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PROPOSED CGT CHANGES – DON'T ACT NOW!

Last week the Government introduced the Tax Reform No. 1 Bill, which includes significant proposed changes to Australia's capital gains tax regime following the 2026–27 Federal Budget.

Schedule 1 of the Bill proposes the following CGT reforms:

- replacing the 50% CGT discount for individuals, trusts and partnerships with cost base indexation for relevant gains from 1 July 2027, subject to transitional rules;
- introducing a 30% minimum tax on certain capital gains, with an exemption for certain income support recipients so that low-income, low-wealth individuals are not adversely affected;
- applying the new arrangements to capital gains accruing from 1 July 2027, with transitional rules to preserve the current treatment for assets acquired and disposed of before that date and for gains accrued before that date;
- bringing pre-CGT assets held before 1985 into the CGT regime for gains accruing after 1 July 2027, while maintaining the exemption for gains accrued before that date;
- providing transitional arrangements for legacy CGT assets acquired between 1985 and 1999, including continued access to prior rules in limited cases and retention of earlier indexation arrangements for eligible entities; and
- allowing investors in eligible new residential dwellings to choose between the existing 50% CGT discount and the proposed new regime.

Whilst there has been significant commentary regarding the CGT treatment of new and startup businesses and indeed the Treasurer has flagged that further consultation will be required in this regard, the Bill doesn't advance that further nor are there any proposed changes to the CGT Small Business Concessions which could be utilised to at least partly address these concerns.

Likely changes to the Concessions would be to increase and index both the Aggregated Turnover and Net Asset Value thresholds which have remained at their current levels since 2008!

Having chosen indexation as the measurement for so called "real" capital gains, the Government should now act to bring these two thresholds up to date and allow them to be indexed going forward.

It is important to remember that these CGT changes are, in the main, slated to start from 1 July 2027 and based on the public and political commentary to date, their passage through the Senate may not be as straightforward as the Government hopes. Indeed, the outcome of the proposed consultation on new businesses and start-ups will, if the Government truly opens the consultation up to industry and the public, raise a number of potential issues that may require some changes to what has been introduced at first instance.

Whilst clients have been asking, **what do we do now?** At this stage, we recommend that clients do not take action solely in anticipation of these changes given their start date is over 12 months away, and the passage of this Bill and the outcome of public consultation may well see some aspects refined or re-engineered.

However, given the proposed commencement date of 1 July 2027, it would be prudent over the next 6 months to begin identifying clients and asset holdings that may be materially affected if the legislation proceeds in its current form.

If you would like to discuss this matter further, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.

TIME TO DISTRIBUTE INCOME – WHAT TRUSTEES NEED TO KNOW

Towards the end of each year trustees of discretionary trust start considering how the trust's income is going to be distributed. Part of this process involves understanding the tax consequences of distributing the income to the prospective beneficiaries.

Taxation of trust income is an area that has been under significant scrutiny by the ATO for a number of years. While the legislation that deals with taxation of trusts has remained largely unchanged, the ATO has changed its interpretation on how the tax law should be administered. In recent times, there have been some significant case law decisions that have changed the way trust income is dealt with.

Not to mention that there's the proposed changes arising from the 2026/27 Federal budget, but for now let's worry about the current year.

There are various elements that a trustee needs to understand when making a resolution to distribute trust income.

This starts with understanding how the trust deed defines "trust income" (assuming it does define it at all), and what powers the trustee may have to treat any other amounts as being included in trust income. The amount of the trust's taxable income that the beneficiary is going to be assessed on will be proportional to the share of the trust income that the beneficiary is entitled to at year end.

Taking this the next step further, does the trustee have the ability to stream the trust income? Streaming allows the trust to collect certain types of income, record them separately, and distribute that type of income to different beneficiaries. While the trust deed may allow various types of income to be streamed, streaming is generally limited in practice to capital gains and franked distributions as the streaming of these types of income are the only ones that are allowed for tax purposes.

Streaming of capital gains can ensure the 50% discount is retained, while the streaming of franked distributions, and therefore the associated franking credits, to certain beneficiaries can lead to better overall outcomes.

It can be very difficult for the trustee to know with certainty what the trust income will be for the year, and subsequently what the trust's taxable income will be. Trustees will need to keep open minds about how the trust income will be distributed.

When considering who to distribute the trust income to, the trustee should ensure that the proposed recipient is an eligible beneficiary under the trust deed.

The recent *Owies* case put the spotlight on the trustee's duty to understand the current circumstances of its beneficiaries as part of the process of deciding how the trust income is distributed. Consequently, it may be prudent to make those enquiries and document the findings.

Care will need to be taken in the event that the trust has made a Family Trust Election or Interposed Entity Election. Where one of these elections has been made, the trustee may wish to ensure that the trust does not distribute income to an entity does not fall within the "family group". Doing so could lead to the trustee being liable for a 47% Family Trust Distribution Tax on that distribution.

So, with the above information on hand the trustee can now make a resolution to distribute the trust income. While it is possible that individual trustees (not corporate trustees) could make a binding and effective oral resolution, the trustee have the burden of proof in relation to their tax affairs, especially in the event of a dispute with the ATO. A written record will provide better evidence of the resolution and avoid a later dispute with the ATO as to whether any distribution of income was effectively made by 30 June.

Ideally the relevant resolutions will be well thought through and documented in a way that outlines what powers the trustee has used and states in an unambiguous way who the trustee is distributing the trust income to. This will ensure that it is the beneficiary who will be taxed on the trust's taxable income instead of the trustee.

There are many more factors, trust-wise and tax-wise, that the trustee will need to be aware of. As tax advisor, please ensure that you consider these factors and are making fully informed income distribution resolutions when advising clients.

If you would like to discuss these matters further, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.

FBT OR DIVISION 7A: WHEN A COMPANY PAYS A DIRECTOR'S PERSONAL EXPENSES

Private groups frequently encounter situations where company payments, loans or benefits are provided to shareholders, directors, or their associates. In such cases, both the Fringe Benefits Tax (FBT) regime and Division 7A of the Income Tax Assessment Act 1936 (ITAA 1936) may potentially apply. To prevent overlap and double taxation, the legislation includes a tie-breaker rule which determines which regime takes priority.

The interaction between FBT and Division 7A is governed by: Section 109ZB, ITAA 1936, and the definition of a fringe benefit in section 136(1) of the Fringe Benefits Tax Assessment Act 1986 (FBTAA). For payments, FBT generally takes priority where the benefit is provided in the capacity of employee; however, for loans and debt forgiveness, Division 7A generally prevails (ITAA 1936, s 109ZB).

Broadly, where a benefit constitutes a fringe benefit, Division 7A will not apply to that same benefit. This tie breaker establishes that FBT takes priority, and Division 7A is effectively displaced where the FBT regime applies to a payment. Consequently, the critical question in any scenario is whether the arrangement gives rise to a fringe benefit.

The practical question is how to characterise a payment. This requires consideration of who incurred the expense, who is legally liable for it, and whether the company is paying it in the director's capacity as employee or as shareholder. These facts and the supporting documentation will usually determine whether the FBT rules or Division 7A applies.

The first step is in determining if a fringe benefit has been provided. A fringe benefit will arise on which FBT applies where:

- It is provided by an employer (or associate),
- To an employee or associate, and
- It is provided **in respect of employment**.

This final condition—the *employment nexus*—is the critical determinant in most cases as was seen in the recent case of *SEPL Pty Ltd ATF SFT Trust v Commissioner of Taxation* [2026] FCAFC 36 (*SEPL*).

The SEPL decision, has been one of the most significant recent FBT cases involving directors, car benefits, and the s136 definition. The Court held that the Directors were NOT employees and reaffirmed a benefit is only a fringe benefit if there is a real and sufficient connection to employment. Critically, the evidence supporting this view was that there were no employment contracts, no salary, wages or employment entitlements and that the conduct of the directors

was consistent with owners/controllers, not employees. This case is highly relevant because, if FBT does not apply (as in SEPL), Division 7A may still apply.

If no fringe benefit arises due to the absence of a sufficient connection to employment—the arrangement must be considered under Division 7A. Where a private company makes a payment, loan or forgives a debt, under Division 7A, a deemed dividend could arise which is taxable to the shareholder or their associate (subject to distributable surplus and other rules). If Division 7A applies, repayment or a complying loan arrangement before lodgement day may be critical to avoid a deemed dividend (for example, ITAA 1936, ss 109D and 109N).

In assessing whether FBT or Division 7A applies, the ATO will generally look to the substance and purpose of the arrangement rather than its form, including the surrounding facts and circumstances, whether the benefit forms part of a remuneration package, the commercial rationale for the arrangement, and whether similar benefits are provided to non-shareholder employees.

This distinction is often nuanced in closely held groups, where individuals act in dual capacities as both employees (e.g. directors receiving remuneration) and equity holders.

Key Takeaways

The key distinction is whether the company is paying the expense as part of the director's remuneration as an employee, or instead providing a private benefit to them as shareholder. Here are the key takeaways:

- A company paying a director's personal expenses is not automatically entitled to an income tax deduction (ITAA 1997, s 8-1).
- FBT is more likely to apply where the expense is paid as part of the director's remuneration or employment package (FBTAA, s 20).
- Division 7A is more likely to apply where the expense is paid as a private benefit to the director in their capacity as shareholder or associate of a shareholder (ITAA 1936, s 109C).
- For payments, FBT generally takes priority over Division 7A where the benefit is provided in the capacity of employee; for loans and debt forgiveness, Division 7A generally prevails (ITAA 1936, s 109ZB).

Private companies should review these arrangements carefully and ensure that the director's capacity, the nature of the expense and the documentation are addressed when the payment is made. Early review is often critical, particularly if there is any doubt about whether the expense is being paid as employment remuneration or as a shareholder benefit, or if a repayment or complying Division 7A loan may be needed before lodgement day.

If you would like to discuss this matter further, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.

PAYDAY SUPER IS COMING: WHAT BUSINESSES NEED TO KNOW AND DO NOW

From 1 July 2026, one of the most significant changes to Australia's superannuation system in decades will take effect. Known as "Payday Super", the reform fundamentally changes when employers must pay superannuation guarantee (SG) contributions.

While the underlying SG rules remain largely unchanged, the timing, compliance framework and operational requirements will shift materially. For many businesses, this will require immediate adjustments across payroll systems, cash flow management, and internal processes.

Payday Super is a legislative reform that requires employers to pay superannuation contributions at the same time as salary and wages, rather than quarterly.

From 1 July 2026:

1. Super must be paid on each payday
2. Contributions must be received by the employee's super fund within 7 business days of payday
3. Super continues to be calculated at 12%, but based on a broader definition of "qualifying earnings"

This replaces the current system where employers generally pay super quarterly, up to 28 days after the end of each quarter.

Importantly, Payday Super does not change:

1. Who is eligible for super
2. The SG rate (still 12%)
3. The obligation to use compliant payment systems (e.g. SuperStream)

For most businesses, the move from quarterly to payday payments is not simply an administrative tweak. It represents a fundamental shift in payroll and compliance processes.

1. Increased Payment Frequency

The most obvious change is the move from quarterly payments to payments aligned with each pay run.

This dramatically increases the number of transactions and reduces flexibility in timing.

2. Stricter Deadlines

Under the new rules, super contributions must reach the employee's fund within 7 business days of payday.

This is a critical shift from the current 28-day quarterly timeframe and leaves very limited margin for delays, errors or processing issues.

3. Greater Compliance Risk and Penalties

Late or missed payments will trigger the Superannuation Guarantee Charge (SGC) and associated penalties.

Importantly a payment is only considered made when it is received by the fund (not when processed). This means that errors (e.g. incorrect member details) that result in rejected payments will still expose the employer to non-compliance.

This effectively introduces a real-time compliance environment, with reduced tolerance for mistakes.

4. Cash Flow Impact

The shift to more frequent payments will bring forward cash outflows for many businesses.

Rather than accruing super liabilities over a quarter, employers will need to fund these obligations in line with each payroll cycle, which can place pressure on working capital.

5. System and Process Integration

Payday Super is not just a payroll issue. It requires alignment across:

- Payroll
- Finance
- HR
- Tax/compliance

Businesses will need integrated systems capable of handling real-time reporting, payment processing, and error management.

With the implementation date fixed at 1 July 2026, businesses now have less than 4 weeks to prepare and be ready. It is important that businesses and employers do all of the following before the start date:

1. Review Payroll Systems and Capabilities

Your payroll system must be able to:

- Calculate super for each pay cycle
- Process payments in line with pay runs
- Integrate with Super Stream requirements
- Identify and manage rejected payments promptly

If your current system cannot support these requirements, upgrades or changes may be necessary.

2. Map Your Current Process vs Future State

Many businesses currently operate with:

- Fortnightly payroll
- Monthly or quarterly super payments

Under Payday Super, this disconnect must be eliminated.

You should:

1. Identify when payroll is processed
2. Identify when super is currently paid
3. Redesign processes so both occur together

3. Validate Employee Super Information

Incorrect or incomplete employee data is a significant risk under Payday Super.

Businesses should:

1. Confirm all employee super fund details are accurate and current
2. Ensure default fund (stapled fund) processes are compliant
3. Build validation checks into onboarding processes.

Rejected payments due to incorrect details can lead directly to compliance breaches.

4. Update Cash Flow Forecasting

More frequent payments will change your cash flow profile.

Key considerations include:

- Timing of payroll vs cash inflows
- Ability to fund super liabilities immediately
- Managing liquidity across peak periods

Businesses with tight margins will need to proactively manage this transition.

5. Train Internal Teams

Payroll, finance, and HR teams must understand:

- The new deadlines
- The new calculation basis (qualifying earnings)
- Error handling processes
- Reporting and reconciliation requirements

This is particularly important given the reduced timeframe to correct issues.

6. Establish Monitoring and Controls

Given the shift to real-time compliance, businesses should implement:

1. Regular reconciliation of payroll and super payments
2. Exception reporting for failed or rejected transactions
3. Clear escalation processes for errors
4. Strong governance will be critical to avoiding penalties.

In the lead up to commencement, businesses should:

1. Perform a "test run" of payroll and super payments under the new model
2. Review service providers (clearing houses, payroll platforms)
3. Ensure alignment across all internal stakeholders
4. Monitor ATO guidance and updates

The transition period is an opportunity to identify and resolve issues before the new rules become fully enforceable.

If you would like to discuss these matters further, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.
