Murray Business Solutions

CPA

Monthly Client Update

November 2022

Federal Budget 2022-23

The 2022-23 federal Budget was handed down on 25 October. The confirmation of lucrative income tax cuts, and the scrapping of a tax offset for low- and middle-income earners were the big-ticket items.

About this newsletter

Welcome to Murray Business Solution's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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That said, Labor's first federal Budget in nine years was as noteworthy for the changes it didn't make as for those that it did. Unmentioned were current outstanding issues impacting the taxation of trusts, the long-awaited simplification of 7A, the future of business depreciation after this financial year and more.

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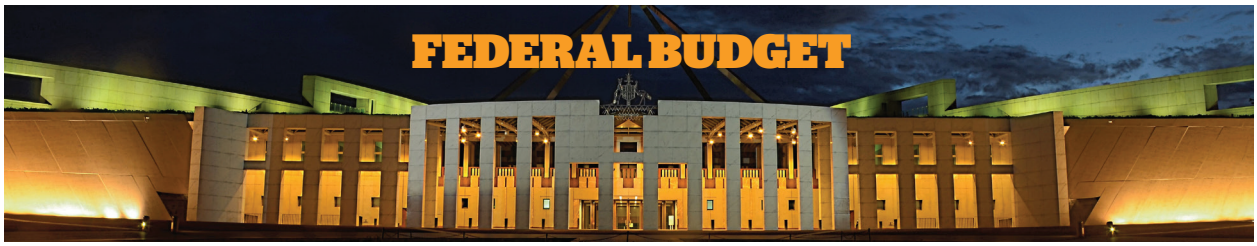

Business and Individual Taxation

Briefly the key taxation measures announced in the Budget are summarised as follows.

- ***Digital currencies not a foreign currency*** – the Budget Papers confirm that the government is to introduce legislation to clarify that digital currencies (such as Bitcoin) continue to be excluded from the Australian income tax treatment of foreign currency.
- ***COVID grants treated as NANE*** – the Budget Papers contain a listing of further State and Territory COVID-19 grant programs eligible for non-assessable, non-exempt treatment.
- ***LMITO axed*** – the government did not announce any extension of the low- and middle-income tax offset (LMITO) to the 2022-23 income year. The LMITO has now ceased and been fully replaced by the less lucrative and less available low income tax offset (LITO). The March 2022-23 Budget had increased the LMITO by $420 for the 2021-22 income year so that eligible individuals (with taxable incomes below $126,000) received a maximum LMITO up to $1,500 for 2021-22 (instead of the previous $1,080).
- ***No action*** – the government did not make any announcements around outstanding issues such as the long-awaited changes to Division 7A, reform to section 100A, the extension of both Temporary Full Expensing and loss carry-back (both due to expire at the end of June 2023), and implementation of the Board of Taxation's recommendations around changes to the individual tax residency rules.
- ***Thin Cap*** – the current measures impose a restriction on the deductibility of foreign held debt under a balance sheet approach. The proposed Thin Cap measures will replace the safe harbour test with a new earnings-based test under which an entity's debt-related deductions will be limited to 30% of profits (using earnings before interest, taxes, depreciation and amortization (EBITDA) as the measure of profit); allow deductions denied under the EBITDA test to be carried forward and claimed in a subsequent income year (up to 15 years) and replace the worldwide gearing test and allow an entity in a group to claim debt deductions up to the level of the worldwide group's net interest expense as a share of earnings (which may exceed the 30% EBITDA ratio). These measures are proposed to commence on 1 July 2023.
- ***Share buy-backs*** – the government intends to align the tax treatment of off-market share buy-backs undertaken by listed public companies with the treatment of on-market share buy-backs. However, there is no detail in the Budget Papers nor in any associated media releases as to what precisely is intended.
- ***Depreciation of intangible assets*** – the government will not proceed with the proposal to allow taxpayers to self-assess the effective life of intangible depreciating assets. This is the reversal of the previously announced option to self-assess effective life for certain intangible assets (eg intellectual property and in-house software). The effective lives of such assets will continue to be set by statute.
- ***Individual tax rates*** – the government did not announce any personal tax rates changes. The Stage 3 tax changes commence from 1 July 2024, as previously legislated. From 1 July 2024, Stage 3 will see the abolition of the current 37% tax bracket, lowering the existing 32.5% bracket to 30%, and raising the threshold for the top tax bracket from $180,001 to $200,001.

  Consequently, the first $18,200 you earn will be tax-free (as it is currently), and every dollar you earn between that and $45,000 will be taxed at 19% (as it is currently).

  However, things then change from 1 July 2024 where every taxable dollar you earn from $45,001 to $200,000 will be taxed at 30%, and every dollar you earn above $200,000 will be taxed at 45%.

  Please see the table overleaf.

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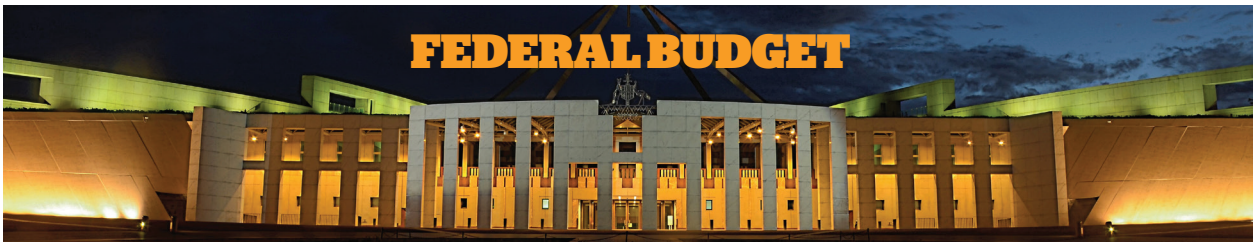
If you have any questions about the Budget and how it may impact you, please contact us.

Please see overleaf for Budget Superannuation and Retirement measures.



Superannuation and Retirement

CAPS AND LIMITS UNTOUCHED

In a pleasing development, the important superannuation caps and limits were undisturbed, providing all-important investor certainty moving forward. This means that:

- individuals will be permitted to contribute just as much to superannuation as currently under the concessional and non-concessional caps at $27,500 and $110,000 respectively (or up to $330,000 of non-concessional contributions over three years, subject to an individual's total superannuation balance (TSB))
- the TSB cap is unadjusted at $1.7 million and indexation continues. The retention of indexation means that the cap will very likely increase by $200,000 to $1.9 million from 1 July 2023. The TSB is relevant when working out eligibility for the following super-related measures:
  - Carry-forward concessional contributions
  - Non-concessional contributions cap and the bring-forward of your non-concessional contributions cap
  - Work test exemption
  - Government co-contribution
  - Spouse tax offset
  - Segregated asset method for calculating exempt current pension income.
- frozen deeming rates will be retained starting at 0.25% until 30 June 2024. The deeming rules are used to work out the income for your financial assets including superannuation. The rules assume these assets earn a set rate of income, irrespective of what you really earn. On 1 July 2022, the deeming rates were frozen for a further two years for all people receiving Centrelink payments, including approximately 445,000 Age Pensioners. Therefore, even though interest rates have increased significantly in 2022 and may do so further, the current deeming rates are sheltered until at least the middle of 2024.

DOWNSIZER AGE REDUCTION

The government confirmed its election commitment that the minimum eligibility age for making superannuation downsizer contributions will be lowered to age 55 (down from age 60). Legislation in the form of the *Treasury Laws Amendment (2022 Measures No.2) Bill 2022* is currently before Parliament to effect this change. When passed into law (a safe assumption given that this is a bipartisan measure) the reduced age limit will apply from the first day of the first quarter after the day the Bill receives Royal Assent (likely from 1 January 2023). There is no maximum age limit to make a downsizer contribution.

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INDIVIDUAL TAX RATES 2022-23 AND 2024-25

Tax Rate	Thresholds in 2022-23	Tax Rate	New thresholds in 2024-25
Nil	Up to $18,200	Nil	Up to $18,200
19%	$18,201-$45,000	19%	$18,201-$45,000
32.5%	$45,001-$120,000	30%	$45,001-$200,000
37%	$120,001-$180,000		
45%	$180,001 and over	45%	$200,001 and over

Director ID...
last ditch awareness campaign!

What you need to know

With hundreds of thousands of directors yet to apply for their director identification number (director ID) ahead of the looming November deadline, a last-ditch public information campaign has been launched.

The Albanese Government has just launched a new awareness campaign to help company directors obtain their director ID as the 30 November deadline quickly approaches.

A director ID is a unique 15digit identifier that a company director will apply for once and keep forever. By allowing regulators to trace directors' relationships with companies over time, director IDs will help prevent illegal activity and level the playing field for businesses.

Director IDs are administered by the Australian Business Registry Services (ABRS), which is managed by the ATO.

The new awareness campaign will feature both widespread communications and targeted outreach to ensure all directors are aware of their obligations.

Who needs a director ID?

You need a director ID if you are an eligible officer of:

- a company, a registered Australian body or a registered foreign company under the *Corporations Act 2001* (Corporations Act)
- an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

An 'eligible officer' is a person who is appointed as:

- a director
- an alternate director who is acting in that capacity.

You need a director ID if you are a director of a:

- company
- Aboriginal and Torres Strait Islander corporation
- corporate trustee, for example, of an SMSF
- charity or not-for-profit organisation that is a company or Aboriginal and Torres Strait Islander corporation
- registered Australian body, for example, an incorporated association that is registered with the Australian Securities and Investments Commission (ASIC) and trades outside the state or territory in which it is incorporated
- foreign company registered with ASIC and carrying on a business in Australia (regardless of where you live).

Who doesn't need a director ID?

A director ID is not required if you are a director of an incorporated association (with no ABRN) registered with the Australian Charities and Not-for-profits Commission (ACNC), a company secretary but not a director, acting as an external administrator of a company, or run your business as a sole trader or partnership.

It has been clarified by the ABRS that directors who resigned their directorship before 31 October 2021 are not required to obtain a director ID. Deceased directors, as they are unable to personally apply, are also exempt.

If you run a company that is a small business, corporate trustee of an SMSF, a not-for-profit or even a large sporting club, it's quite likely that you're a director, and you'll need to apply for your director ID.

When?

All directors of companies registered with ASIC will need a director ID and must apply by the 30 November deadline. Directors of Aboriginal and Torres Strait Islander corporations may have additional time to apply.

The deadline depends on the date on which you first became a director. See the table on the following page which lays out these dates.

Not sure?

If you are still uncertain as to whether a director ID is required:

- Search ABL Lookup using the ABN or business name. If ASIC Registration – ACN or ARBN or ARSN or ARFN is showing against their record, and they are a director, you need to apply for a director ID.
- Search the online ASIC companies register for director details (providing the company is complying with its maintenance obligations).

continued overleaf ⇨

Director identification numbers cont

- Determine who the directors are for:
  - not-for-profit organisations that are not registered with ACNC and have an ARBN or ACN – check the online ASIC companies register for director details (providing the organisation is complying with its maintenance obligations)
  - charities that are registered with the ACNC and have an ARBN or ACN – search for a charity oline on the ACNC website
    After selecting your charity, navigate to the People tab. If the role listed their name is Director, they need to apply for a director ID.

Apply

The fastest way to apply for a director ID is online at Australian Business Registry Services (ABRS website – www.abrs.gov.au/directorID). To access the online application, use the myGovID app with at least a standard identity strength to log in to ABRS Online. You must apply personally; we cannot apply on your behalf; however we can advise you around eligibility, deadlines etc. ■

Deadlines

1. Corporations Act directors

Date you first become a director	Date you must apply
On or before 31 October 2021	By 30 November 2022
Between 1 November 2021 and 4 April 2022	Within 28 days of appointment
From 5 April 2022	Before appointment

2. CATSI Act* directors

Date you first become a director	Date you must apply
On or before 31 October 2022	By 30 November 2023
From 1 November 2022	Before appointment

* *Corporations (Aboriginal and Torres Strait Islander) Act*

Super & Retirement cont

This change will allow individuals aged 55 or over to make an additional non-concessional contribution of up to $300,000 from the proceeds of selling their main residence outside of the existing contribution caps. Either the individual or their spouse must have owned the home for ten years.

Downsizing will also be incentivised. Pensioners who downsize will have their sale proceeds exempt from the asset test extended from 12 to 24 months. Further, for income test purposes, only the lower deeming rate (currently 0.25%) will apply to these asset test exempt principal home sale proceeds for the 24-month period.

EXPANDED ACCESS TO THE COMMONWEALTH SENIORS HEALTH CARD

The government re-stated its commitment to increase the income threshold for Commonwealth Seniors Health Card eligibility from $61,284 to $90,000 for singles and from $98,054 to $144,000 (combined) for couples.

OTHER ANNOUNCEMENTS

- The SMSF audit cycle will not be expanded to three years. The annual audit requirement remains.
- The relaxing of the SMSF residency rules, previously announced in the 2021-22 Budget to commence from 1 July 2022, will now start from the income year commencing on or after the date of assent of the enabling legislation (yet to be introduced). Therefore, SMSF trustees need to ensure that they satisfy the current residency requirements otherwise their fund may become non-complying with severe tax consequences to follow. ■

If you have any questions about how any of the above may impact you or your SMSF, please contact us.

Rental expenses in excess of income not deductible

With many parts of Australia in the grip of a rental crisis, a significant number of tenants may be residing in the properties of friends and relatives.

A recent case that came before the Administrative Appeals Tribunal (AAT), *Rizkallah and FCT* [2022] AATA 3081, is a timely reminder that rental expenses in excess of income may not be deductible in these circumstances. Instead, the deductions may be limited to your income from the property.

The taxpayer acquired a unit in Sydney for $300,000 in September 2010, financed by way of a mortgage. After using it as her principal residence for about six months she found it difficult to keep up with the mortgage payments and commenced letting the property to a tenant after moving back in with her parents, who lived across the road.

In May 2015 the taxpayer's future husband arrived in Australia on a partner visa sponsored by her. He joined the taxpayer, living with her in her parents' house. The couple married in August 2015 and moved into the taxpayer's property for about one month, after which time they split up due to the husband's gambling addiction.

Keen to keep her estranged husband nearby in the hope of a reconciliation, the taxpayer then came to an informal tenancy agreement with her husband for $1,016 per month, to be paid in cash. She claimed this reflected the going rate for comparable housing in the area, although it subsequently emerged at the hearing that the market rate was at least double the rate she struck with her husband.

In her 2016 and 2017 income tax returns, the taxpayer disclosed the rent received as assessable income, but claimed net losses of $24,200 and $23,500 respectively, due to significant claims for interest, capital allowance deductions (that is, depreciation on the building) and other expenses, including repairs and maintenance.

In relation to the capital allowances claim (totaling $22,100 over the two income years), on being notified of an audit the taxpayer produced invoices totaling almost $200,000 from a company associated with her family which turned out to have been deregistered at the relevant time. She subsequently withdrew her capital allowances claim, saying the work was never undertaken nor the expenditure incurred, without offering any explanation as to her basis for making the claim in the first place.

The ATO disallowed the net losses claimed in both years and imposed a 50% shortfall penalty on the basis of recklessness. The taxpayer sought a review in relation to both the disallowance of her claims and the penalties imposed.

The main question addressed by the AAT was whether the expenditure claimed (other than the withdrawn capital allowance claim) was deductible – was it necessarily incurred in gaining or producing assessable income, or was it incurred for some other purpose?

The AAT agreed with the Commissioner that the arrangement was non-commercial because: (a) the property was rented to the taxpayer's former partner in an attempt to facilitate the reconciliation of the relationship (b) the rent was well below market rates (c) no tenancy agreement was lodged with authorities. All told, the rent payable was below market rates and based on non-commercial considerations.

The tribunal therefore held that deductions were only allowable up to the extent of the rental income disclosed. ■

If you have any questions around the taxation of your rental property and the deductions available, please reach out to us.

Do I have to pay myself super as a business owner?

Do you have your own business or are you thinking of starting one? If so, you may need to pay yourself superannuation depending on your business structure.

Types of business structures available

If you were working for a company, your employer would be required to pay you superannuation guarantee (SG) contributions of 10.5% of your earnings to your chosen superannuation fund.

However when you're running your own business and paying yourself, it's not always clear if superannuation is compulsory as it depends on the trading structure of your business.

There are four commonly used business structures in Australia. These include:

1. Sole trader
2. Partnership
3. Company, and
4. Trust.

It is important to understand the responsibilities of each structure because the structure you choose will have different superannuation obligations.

Summary of superannuation requirements

The table below summarises whether SG contributions will be required to be paid under each business structure.

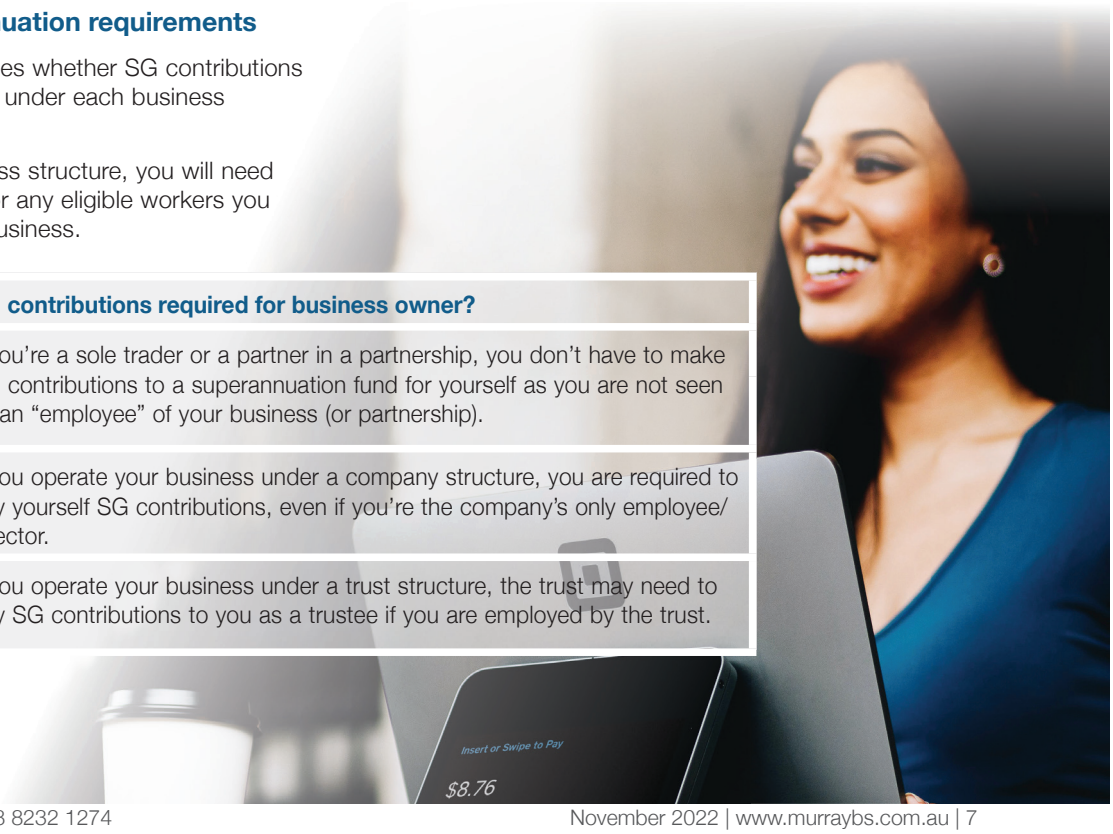
Regardless of your business structure, you will need to pay SG contributions for any eligible workers you employ to help run your business.

Business structure	SG contributions required for business owner?
Sole trader	If you're a sole trader or a partner in a partnership, you don't have to make SG contributions to a superannuation fund for yourself as you are not seen as an "employee" of your business (or partnership).
Partnership	
Company	If you operate your business under a company structure, you are required to pay yourself SG contributions, even if you're the company's only employee/director.
Trust	If you operate your business under a trust structure, the trust may need to pay SG contributions to you as a trustee if you are employed by the trust.

Despite not having to pay SG contributions under certain business structures, you may still consider making contributions into superannuation to save for your retirement due to the low tax environment within superannuation. A further benefit is that you may also claim a tax deduction for any concessional contributions, such as personal deductible contributions, that you make to your superannuation fund up to a limit of $27,500 a year. Other types of concessional contributions that also count towards the $27,500 limit include SG contributions and salary sacrifice contributions.

Need help?

Choosing the right business structure and knowing what your obligations are can be complex. Remember, you're not locked into any business structure and you can change the structure as your business changes or grows. Please don't hesitate to contact us if you're unsure which business structure to choose or whether you should be paying yourself superannuation, even though you may see yourself as being self-employed. ■



Protecting your *au* domain name

The ATO Commissioner has just issued a warning to businesses on the importance of securing your au domain name!

To recap, .au direct domain names were launched earlier this year by the organisation that manages Australian domain names, the Australian Domain Administration (auDA). This will allow businesses to elect to drop the .com from their web addresses.

.au has been introduced, after ongoing significant public consultation, to complement the existing 'namespaces' (e.g. .com.au, .net.au and .org.au) for those domain names with direct verified connection to Australia. Its purpose is to deliver a wider choice of available names in the Australian domain, allow users to register shorter online names and provide names that are easier to type and display on mobile devices.

This change will align Australia with many other countries including the UK, Canada, USA and New Zealand.

To keep your business safe and undisrupted a consistent .au online presence will help to reduce the risk of unwanted parties piggybacking on your online brand / domain names. It is recommended that your equivalent .au direct domain is purchased.

Anyone can register your business's .au equivalent domain name unless you have secured it.

Since March this year, businesses with an existing domain name (i.e. those whose websites end in .com.au or .net.au) have been given priority to reserve their matching .au domain name. For example, a business with an 'ato.com.au' domain name can also register as 'ato.au'.

Remember to consider the benefits of registering an .au domain for your business and your individual circumstances. One of the benefits of registering is that you safeguard your brand's identity on the internet.

If you don't reserve your business's .au domain name, impersonators, web name campers or cyber criminals may potentially take it. The Australian Cyber Security Centre has issued an alertExternal Link on the risk of cyber criminals using your brand's domain to impersonate your business and conduct fraudulent cyber activities.

You can register your domain name's .au equivalent at www.auda.org.au/au-domain-names/au-domain-names/au-direct or through www.auda.org.au/accredited-registrars to protect the digital identity of your brand.

In most cases, there will only be one registrant eligible to apply for a reserved .au direct name as they will be the only holder of its match in another .au namespace (e.g. .com.au, .net.au and .org.au). This is referred to as an uncontested name.

In these cases, the applicant will be allocated the domain name shortly after applying for Priority Status. The registrant will be able to choose a licence term of between one and five years.

For contested names (names where different registrants have the same name in different namespaces), the earlier the creation date of your current domain name the higher the priority and the more likely you are to be allocated your requested name. ■

? If you have any questions about this topic, please contact us.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.