

Tax and super planning checklist

The Federal Budget has come and gone, and the weather is getting colder... it must be nearly time for financial year end work! To help you get through this busy time, we present the following *Tax and Superannuation Planning Checklist*. This checklist outlines some salient year-end tax and superannuation matters to consider before 30 June 2015, and some planning tips for the 2015-16 income year.

This list of tax and super issues is not exhaustive and all items should be considered in light of your circumstances. Specific tax, legal and commercial advice should be sought where necessary.

Legislative references are to *Income Tax Assessment Act 1936* (ITAA36) and *Income Tax Assessment Act 1997* (ITAA97).



INDIVIDUALS

DIVIDEND INCOME

- Has all dividend income been included in the individual's assessable income on a receipts basis?
- Have dividends received been correctly grossed-up for all attached imputation credits?
 - If the individual is an Australian tax resident:
 - Has the individual taken into account all franking credit offsets?
 - Is the individual entitled to a refund of any excess franking credits?
 - If the individual is not an Australian tax resident, have all Australian unfranked dividends been included in assessable income?

Note: Excess franking credits are typically refundable to individuals where their basic tax liability is less than the total of their imputation credits (after taking into account any other tax offsets). Non-resident individuals are ineligible. Note that certain eligible trusts may be entitled to a refund of excess franking credits.

BONUS INCOME

- Can the receipt of bonus income be deferred until the following income year?

NON-COMMERCIAL LOSSES

- Has the individual incurred losses from a non-commercial business activity under Division 35 of the ITAA97?

If so, tax losses can be applied against other income of the individual and is to be quarantined.

The non-commercial loss rules would typically not apply if at least one of the following tests is passed in relation to 2014-15:

- *the business has assessable income of at least \$20,000*
- *the business had a profit for tax purposes in three out of the past five years (including the current year)*
- *the value of real property, or of an interest in real property used in the business was at least \$500,000, or*
- *the value of assets (excluding real property, cars, motor cycles and similar vehicles) used in carrying on the business was at least \$100,000.*

Note: Application of the \$250,000 income test may prevent tax losses from being recouped against other income.

SALARY SACRIFICE ARRANGEMENTS

- Has the taxpayer salary sacrificed unrelated business expenses of an employee in order to negate the operation of the non-commercial loss rules?

The individual can still exceed the \$250,000 threshold in these circumstances. See TR 2013/6 and TD 2013/20.



INDIVIDUALS (CONT)

PERSONAL SERVICES INCOME (PSI)

Has the individual derived income from personal exertion either as a sole trader or through a business structure (eg a company or trust)?

If so, does the individual satisfy the 'results test' under the PSI rules?

If 'no', does the individual satisfy the '80% test' and one of the following:

- the unrelated clients test
- the employment test, or
- the business premises test?

The PSI rules do not apply to a 'personal services business' (PSB).

Has the application of the general anti-avoidance rules contained in Part IVA of the ITAA36 been considered notwithstanding that entity is a PSB?

For example, PSI being streamed to different taxpayers where the PSB is conducted using a trust structure – see tax rulings IT 2330 and TR 2001/8. Also see TR 2001/7 for the meaning of PSI.

SELF-EDUCATION EXPENSES

Has the taxpayer incurred self-education expenses that have a relevant connection to the taxpayer's current income earning activities?

Some expenses which are typically allowable as a self-education expense deduction (subject to certain conditions) are as follows:

- accommodation and meals (if away from home overnight)
- computer consumables
- course fees
- decline in value for depreciating assets (cost exceeds \$300)
- purchase of equipment or technical instruments costing less than \$300
- equipment repairs
- fares
- home office running costs
- interest
- internet usage (excluding connection fees)
- parking fees (only for work-related claims)
- phone calls
- postage
- stationery
- student union fees
- student services and amenities fees
- textbooks
- trade, professional, or academic journals, and
- travel to-and-from place of education.

See TR 98/9 for further details on the deductibility of self-education expenses.

Is the taxpayer required to reduce certain allowable self-education expenses by \$250 per s82A ITAA36?

Note: Certain non-deductible expenses can be offset against the \$250 reduction first (eg travel from home to the place of education).

►WARNING! The Tax Office is currently undertaking reviews of self-education claims (including travel costs such as airfares). The individual will need to maintain adequate documentation and travel diaries (where necessary) to support these claims – see below.



INDIVIDUALS (CONT)

DEPRECIATING ASSETS USED FOR WORK

Has the taxpayer acquired depreciating assets with a cost of \$300 or less?

Note: An immediate deduction may be available if the asset is being used to derive non-business income (eg salary and wage income).

WORK-RELATED TRAVEL: EXPENSES, REIMBURSEMENTS AND ALLOWANCES

(i) Travel expenses

Has the individual incurred work-related 'travel expenses'?

Note: Work-related travel expenses are travel expenses (such as airfares, accommodation and food) which are incurred in the course of the individual's employment; eg a trip interstate to attend a business meeting with clients.

Has the individual maintained the correct records?

If the cost is incurred by the individual – the necessary evidence must be maintained to support the claim (eg receipts and travel diaries).

(ii) Travel reimbursements

Has the travel expense incurred by the employee been reimbursed by the employer?

If yes, then the reimbursement is not assessable income and not an allowable deduction to the employee.

(iii) Travel allowances

Has the individual received a travel allowance from their employer?

Alternatively, is the allowance paid to the employee a 'living away from home allowance' (LAFHA)?

See MT 2030 for differences between a travel allowance and LAFHA.

If a travel allowance:

- Is the allowance a bona fide travel allowance? See TR 2004/6.
- Has the travel allowance been included in the employee's PAYG payment summary?
- Is the individual entitled to use the 'substantiation exception' and therefore, claim deductions for work-related travel expenses using the Commissioner's reasonable amounts?

► **IMPORTANT!** As a general rule, all allowances must be shown as assessable income in the employee's tax return. However, the allowance received is not required to be shown as assessable income in the employee's tax return, where:

- the allowance is not shown on the employee's payment summary
- the allowance received is a bona fide overtime meal allowance or a bona fide travel allowance
- the allowance received does not exceed the reasonable amount; and
- the allowance has been fully expended on deductible expenses.

If an employee receives a bona fide travel allowance, they do not have to keep written evidence of their expenditure provided the claim does not exceed the reasonable allowance amount prescribed by the Commissioner annually. This is referred to as the 'substantiation exception'.

Written evidence must be maintained if the expenditure claimed exceeds the reasonable allowance amount. Note: The substantiation exception does not apply if the allowance received is not a bona fide travel allowance. See TR 2004/6 for detailed commentary on the exception.

If a LAFHA:

- The allowance is not assessable to the individual, and
- Deductions cannot be claimed with respect to the costs of accommodation.

► **IMPORTANT!** The Tax Office is currently undertaking reviews of travel expenses claims (including travel, accommodation and foods costs). Individuals should ensure that they have claimed the correct amounts and maintain records if they are ineligible for the substantiation exception (see above).



INDIVIDUALS (CONT)

PREPAYMENTS

Did the individual incur non-business expenses where the period to which the expenditure relates:

- is 12 months or less, and
- ends no later than the last day of the income year following the year in which the expense was incurred?

If so, a deduction is available for the current income year.

These conditions also apply to a 'small business entity' except that the expenditure does not have to be in relation to non-business expenses (see below).

DONATIONS

- Have donations been made to a Deductible Gift Recipient?
- If so, are there any restrictions placed on the taxpayer being able to claim a deduction?
(eg the donation cannot exceed an entity's taxable income after disregarding the donation, carry forward tax losses and farm management deposits— see s26-55 ITAA97).
- Can the deduction be claimed over 5 years instead (see Subdivision 30DB ITAA97)?

WORK-RELATED CAR EXPENSES

Is the individual entitled to claim a deduction for work-related car expenses for use of their own 'car' (typically either owned or leased) in performing their duties as an employee?

Examples include, but are not limited to:

- carrying bulky equipment
- attending conferences or meetings
- travel between two separate places of employment
- travel from an individual's normal workplace to an alternative workplace and back to their normal workplace or directly home, and
- travel from an individual's home to an alternative workplace and then to their normal workplace or directly home (for example, travel to a client's premises).

If so, the individual can choose one of the following four methods to claim work-related car expenses:

- cents per kilometre method
- 12% of original value method
- one-third of actual expenses method, or
- logbook method (refer to Division 28 ITAA97 for further details).

Note: A 'car' is defined as a motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers. Taxpayers will need to claim the actual expenses incurred (such as fuel, repairs and servicing, interest on a car loan, etc) for vehicles not classed as a 'car'.

Also note that the '12% of original value method' and 'one-third of actual expenses method' can only apply if the car has travelled more than 5,000 business kilometres in the income year.

►IMPORTANT! Budget 2015-16

In its 2015-16 Federal Budget, the Government proposed to abolish the '12% of original value method' and 'one-third of actual expenses method'. Further, the 'cents per kilometre method' will be modernised by replacing the three current rates based on engine size with one rate set at 66c per km to apply for all motor vehicles, with the Commissioner responsible for updating the rate in following years. The 'logbook method' will be retained. At the time of writing, legislation has not yet been released.

Is the car jointly owned by individuals?

Special rules apply in relation to the four available methods where this is the case. For example, under the cents per kilometre method, where both joint owners use the car for separate income-producing purposes, each can claim up to a maximum of 5,000 kilometres in relation to their income-producing use.

Is the car a borrowed car (ie. it is not leased or owned by the taxpayer)?

If so, the individual can only claim the costs they actually incurred (eg fuel costs) as a travel expense.



TAX OFFSETS AND LEVIES

Have all relevant offsets and levies been taken into account for the individual (eg low income tax offset)?
Common offsets and levies to consider for 2014-15 include the following.

DEPENDENT (INVALID AND CARER) TAX OFFSET

This offset applies from the 2012-13 income year onwards and replaces a number of dependant tax offsets. A calculator is available on the Tax Office website.

SENIOR AND PENSIONERS TAX OFFSET

This offset is available for senior Australians who are eligible for an Australian Government age pension (or similar) and whose rebate income is within the relevant rebate income thresholds.

NET MEDICAL EXPENSE TAX OFFSET

Consider the impact of the phase-out of the new medical expense tax offset (NMETO) on an individual in respect of the 2014-15 income year.

The phase out of the NMETO will occur through these categories of transitional arrangements:

- **Category A:** *From the 2013-14 income year until the end of the 2018-19 income year: Taxpayers can only claim the NMETO for medical expenses that both:*
 - *meet the current definition and eligibility requirements, and*
 - *relate to disability aids, attendant care or aged care.*
- **Category B:** *For the 2013-14 income year and 2014-15 income year: Taxpayers will be eligible to claim the full range of medical expenses (as defined currently) but only if they have received an amount of the NMETO in the previous income year (or in both 2012-13 and 2013-14 in respect to claims in the 2014-15 income year).*

Note: The relevant income tests and eligibility requirements must still be satisfied in order claim the offset.

MEDICARE LEVY

The Medicare levy for the 2014-15 income year is 2.0% of taxable income.

Consider the following:

- *The Medicare levy rate increased from 1.5 to 2% of taxable income for the 2014-15 income year (ie. from 1 July 2014) and later income years.*
- *As announced in the 2015-16 Federal Budget, the Medicare levy low-income threshold for 2014-15 income year will be increased as follows:*
 - **For singles** *the threshold will be increased to \$20,896.*
 - **For couples with no children** *the threshold will be increased to \$35,261 and the additional amount of threshold for each dependent child or student will be increased to \$3,238.*
 - **For single seniors and pensioners** *the threshold will be increased to \$33,044.*

MEDICARE LEVY SURCHARGE

Consider whether it would be necessary for an individual to obtain private health insurance cover for the 2015-16 income year so that the taxpayer will not be subject to the Medicare levy surcharge.

The Medicare levy surcharge applies where the income threshold of an individual for the income year is exceeded (ie single or family amounts still apply) and the individual does not have sufficient private health insurance cover. The surcharge rate ranges from 1% to 1.5% depending on the taxpayer's modified income amount (see table below).



TAX OFFSETS AND LEVIES (CONT)

PRIVATE HEALTH INSURANCE REBATE

Consider whether an individual would lose their entitlement to the full 30% rebate for private health insurance cover for the 2015-16 income year based on their 2014-15 taxable income.

Note: There are income tests which impact the ability for an individual to claim the full rebate. A full rebate is available if an individual's income below the Medicare levy surcharge threshold (see table below).

The rebate no longer applies where the person's income exceeds the upper threshold.

<i>Singles</i>	≤\$90,000	\$90,001-105,000	\$105,001-140,000	≥\$140,001
<i>Families</i>	≤\$180,000	\$180,001-210,000	\$210,001-280,000	≥\$280,001
Rebate – 1 July 2014 to 31 March 2015				
	<i>Standard</i>	<i>Tier 1</i>	<i>Tier 2</i>	<i>Tier 3</i>
< age 65	29.04%	19.36%	9.68%	0%
Age 65-69	33.88%	24.2%	14.52%	0%
Age 70+	38.72%	29.04%	19.36%	0%
Rebate – 1 April 2015 to 30 June 2015				
< age 65	27.82%	18.55%	9.27%	0%
Age 65-69	32.46%	23.18%	13.91%	0%
Age 70+	37.09%	27.82%	18.55%	0%
Medicare Levy Surcharge				
	<i>Standard</i>	<i>Tier 1</i>	<i>Tier 2</i>	<i>Tier 3</i>
<i>All ages</i>	0.0%	1.0%	1.25%	1.5%

Single parents and couples (including de facto couples) are subject to family tiers.

For families with children, the thresholds are increased by \$1,500 for each child after the first.

HECS-HELP DEBT

Does the taxpayer have an outstanding HECS-HELP debt?

If so, determine the compulsory repayment amount for the 2014-15 income year.

Does the taxpayer wish to make a voluntary repayment of HELP for the income year?

If so, a discount equal to 5% of the voluntary repayment amount may be available for payments in excess of \$500. It would be best to make the repayment either before lodgment of the income tax return or before the application of indexation (1 June).

► WARNING! Subject to the passage of legislation, from 1 January 2016, the Government will remove the upfront HECS-HELP discount of 10% for eligible students who pay their student contributions upfront and the voluntary HELP repayment bonus of 5%.

Is it still necessary for the taxpayer's employer to withhold a HECS-HELP component of PAYG for the remainder of 2014-15 or for 2015-16?

If not, the taxpayer should advise their employer to reduce the amount of PAYG withheld.

Budget 2015-16! As announced, from 2016-17, HELP debtors residing overseas for six months or more will be required to make repayments of their HELP debt if their worldwide income exceeds the minimum repayment threshold at the same repayment rates as debtors in Australia. At the time of writing, this measure was not yet enacted.

BUSINESS TAXPAYERS

CAPITAL ALLOWANCES

Balancing adjustments

Has the taxpayer written off any depreciating assets which have been scrapped or are lost, destroyed or obsolete?

A deductible balancing adjustment event may arise to the extent that the asset had a 'tax written down value'.

Has the taxpayer applied the Commissioner's effective life rates (see TR 2014/4) in working out the decline in value for depreciating assets acquired during the income year?

► **TIP!** Where the taxpayer has chosen to self-assess the effective live of the asset, it would be prudent to document the reasons for adopting an alternative rate.

Consider whether it would be appropriate to implement:

- a low value pool, or
- a software development pool.

Consider whether the cost limit for motor vehicles of \$57,466 for the 2014-15 income year has been correctly applied (per TD 2014/17).

Immediate write-offs

Has the taxpayer acquired any depreciating assets costing \$100 or less?

For taxpayers conducting a business (that is not a small business entity – see below), the Tax Office allows an immediate deduction for assets with a cost of \$100 or less (GST-inclusive), as an administrative concession. See PS LA 2003/8 for details.

Business-related capital expenditure

Has the taxpayer incurred an business-related capital expenditure such as:

- business set-up and/or feasibility costs – see below for proposed changes for small businesses
- business restructuring costs
- costs of raising equity or defending a take-over, or
- business cessation costs?

If so, such costs may be deductible over five years at 20% each income year (subject to the conditions contained in s40-880 ITAA97). Also see TR 2011/6.

BAD DEBTS

• Are there any bad debts that can be written off prior to year end? (see TR 92/18 for comment)

• Is the debt prevented from being deducted due to a change in ownership or control of a company or trust structure?

If so, does the entity satisfy the same business test?

PREPAYMENTS

Has an immediate deduction been claimed for the following types of prepaid expenses:

- amounts of less than \$1,000?
- amounts required to be incurred by a law, or by an order of a court, of the Commonwealth, a state or a territory (eg. car registration, worker's compensation insurance, etc)?
- payments of salary or wages (under a contract of service)?, or
- amounts that are capital or private in nature?

Otherwise, the deduction is referable to the 'eligible service period' to which it relates for the income year.



BUSINESS TAXPAYERS (CONT)

TRADING STOCK

Stock valuation

Consider whether it would be beneficial for the taxpayer to revalue trading stock at year end, noting that stock can be valued at:

- cost
- market selling value, or
- replacement value (see s70-45 ITAA97)

Notwithstanding the above, has stock been valued or written off to take into account stock obsolescence or other special circumstances (s70-50 ITAA97)? (See TR 93/23 for conditions.)

Disposal outside the ordinary course of business

Has stock been disposed of by the taxpayer outside the ordinary course of their business?

If so, such stock is deemed to be disposed of at market value (see s70-90 ITAA36).

Stock taken for personal use

Has stock been taken for personal use or used in the business instead?

If so, such stock is deemed to be disposed of at cost and reacquired for the same amount.

► **EXAMPLE:** You are a sheep grazier and take a sheep from your stock to slaughter for personal consumption. You are treated as having sold it for its cost. This amount is assessable income, just like the proceeds of sale of any of your trading stock. Although you are also treated as having bought the sheep for the same amount, it would not be deductible because the sheep is for personal consumption.

Stock on hand

Has all trading stock been accounted for as being on-hand at year end?

Trading stock is considered to be on-hand where the taxpayer is in the position to dispose of the goods (see IT 2670).

PAYG INCOME TAX INSTALMENTS

Consider whether it would be beneficial to vary PAYG instalment rate downwards for the final quarter of the income year.

Note: General interest charge may be imposed where the varied instalment amount is based on an estimate that is less than 85% of the actual tax payable on the company's business and investment income.



SMALL BUSINESS ENTITIES

MEANING OF 'SMALL BUSINESS ENTITY' (SBE)

Does the taxpayer satisfy the following requirements:

- it is carrying on a business, and
- it meets the '\$2 million aggregated turnover test' (see s328-110 ITAA97)?

If so, the entity is a SBE and may be entitled to concessional tax treatment.

Note: Taxation Ruling TR 97/11 outlines some factors in working out whether an entity is 'carrying on a business'.

'Aggregated turnover' is defined under s328-115 ITAA97 and requires the inclusion of income of 'connected entities' and 'affiliates' of the taxpayer.

SIMPLIFIED DEPRECIATION RULES

Has the taxpayer ensured that the following simplified depreciation rules have been correctly applied for the 2014-15 income year:

- Claimed an immediate deduction for depreciating assets costing under \$1,000?
– see below for Federal Budget announcement in relation to \$20,000 immediate write-offs.
- Where immediate deductions are not allowed, allocated depreciating assets to the small business general pool?
- Correctly accounted for any additions, disposals and changes in business use of assets contained in the small business general pool?
- Applied correct depreciation rates (ie 15% for additions, 30% for existing assets)?

OTHER CONCESSIONS

- **Prepayments:** Are there prepayments made that are referable to a period less than 12 months? If so, an immediate deduction may be available (see *Individuals – Prepayments* above).
- **Trading stock:** Has a choice been made not to undertake a stocktake of trading stock because the difference between the opening value of stock on hand and an estimate year-end stock value is \$5,000 or less?

PLANNING TIPS FOR SMALL BUSINESS ARISING FROM THE 2015-16 FEDERAL BUDGET

In its 2015-16 Federal Budget, the Government announced a number of measures that will assist eligible small businesses. These measures include:

Small business measure	Application date
1.5% tax cut for small companies	From the 2015-16 income year
5% discount on tax payable on income from unincorporated small business activity	From the 2015-16 income year
Temporary immediate write-off for small business assets costing less than \$20,000	Between 7.30pm (AEST) 12 May 2015 and 30 June 2017
Change legal structure without attracting a CGT liability at that point.	From the 2016-17 income year
Start-up costs – Immediate deduction for professional expenses such as professional, legal and accounting advice.	From the 2015-16 income year

► **IMPORTANT:** The measures apply to an entity which satisfies the meaning of an SBE (that is, the entity has aggregated annual turnover of less than \$2 million). At the time of writing, legislation was introduced into Parliament for some of these measures.



TRUSTS

DEFINITION OF 'INCOME OF THE TRUST ESTATE' IN THE TRUST DEED

Have the following been considered when determining the meaning of 'income of the trust estate':

- How is 'income' defined in the trust deed?
- Are there discretions available to the trustee as to how income and capital items should be treated?
If so, what is required in order to effect an exercise in discretion?
- What is the effect of TR 2012/D1?

TR 2012/D1 concludes that the 'income of the trust estate' cannot exceed the net amount of income to which beneficiaries could be made presently entitled or the trustee could accumulate. For example, where a trust deed has an income equalisation clause equating 'trust income' with 'net income', notional amounts such as franking credits grossed-up are not included in determining 'income of the trust'.

Note: Labels 53A and 54W in the Trust Tax Return 2014 require that taxpayers disclose the 'total income of the trust' and a beneficiary's 'share of income of the trust estate' as defined by the Tax Office TR 2012/D1. At the time of writing, 2015 tax return stationery had not been released by the Tax Office.

IMPLEMENTING THE TRUST DISTRIBUTION

What are the requirements of the trust deed to create present entitlement?

Note: To establish a 'present entitlement', the Courts have held that the trustee must, under the terms of the trust, be legally required to pay the trust income to the beneficiary, or deal with the trust income on the beneficiary's behalf. In the case of a discretionary trust, a beneficiary has no present entitlement to trust income until the trustee exercises a discretion in the beneficiary's favour.

IDENTIFICATION OF BENEFICIARIES

Are there different classes of beneficiary?

Characteristics of the beneficiaries which may impact the distribution (eg minors, non-residents; non-resident beneficiaries are not entitled to imputation credits from a distribution of franked dividends).

TRUSTEE RESOLUTIONS

- Has a trustee resolution been completed by 30 June (or such earlier date as is required by the deed)?
- If no, are there 'default beneficiaries' who may become presently entitled to the income pursuant to the terms of the trust deed?

Further resolution?

Is any subsequent action required by the trustee to confirm resolutions in relation to income distributions?

Proportional vs quantum approach?

Has the trustee resolution taken a 'proportionate approach' in distributing trust income (in accordance with the decision in *Bamford*)?

For example, the trust resolution specifies that 'income of the trust estate' be distribution on a percentage basis.

Note: Only net capital gains and franked distributions may be streamed to beneficiaries to the extent the beneficiary is made 'specifically entitled' (see below for details).

STREAMING OF SOME OR ALL OF THE DISTRIBUTION

Have the following been considered when streaming income:

- Is it intended that classes of income be streamed?
- Does the deed confer that power on the trustee?
- If not, should an amendment to the deed be considered to grant such a power?
- Will the specific requirements of the tax law be satisfied?



TRUSTS (CONT)

CAPITAL GAINS AND FRANKED DISTRIBUTIONS

Do franked dividends form part of the trust income?

Review definition of 'income' in the deed.

Some considerations if franked dividends are derived by the trust include:

- Can franking credits be 'distributed'?
- Which beneficiaries can best utilise franking credits?
- Will the specific requirements of the tax law be satisfied?

Do capital gains form part of the trust income?

Review definition of 'income' in the trust deed.

Note: Capital gains and franked distributions can be 'streamed' where they are included in the net (taxable) income of a trust. It is not necessary that there be an amount of trust income where the streaming provisions are applied. It is however necessary for a 'specific entitlement' to be created by way of resolution.

IS THERE TRUST INCOME?

If the trust income is nil, are there any steps which could be taken to appropriately classify other amounts as income so that a distribution can occur (thereby avoiding the operation of s99A ITAA36 which taxes 'net income' of the trust at the top marginal rate including Medicare levy).

ACCUMULATION OF INCOME

Does the trust deed allow income to be accumulated and, if so, are there circumstances which may warrant accumulating some or all of the income?

Accumulated income is typically assessed to the trust under s99A ITAA36; however, special rates may apply to certain trusts (eg deceased estates under s99 ITAA36).

Note: The top marginal tax rate for 2014-15 income year (including the Medicare Levy of 2%) is 49%.

This rate applies for a three year period from 1 July 2014 due to the inclusion of the Temporary Budget Repair Levy.

TRUST LOSSES

Does the trust have prior year losses and, if so, must they be recouped out of income?

- Will the trust satisfy the loss recoupment rules in Schedule 2F ITAA36?

The relevant tests that may require consideration (subject to trust type) include:

- the control test
- the 50% stake test
- the pattern of distributions test, and
- the income injection test.

Is it necessary for the trust to make a Family Trust Election (FTE) (see below)?

CORPORATE BENEFICIARY

- If a distribution is made to a corporate beneficiary, will there be Division 7A implications?
Consider the implications of TR 2010/3 and PS LA 2010/4 (ie pre- and post-December 2009 unpaid present entitlements owed to a corporate beneficiaries).
- Is it necessary to have certain unpaid present entitlements placed on a sub-trust arrangement?
- Are there any unpaid present entitlements in respect of prior years which have been formally converted into loans?



TRUSTS (CONT)

SMALL BUSINESS CGT CONCESSIONS

- How can distributions be made to maximise the benefit obtained from the small business CGT concessions?
- Are particular distributions required to ensure that:
 - a beneficiary is a 'controller' of the trust, or
 - a CGT concession stakeholder?

FAMILY TRUST

- Has a Family Trust Election (FTE) been made?
- Is an FTE required?

An FTE may be necessary for a trust for the following reasons:

- *to provide a non-fixed trust (eg discretionary trust) with concessional treatment in recouping trust tax losses. Certain trust loss tests do not apply or are modified (see Trust losses above)*
- *to allow a non-fixed trust to apply a concession under the company loss recoupment rules so that a relevant interest held by a family trust are taken to be owned by a single notional entity as an individual*
- *to allow a non-fixed trust to satisfy the 45-day holding rule and be entitled to imputation credits when in receipt of franked dividends, or*
- *to exclude from the trustee beneficiary reporting rules trusts that have made a FTE or interposed entity election (IEE).*

INTERIM DISTRIBUTIONS

Have interim distributions occurred during the year?

If so, ensure that the year-end distribution resolution is appropriately worded to reflect the earlier distribution.

Tax File Number (TFN) of beneficiaries must be provided to the trustee.

Ensure that beneficiaries in receipt of a distribution for the first time have provided their TFN to the trustee by the time of the distribution.

These rules apply to 'closely held trusts'.

THE TRUSTEE DISTRIBUTES AN ASSET IN SPECIE TO SATISFY A BENEFICIARY'S ENTITLEMENT TO INCOME OR CAPITAL

If the trust is registered for GST will a liability arise? (refer to GSTD 2009/1).

The GSTD considers that a supply by way of an in specie distribution of an asset that is applied in the enterprise carried on by the discretionary trust is a supply made in the course or furtherance of that enterprise.

A GST liability would typically arise in these circumstances.

REIMBURSEMENT AGREEMENTS

Has the trustee considered whether there is a 'reimbursement agreement' under s100A ITAA36?

Note: A reimbursement agreement generally involves making someone presently entitled to distributable income of a trust in circumstances where both:

- *someone else actually benefits from that income, and*
- *a purpose of a party to the agreement is to obtain a tax benefit.*

The trustee may be assessed at the top marginal tax rate on that distributable income under s100A ITAA36.

Reimbursement agreements are a complex area of the tax law. For further information, refer to the Tax Office's guide entitled Trust taxation – reimbursement agreement available on its website.



COMPANIES

DIVISION 7A

Is the taxpayer a 'private company' for tax purposes (see s103A ITAA36)?

PAYMENTS

Has the private company made a 'payment' to a shareholder (or an associate) during the income year?

The meaning of 'payment' for Division 7A purposes also includes the provision of property for use by a shareholder (or associate) (eg use of a holiday home) (see s109CA ITAA36). Certain exceptions apply.

LOANS

Has the private company made loans to a shareholder (or an associate) during the income year?

If so:

- Have complying s109N loan agreements been put in place by the lodgment date (ie due date of lodgment of company tax return)?
- Have minimum principal and interest payments been met for prior year s109N loans?
- Have unpaid present entitlements from a trust to a corporate beneficiary been appropriately dealt with (see *Corporate beneficiaries* above)?

DEBT FORGIVENESS

Has the private company forgiven a debt owed by a shareholder (or an associate)?

Note: The commercial debt forgiveness rules would typically not apply to a debt forgiveness treated as a dividend under Division 7A to the extent that dividend is included the relevant entity's assessable income. The CDF rules may apply where some amount is not assessable.

REDUCTIONS AND EXCEPTIONS

Is the distributable surplus less than the deemed dividend amount?
The deemed dividend is limited to that amount.

Have the following payments been made:

- Payments of genuine debt?
- Payments of other companies?
- Payments that is otherwise assessable?
- Certain liquidator's distributions?

These payments are not dividends.

Have the following loans been made:

- Loans to other companies?
- Loans that is otherwise assessable?
- Loans made in the ordinary course of business that are on commercial terms?
- Certain liquidator's distributions?
- Loans to purchase shares or rights under an employee share scheme?
- Loans where undue hardship is caused?

These loans are not dividends.

OTHER INTEGRITY MEASURES

Have Division 7A integrity measures such as those related to interposed entity transactions (s109XA ITAA36) and back-to-back loan arrangements (s109T ITAA36) been considered?



COMPANIES (CONT)

DIVIDENDS

- Has the application of s254T of the *Corporations Act 2001* been considered in declaring and payment of dividends (see TR 2012/5)?
- Have distribution statements for dividends paid been issued?
- Have excess franking credits received by the company been converted into a tax loss?

FRANKING ACCOUNT

Has the taxpayer considered the following in respect of maintenance of its franking account for the current year:

- Has the benchmark rule been appropriately applied in franking the dividend? If not, has there been any over or under franking?
- Have company tax instalments and paid been credited at time of payment?
- Have refunds of tax been debited to the franking account?
- Have distributions of franked dividends been debited at the time the distribution is made?
- Is there a franking debit at year end? If so, franking deficits tax may be payable and a franking account tax return may need to be lodged. A franking deficit offset is available.
- Has there been excessive over-franking (greater than 10%) that requires the franking deficit tax offset to be reduced by 30%?

COMPANY TAX LOSSES

If the company has prior year tax losses or wishes to recoup those tax losses:

- Have the conditions under the continuity of ownership test been satisfied for the relevant period?
- If not, is the company able to demonstrate that it satisfies the 'same business test' for the relevant testing times?

Note: The SBT is applied narrowly by the Tax Office (see tax ruling TR 1999/9 for comments).

RESEARCH AND DEVELOPMENT (R&D) TAX INCENTIVE

- Is the company eligible for the R&D tax incentive for 2014-15?
 - ▶ **IMPORTANT!** With effect from 1 July 2014, a \$100 million threshold applies to the R&D expenditure for which companies can claim a concessional tax offset under the R&D Tax Incentive. For any R&D expenditure amounts above \$100 million, companies will still be able to claim a tax offset at the company tax rate.
 - The Government has announced its intention to change the rates of assistance to 43.5% and 38.5% respectively. At time of writing, no legislation has been introduced to make this change.
- Have the relevant activities been registered with AusIndustry? Note that the application is due 10 months after the end of a company's income year (ie. 30 April 2015).



CAPITAL GAINS TAX

GENERAL

- Is the CGT asset acquired 'pre-CGT' (ie. acquired before 20 September 1985)?
- Consider whether Division 149 ITAA97 or CGT event K6 has possible application in stopping an asset from being a CGT asset.
- Can a capital gain be deferred until the following income year?
For example, it is possible to defer entering into a contract of sale until the following income year so that CGT event A1 is triggered in that year instead?
- Are there any assets where a capital loss may be crystallised to be applied capital gains derived earlier during the income year?
Beware of the application of TA 2008/7 which deals with the application the general anti-avoidance provisions to 'wash sale' arrangements.
- Has the CGT asset been held for at least 12 months in order to access the general discount?
This applies only to taxpayers that who are individuals, trusts or superannuation funds.
Note: Non-resident taxpayers will no longer be entitled to the 50% discount on taxable Australian property, such as real estate. Non-residents will still be entitled to a discount on capital gains accrued prior to 8 May 2012, provided they choose to value the asset as at that time.
- Is there expenditure that can be included in cost base (eg incidental costs – second element or certain interest costs – third element of cost base)?
- Have appropriate market valuations been obtained in working out capital proceeds where the transaction is not conducted at arm's length?
- Is the taxpayer entitled to any CGT roll-over in respect of the CGT event? (eg was the asset compulsorily acquired, was there a restructure from a sole proprietor to a company structure?)
See Divisions 122 and 124 ITAA97. Also note proposed 2015-16 Federal Budget changes which enable small businesses to change structures without adverse CGT implications.
- Have the rules in Division 128 ITAA97 been appropriately applied in respect of certain CGT assets following the death of an individual?
Note: As a general rule, a capital gain or loss in respect of an asset that devolves to the deceased's legal personal representative or passes to their beneficiary is disregarded. Special cost base and acquisition rules apply.

SMALL BUSINESS CGT CONCESSIONS

- Has a business CGT asset been disposed during the income year that has resulted in a capital gain?
- If so, has the taxpayer satisfied the basic conditions for eligibility (eg maximum net asset value test)?
- Note: Additional conditions apply if the CGT asset is an interest in a company or trust. A taxpayer may also be eligible in respect of 'passive' assets that are used by a connected entity or an affiliate of the taxpayer in carrying on a business.*
- Consider whether the taxpayer is eligible to apply the following concessions:
- the small business 15 year exemption
 - the small business 50% reduction
 - the small business retirement exemption, or
 - the small business roll-over.
- Note: It is only necessary for the basic conditions to apply to access the 50% reduction and small business roll-over. Additional requirements apply to the other two concessions – for example, the retirement exemption requires that there be a 'significant individual' amongst other conditions.*



CAPITAL GAINS TAX (CONT)

MAIN RESIDENCE EXEMPTION

- Has the individual disposed of a dwelling which is their 'main residence' during the income year?
- Has a choice been made to apply the 'absence rule' to continue to treat the dwelling as a main residence (s118-145 ITAA97)?
Note: The absence rule is limited to six years if the asset has been used to derive income.
- Has the 'first used to produce income' rule been applied to determine market value cost base and a deemed acquisition date (s118-192)?
- Has the interaction between the 'absence rule' and 'first used to produce income rule' been considered? See ATO ID 2003/1113.
- Has there been any use of the dwelling for income producing purposes that require apportionment (s118-190)?
- Was the dwelling used as a main residence for only part of the ownership period (s118-185)?
- Does the 'four year rule' apply in respect of the building, repair or renovation of the dwelling to treat it as a main residence? (s118-150 ITAA97)?
- Has there been a subdivision of land? If so, this does not constitute a CGT event. However, the main residence exemption status of the subdivided block without the dwelling is typically lost.

Note: It is still necessary to disclose in the tax return that the CGT event had happened for the income year notwithstanding that a capital gain may be fully disregarded.



SUPERANNUATION

SUPERANNUATION GUARANTEE CHARGE

- Has the employer applied the correct superannuation guarantee rate?

From 1 July 2014, the superannuation guarantee rate increased from 9.25% to 9.5%. Note the change to the schedule increasing the superannuation guarantee rate to 12% as outlined by Government in the 2014-15 Federal Budget.

CONTRIBUTIONS

- Has the individual monitored their contributions caps to ensure that these have not been exceeded?

Note: Changes to excess contributions apply from the 2013-14 income year. Under the changes, individuals can elect to release an amount of excess concessional contributions from their superannuation interests. Note that a charge also applies to ensure that taxpayers who have concessional contributions in excess of their annual cap do not receive an advantage compared to taxpayers who have not exceeded their annual cap.

CONCESSIONAL CONTRIBUTIONS CAP

Income year	Amount of general cap	Cap for those aged 59 years or over on 30 June 2013	Cap for those aged 49 years or over on 30 June 2014
2015-16	\$30,000	\$35,000	\$35,000
2014-15	\$30,000	\$35,000	\$35,000



SUPERANNUATION (CONT)

NON-CONCESSIONAL CONTRIBUTIONS CAP

Income year	Amount of cap
2015-16	\$180,000
2014-15	\$180,000

- Does the individual satisfy the '10% rule' for the income year?
Consider whether it would be beneficial to make a deductible personal contribution (again, beware of the concessional contributions cap and note that a deduction is available when the contribution is received).
- Has the individual considered a superannuation salary sacrifice arrangement for 2015-16?
Note concessional contribution caps when making such contributions.
- Is the taxpayer 64 years of age or under on 1 July of the financial year?
If so, they can apply the 'bring forward rule' to make non-concessional contributions of up to \$540,000 over a three year period if this rule is triggered from 1 July 2015.
- Is the individual eligible for superannuation co-contributions?
This is subject to income testing. Note that for contributions made in the 2014-15 income year the following will apply:

	If your personal super contribution is:			
	\$1,000	\$800	\$500	\$200
And your income is:	Your super co-contribution will be:			
\$34,488 or less	\$500	\$400	\$250	\$100
\$37,488	\$400	\$400	\$250	\$100
\$40,488	\$300	\$300	\$250	\$100
\$43,488	\$200	\$200	\$200	\$100
\$46,488	\$100	\$100	\$100	\$100
\$49,488 or more	\$0	\$0	\$0	\$0

PAYMENTS

- Have the relevant caps been considered for lump sum payments (low rate cap amounts and untaxed plan cap amount)?
- Has the taxpayer reached the correct preservation age?
- Where relevant, has the correct tax been calculated on:
 - superannuation lump sum, and
 - superannuation income stream payments?