

client alert | explanatory memorandum

July 2021

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 21 June 2021.

Temporary COVID Disaster Payment now available

The Federal Government has announced a temporary COVID Disaster Payment to assist workers who reside or work in a Commonwealth declared hotspot, who are unable to attend work and earn an income as a result of state-imposed health restrictions that last for longer than one week.

The payment, available for Australian citizens, permanent residents and eligible working visa holders, is up to \$500 per week for recipients who lose 20 hours or more of work, and \$325 per week those who lose under 20 hours of work.

The payment is available in respect of the second and any subsequent weeks of restrictions to workers who:

- have liquid assets of no more than \$10,000;
- have exhausted any leave entitlements (other than annual leave) or other special pandemic leave; and
- are not already receiving income support payments, business support payments, or the Pandemic Leave Disaster Payment.

Access to the payment is available through Services Australia from 8 June 2021.

Source: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/temporary-australian-government-assistance-workers>.

Private health insurance rebates frozen

The Federal Government has once again quietly sought to freeze the private health insurance income thresholds for the private health insurance incentive, this time for another two years, with indexation of the thresholds to start up again from 1 July 2023. Most people with private health insurance takes the private health insurance incentive in the form of reduced premiums, although it can also be taken as a tax offset.

The income thresholds for private health insurance were originally meant to be indexed annually; however, since the government implemented the freezing of indexation, the income thresholds have remained at 2014–2015 levels for the various tiers. While the rebate percentages were adjusted annually on 1 April, the rebate percentage for the current year have remained the same as in the 2019–2020 year.

For individuals and families with private health insurance, this means that the rebate adjustment factor will remain the same as in the 2019–2020 income year, translating into a real-life cut in the rebated amount. This will be the case until the government completes its review into the MLS Medicare Levy Surcharge (MLS) Policy Settings.

According to the Commonwealth Ombudsman, private health insurance offerings for basic (Bronze) hospital cover plus extras for two adults and two young children range from \$300 to \$600 per month for the current year. Going with an average figure of \$450 per month, the annual cost of the insurance would equate to roughly \$5,400. Assuming the adults are under 65 and earning less than \$180,000 as a family, the total rebate on the yearly premium would be: $\$5,400 \times 25.059\% = \$1,354$.

If the family applies the rebate in the form of reduced premiums for their cover, it would mean that instead of paying \$450 per month they would pay \$337 per month. However, because indexation is now frozen until 1 July 2023, if private health insurance prices increase next year in line with previous average increases, the same family earning the same amount of money will end up paying more for their private health insurance, because the rebate percentage will stay the same.

The average 2021 price increase for health insurance premiums was 2.74%, which was the lowest increase since 2001. However, most large insurers increased their prices above the average rate, with the maximum increase by a fund listed as 5.47%. According to some figures, health insurance premiums have increased by 57% in the last decade, while the consumer price index (CPI, or inflation) has only grown by 20%.

Extending from our example, if the average price of \$450 per month increases by 5% for 2022, the family will be paying \$22 extra per month before the rebate is applied. The total annual premium would be \$5,670 and the total rebate on the yearly premium would be: $\$5,670 \times 25.059\% = \$1,420$.

Again, if the hypothetical family applies the rebate in the form of reduced premiums, they will end up paying \$354 per month in 2022, which equates to \$17 a month extra for the same policy with the same benefits, while they are earning substantially the same amount due to stagnant wages growth. Remember, this simple calculation doesn't take in the fact of singles or families moving between tiers which would reduce their rebate even more.

Cryptocurrency trading is subject to tax: new ATO data-matching program

According to ATO estimates, over 600,000 Australian taxpayers have invested in crypto-assets in recent years. The ATO has recently issued a reminder that although many people may believe that gains made through cryptocurrency trading are tax-free, or only taxable when the holdings are cashed back into "real" Australian dollars, in fact this is not the case – capital gains tax (CGT) does apply where gains or losses are in the form of crypto-assets.

"We are alarmed that some taxpayers think that the anonymity of cryptocurrencies provides a licence to ignore their tax obligations", ATO Assistant Commissioner Tim Loh has said. Mr Loh added that while it may appear that cryptocurrencies operate in an anonymous digital world, the ATO does closely track where these assets interact with the "real" financial world through data from banks, financial institutions and cryptocurrency online exchanges, following the money back to the taxpayer.

This year the ATO will be writing to around 100,000 people with cryptocurrency assets explaining their tax obligations and urging them to review their previously lodged returns. It also expects to prompt 300,000 taxpayers to report their cryptocurrency capital gains or losses as they lodge their 2021 tax returns.

"Gains from cryptocurrency are similar to gains from other investments, such as shares", Mr Loh explained. "Generally, as an investor, if you buy, sell, swap for fiat currency, or exchange one cryptocurrency for another, it will be subject to capital gains tax and must be reported."

"The best tip to nail your cryptocurrency gains and losses is to keep accurate records, including dates of transactions, the value in Australian dollars at the time of the transactions, what the transactions were for, and who the other party was, even if it's just their wallet address", Mr Loh said.

Alongside these communications to taxpayers, the ATO is beginning a new data-matching program focused on crypto-asset transactions. It will acquire account identification and transaction data from cryptocurrency designated service providers for the 2021 financial year through to the 2023 financial year inclusively. The ATO estimates that the records relating to approximately 400,000 to 600,000 individuals will be obtained each financial year.

The data items will include:

- client identification details (names, addresses, date of birth, phone numbers, social media accounts and email addresses); and
- transaction details (bank account details, wallet addresses, transaction dates, transaction time, transaction type, deposits, withdrawals, transaction quantities and coin type).

The ATO says that the objectives of the program are to:

- promote voluntary compliance by communicating how the ATO uses external data with its own "to help encourage taxpayers to comply with their tax and superannuation obligations";
- identify and educate those individuals and businesses that may be failing to meet their registration and/or lodgment obligations and "assist them to comply";
- gain insights from the data that may help to develop and implement treatment strategies to improve voluntary compliance (including educational or compliance activities, as appropriate);
- gain insights from the data to increase the ATO's understanding of the behaviours and compliance profiles of individuals and businesses that have bought, sold or accepted payment via cryptocurrency;
- help ensure that individuals and businesses that trade or accept cryptocurrency as payment are fulfilling their taxation lodgment, reporting and payment obligations; and
- help ensure that individuals and businesses are fulfilling their tax and superannuation reporting obligations.

Source: www.ato.gov.au/Media-centre/Media-releases/Cryptocurrency-under-the-microscope-this-tax-time/;
www.legislation.gov.au/Details/C2021G00417.

ATO compliance: economic stimulus measures

Businesses that have accessed government economic stimulus measures need to take extra care this tax time. The ATO has announced that it will increase its scrutiny, conducting compliance activity on various economic stimulus measures introduced to help businesses recover from the effects of COVID-19. These stimulus measures include loss carry-back, temporary full expensing and accelerated depreciation. While the ATO said it will continue to support businesses, most of whom are doing the right thing, it is looking at behaviour or development of schemes designed to deliberately exploit various stimulus measures. All taxpayers that have used the schemes are encouraged to review their claims to ensure they are eligible, and that the amounts claimed are correct.

The loss carry-back measure allows eligible corporate entities to claim a refundable tax offset in their 2020–2021 and 2021–2022 company tax returns. In essence, companies get to “carry back” losses to earlier years in which there were income tax liabilities, which may result in a cash refund or a reduced tax liability.

The temporary full expensing measure allows eligible businesses to immediately deduct the business portion of the cost of eligible new depreciating assets or improvements held and ready for use between 6 October 2020 and 30 June 2022. Eligible businesses also have access to the accelerated depreciation measure for the 2019–2020 and 2020–2021 income years, in which the cost of new depreciating assets can be deducted at an accelerated rate.

Specifically, in relation to loss carry-back, the ATO will be looking for businesses that are deliberately inflating their deductions or omitting some of their income to generate the appearance of losses. It will also look for signs of businesses entering into contrived schemes to obtain a benefit of the loss carry-back tax offset, such as shifting or creating losses through non-arm’s length dealings or shifting franking credits to a corporate entity (either directly or indirectly).

In relation to temporary full expensing and/or accelerated depreciation, the ATO notes the following behaviours which will attract its attention:

- entering into contrived schemes to obtain a benefit of a temporary full expensing deduction, including schemes involving:
 - manipulation of aggregated turnover;
 - non-commercial transactions involving the transfer of an asset between related entities;
 - artificially inflating the cost of assets (including inappropriate valuations) through non-arm’s length dealings;
 - claiming deductions for assets acquired solely for a non-business purpose or failing to take into account any portion of non-business use;
- deliberately misclassifying or reclassifying excluded assets (eg reclassifying capital works and buildings as eligible assets under temporary full expensing or Div 43 capital works and buildings as eligible assets under accelerated depreciation);
- deliberately inflating the amount of accelerated depreciation deduction by applying the incorrect adjustable value or effective life;
- failing to take into account the car limit when calculating the deduction; and
- lacking evidence to substantiate the claim (including the cost of assets) such as invoices, contracts, supplier agreements or independent valuations.

The ATO notes that it will review claims for loss-carry back, temporary full expensing and accelerated depreciation as part of its tax time compliance activities as well as actively identifying tax schemes and arrangements seeking to exploit those schemes. Where cases of concerning or fraudulent behaviours are identified, it will actively pursue the claims including imposing financial penalties, prosecution and imprisonment for the most serious of cases.

Personal use assets and collectables in SMSFs

Contrary to some popular beliefs, a self managed superannuation fund (SMSF) can invest in collectables such as artworks, jewellery and wine, as well as personal use assets such as boats, classic cars and other vehicles. However, investment in these assets must occur in keeping very strict and specific rules in order to qualify, and thus care should be taken to avoid breaches of super rules in relation to owning collectables and personal use assets in SMSFs.

To start with, collectables and personal-use assets encompass a wide range of assets, including:

- artworks (paintings, sculptures, drawings, engravings, photographs etc);
- jewellery;

- antiques;
- artefacts;
- coins, medallions or bank notes in certain circumstances (eg coins, bullion coins and bank notes are considered collectables if their value exceeds their face value);
- postage stamps or first-day covers;
- rare folios, manuscripts or books;
- memorabilia;
- wine/spirits etc;
- motor vehicles and motorcycles;
- recreational boats; and
- memberships of sporting or social clubs.

The SMSF is allowed to invest in any of these collectable or personal use assets, provided such items are acquired for genuine retirement purposes and not to provide any present day benefit to either the members of the SMSF or related parties. In addition, the investment must also satisfy the following criteria:

- it must comply with all other relevant investment restrictions, including the sole purpose test;
- the decision on where the item is stored must be documented and a written record kept;
- the item(s) must be insured in the fund's name within seven days of the fund acquiring it;
- where an item is subsequently transferred to a related party, it must be at the market value as determined by a qualified, independent valuer; and
- the items must be unencumbered.

First and foremost, these rules mean that whatever collectable or personal use asset is purchased by the SMSF, it cannot be used by members or related parties in any capacity. To show how far this rule goes, the ATO cites an example of a classic car: if it is owned by the SMSF as an investment, it cannot be driven by a member or any related party for any reason. This holds true even if the only reason for driving the car is to maintain the car or to perform restoration work.

These rules also mean that any collectable or personal use asset owned by the SMSF cannot be stored on or in the private residence of any member or related party (this includes all parts of a private dwelling, as well as the land on which the private residence is situated and all other buildings on that land, such as garages or sheds). However, the asset can be stored – but not displayed – in premises owned by a related party that are not their private residence.

For example, an artwork that is an SMSF investment cannot be displayed in the business premises of a related party where it would be visible to clients and employees, but it could be stored in a cupboard or another similar storage area. Additionally, the artwork (or other collectable/personal use asset) can be leased to unrelated parties on arm's length terms.

The ability to obtain insurance must also be considered where an SMSF is going to invest in collectables or personal use assets. It is a requirement that the items are insured within seven days, under either separate policies or one collective policy. The owner and beneficiary of the policy must be the SMSF itself. If the SMSF has already made the investment but is unable to obtain insurance, the ATO will need to be notified.

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