides this example.

XYZ Co made a loss carry back choice in its Company tax return 2021 to carry back \$5,000 of the \$10,000 tax loss it made in that income year to the 2019–20 income year. Later it decides that it wants to carry back all the \$10,000 tax loss to the 2019–20 income year.

XYZ Co notifies the ATO of its change in loss carry back choice using the approved form within the time limit for amending its tax assessment for the 2020–21 income year.

The time limit for amending an assessment is generally 2 years if your company is a small business entity (aggregated turnover of less than \$10 million) or, if the income year starts on or after 1 July 2021, a medium business (aggregated turnover of less than \$50 million). Otherwise the time limit is generally 4 years.

For a company balancing at 30 June, the first income year starting on 1 July 2021 is the 2021–22 income year.

Using business money for private purposes

There may be tax consequences if you take or use money or assets from your company or trust for private purposes.

For example, it is quite common for the company or trust to make a loan to a shareholder or an associate of a shareholder (e.g. the shareholder's spouse or child). When a company lends money or assets to a shareholder, the shareholder may be taken to have received a Division 7A deemed dividend if certain conditions are not met.

If this happens, the shareholder will need to report an unfranked dividend in their individual tax return. A deemed dividend has no impact on the company's balance sheet or income tax return.

To avoid a Division 7A deemed dividend, before the company tax return is due or lodged (whichever comes first), the loan must:

- be repaid in full; or
- put on Division 7A complying terms.

To put a loan on Division 7A complying terms, the loan must:

- be in a written agreement and signed and dated by the lender;
- have an interest rate for each year of the loan that at least equals the benchmark interest rate (4.52% for 2021–22);
- not exceed the maximum term of 7 years, or 25 years in certain circumstances when the loan is secured by a registered mortgage over real property.

The company must include any interest earned from the loan in its tax return.

You (the shareholder or associate of the shareholder):

- must make the minimum yearly repayment each year (the ATO publishes a Division 7A calculator to work this out);
- cannot borrow money from the company to make the minimum yearly repayment;
- can make payments on the loan using a dividend declared by the company. This dividend must still be reported in your individual tax return as assessable income.

It is important to keep accurate records of any such transactions and ensure they are reported correctly for tax purposes. This may require a transaction to be reported in both the company's or trust's tax return and your individual tax return.

Unpaid present entitlement

An unpaid present entitlement (**UPE**) arises where a beneficiary of a trust is presently entitled to a share of trust income but it remains unpaid. If the beneficiary is a private company and the trust is a shareholder in the company (or an associate of a shareholder), the ATO considers that the unpaid amount is a loan from the company to the shareholder (or associate) and therefore subject to the operation of Division 7A.

The ATO has recently issued a draft taxation determination, revising its views on the application of Division 7A where there is a UPE for arrangements arising on or after 1 July 2022. For example, the ATO now considers that Division 7A may apply where a private company beneficiary has knowledge of a UPE and does not demand payment of that amount.

Check your business' PAYG instalments

Now is a good time to check that your business' PAYG instalments still reflect its expected end of year income tax liability.

If the business' circumstances have changed and you think it will pay too much (or too little) in instalments for the year, the instalments can be varied on the next activity statement.

Instalments can be varied multiple times throughout the year. The varied amount or rate will apply for the remaining instalments for the tax year or until another variation is made.

If your business is affected by COVID-19 or a natural disaster, the ATO has said it will not apply penalties or charge interest to varied instalments if the business has made its best attempt to estimate its end of year income tax liability.

If an amount or rate is varied online, paper activity statements and instalment notices will no longer be issued. These will be issued electronically. Your business will need to consider this when deciding how to lodge, revise and vary future activity statements and instalment amounts.



Digital record keeping

The ATO has highlighted the advantages of keeping business records digitally. If, for example, your business uses a commercially-available software package, it may help the business:

- keep track of business income, expenses and assets as well as calculate depreciation;
- streamline its accounting practices and save time so you can focus on the business;
- automatically calculate wages, tax, superannuation and other amounts for activity statement and other purposes;
- meet Single Touch Payroll (**STP**) reporting obligations;
- back up records using cloud storage to keep records safe from flood, fire or theft.

Digital storage of paper records

Paper records (or hard copies) can be stored digitally. The ATO accepts images of business paper records saved on a digital storage medium, provided the digital copies are true and clear reproductions of the original paper records and meet its five rules for record-keeping.

Once an image of the original paper records is saved, there is no need to keep the paper records unless required by a particular law or regulation.

However, if information (for example, supplier information, date, amount and GST) is entered into accounting software from digital or paper records, the business may still need to keep a copy of the actual record, either digitally or on paper. Some accounting software packages may do both accounting and record keeping.

The ATO website gives tips on how to choose suitable record-keeping software.

Providing the ATO with copies of records

If the ATO asks to see copies of records that are kept digitally, you can provide either digital or printed copies. The ATO may also request documentation about the record-keeping system (for example, information about regular back-up and record destruction procedures) or ask for paper copies.

Cloud storage

If your business uses cloud storage, either through accounting software or a separate service provider, for example, Google Drive, Microsoft OneDrive or Dropbox, you should ensure:

- the record storage meets the record-keeping requirements;
- you download a complete copy of any records stored in the cloud before you change software provider and lose access to them.

e-Invoicing storage

Regardless of your business' e-Invoicing software or system, you are responsible for determining the best option for storing business transaction data. You should:

- ensure that the process meets the record-keeping requirements
- discuss the options with your software provider
- talk to your business adviser, if necessary.

Don't get burned by a phoenix

The ATO has warned small businesses about phoenixing. That happens when (to quote the ATO) a 'dodgy' business shuts down to avoid paying its debts, but then pops up under a different company name without any debt.

The ATO is working, through the Phoenix Taskforce, with other federal, state and territory agencies to detect, deter and disrupt illegal phoenix businesses.

Here are 5 red flags to look out for when working with a company:

- unusually low quotes or tenders can suggest that the company isn't taking superannuation or PAYG instalments into account;
- the company directors have previously been involved with liquidated entities;
- the company's name and directors have changed, but the manager and staff remain the same;
- the company is requesting payments to a new company;
- you're told that your last contract won't be paid unless you sign a new contract, often with a different company name from the one you first dealt with.

If you suspect illegal phoenix activity, you can contact the ATO by phoning **1800 060 062** or by emailing phoenixreferrals@ato.gov.au.

Employee or independent contractor?

It is an age old question. Is the individual providing services to your business an employee or an independent contractor?

The High Court recently considered this issue in two separate cases and agreed in both that it is the 'totality of the relationship between the parties' that should be considered. However, instead of adopting a 'multifactorial' approach, considering factors such as the degree of control, who bears the commercial risk and who provides the equipment, the High Court focused on the contractual relationship between the parties.

This is not the place to analyse the High Court's decisions in detail. However, it is worth noting that the High Court observed that where the terms of the parties' relationship are comprehensively committed to a written contract (that is not a sham), the terms of the contract should determine the character of the relationship. On that basis, the High Court held that the relevant individuals were employees in one case (*CFMEU v Personnel Contracting*), but not in the other (*ZG Operations v Jamsek*).

These cases are relevant for tax (e.g. PAYG withholding obligations) and the Superannuation Guarantee (**SG**) scheme. Of course, the SG picture is complicated by rules treating certain individuals as employees for SG purposes, even if they are not employees at common law.



FBT issues

FBT return time

The 2022 Fringe benefits tax (**FBT**) year ends on 31 March 2022, so it's a good time to start considering what you need to do to lodge your business' FBT return and pay FBT.

You'll need to work out if the business has an FBT liability for any fringe benefits provided to employees (or their associates) between 1 April 2021 and 31 March 2022. An associate includes a spouse, child, parent, sibling and most other relatives (but not cousins).

If your business has an FBT liability for the 2022 FBT year, the FBT return and payment is due by 23 May 2022. This date applies as the statutory due date of 21 May falls on a weekend this year. The due date may differ if your business uses a tax agent.

If your business does not have an FBT liability, and it is registered for FBT, you still need to inform the ATO. You can do this by completing a *Notice of non-lodgement – Fringe benefits tax* form by the date your return would have been due.

Don't forget to keep all records relating to the fringe benefits that have been provided, including how the taxable value of the benefits was calculated.

FBT thresholds and rates for 2022–23

Normally by the time the April edition of TaxWise is prepared, the ATO has released the various thresholds for the new FBT year (the FBT year commences on 1 April). But not this

year. The 2022–23 FBT thresholds had not been released by the time we prepared this edition of TaxWise.

However, we have used the rules specified in the FBT legislation to work out:

- the statutory (or benchmark) interest rate (e.g. for loan fringe benefits) — this should be 4.52% for 2022–23 (the same as for 2021–22); and
- the record keeping exemption (also relevant for eligibility to use the base rate method to calculate FBT) — this should be \$9,181 for 2022–23 (up from \$8,923 for 2021–22).

Taxation determinations will be issued specifying:

- the cents per kilometre rates for motor vehicles (other than a car); and
- the reasonable food and drink amounts for employees living away from home.

The car parking threshold for the 2022–23 FBT year can be calculated once the All Groups CPI number (weighted average of the eight capital cities) for March this year is available.



Key tax dates

Date	Obligation
21 Apr 2022	March 2022 monthly BAS due
28 Apr 2022	March 2022 quarterly BAS due
	Pay March 2022 quarterly PAYG instalment
	Employee Superannuation Guarantee contributions due
23 May 2022*	April 2022 monthly BAS due 2021–22 FBT return due
30 May 2022*	March 2022 SG charge statement due (if required)
21 June 2022	May 2022 monthly BAS due
21 July 2022	June 2022 monthly BAS due
28 July 2022	June 2022 quarterly BAS due
	Pay June 2022 quarterly PAYG instalment

*These are the next business days as the due dates (21 and 28 May) fall on a Saturday.

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