

Tax News and Updates May 2021

ATO independent review service extended to small businesses

Where a small business (having a turnover of less than 10 million) disagrees with the audit position on certain tax and indirect tax obligations, they can now request a review of the dispute by an independent ATO technical officer in a quick and cost-effective way. This service applies to disputes about income tax, GST, excise, luxury car tax, wine equalisation tax, and fuel tax credits, but doesn't cover superannuation or fringe benefits.

Click [here](#) for further information.

Pre-lodgment compliance agreements with ATO

Privately owned and wealthy groups can engage early with the ATO and obtain a pre-lodgment, or pre-deal, compliance agreement for their commercial deals and restructure events.

The ATO defines a commercial deal as any significant business transaction that may affect the structure of your business. Some examples of this may include demergers, financing and refinancing, initial public offerings, sale of business and share buybacks etc.

You can get practical certainty for these events, while they are being planned or before lodgment, by using the Commercial Deals service. If agreement is reached and lodgment received as agreed, the ATO will not conduct a review or audit for the commercial deal transaction in question.

Click [here](#) for further information.

Tax issues where a business employs family members

Family members are often employed by a business as a method of splitting income between a number of different taxpayers. This can be a legitimate strategy provided the family member is a genuine employee and is genuinely providing their services.

When deciding on whether the employment of a family member is genuine, the courts have looked for the following as evidence of an employment relationship:

- The payment to the family member is a regular salary for services provided.
- The business is complying with its statutory obligations including PAYG withholding, FBT, superannuation guarantee, and workers compensation insurance.
- A written employment contract that outlines the key terms of the relationship (e.g. level and method of remuneration, working hours, leave entitlements etc).
- Maintenance of appropriate records, including tasks performed and the number of hours worked (e.g. time sheets).

Specific income tax rules apply with respect to excessive remuneration paid to family members so they should be paid at the same rate as an arm-length employee.

Note where a business is subject to the personal services income rules, the business cannot claim a deduction for wages and superannuation paid to associates (e.g. family members), unless the associate is engaged to perform "principal work" for the business – this does not include administrative and bookkeeping work.

Capital gains tax discount on affordable housing

An additional 10% capital gains tax (CGT) discount may be available when an Australian residential rental property is sold that has been used to provide affordable housing. This increases the maximum capital gains discount percentage on the sale from 50% up to 60%.

Click [here](#) or further information.

Small business capital gains tax concessions – rental properties

The ATO has released Taxation Determination [TD 2021/2](#) on whether a company can claim the small business CGT concessions in relation to rental properties.

Under Tax Ruling 2019/1 a company may be carrying on a business for tax purposes even if its only activity is a rental property investment. The question then arises if such a company can claim the small business CGT concessions.

However, TD 2021/2 explains that if an asset's only use is to derive rent, it is excluded from being an active asset under s 152-40(4)(e) ITAA 1997 regardless of whether the activities constitute the carrying on of a business in a general sense. The asset would therefore fail the active asset test in s 152-35 and the company would not be eligible for the small business CGT concessions in Division 152 in relation to that investment property.

Note the position may well be different if the property is let to, for example, an entity connected with the company – e.g. a company may be running the business and the commercial premises is owned by a related company or family trust.

The Determination has retrospective effect.

Reduction in company tax rate from 26% to 25% from 1 July 2021

Of the biggest drawcards of using a company is the ability to lock in a flat rate of tax in the year the income is derived.

In the 2020/21 year, the company rate tax is 30%, or 26% if the company is a "base rate entity" (BRE). A BRE is a company that has an aggregated turnover of less than \$50 million and 80% or less of its assessable income is "base rate entity passive income" (e.g. rent dividends, interest).

The tax rate for a BRE will drop to 25% for 2021/22 and future income years.

Tax updates are provided solely for general information purposes and are not intended as professional advice. Readers should not act on the information contained therein without proper advice from a suitably qualified professional.