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Year-end tax planning

What you need to know for 30 June 2023

May 2023

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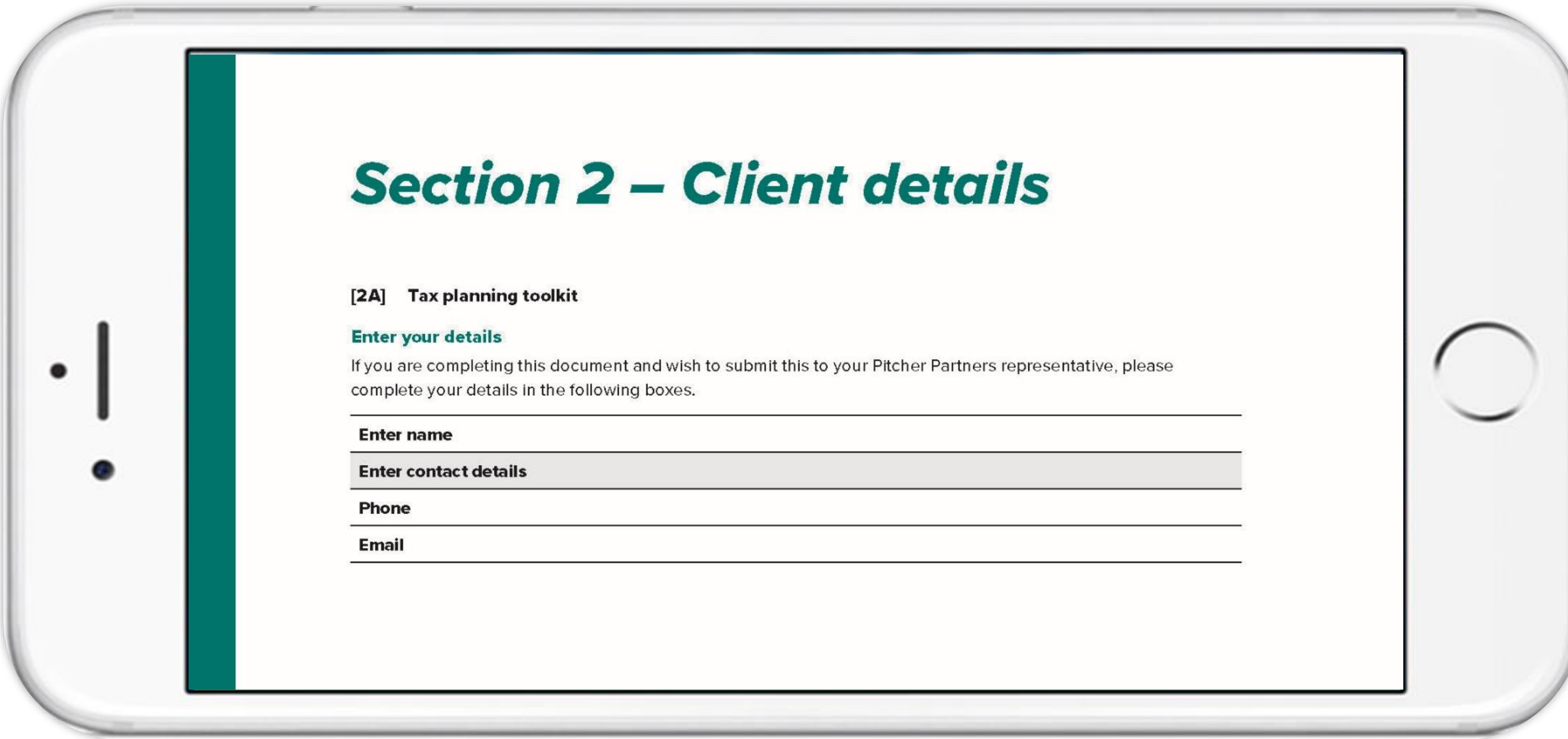
Tax planning toolkit

Our guide to tax planning



Section 2 – Client details

[2A] Tax planning toolkit

Enter your details

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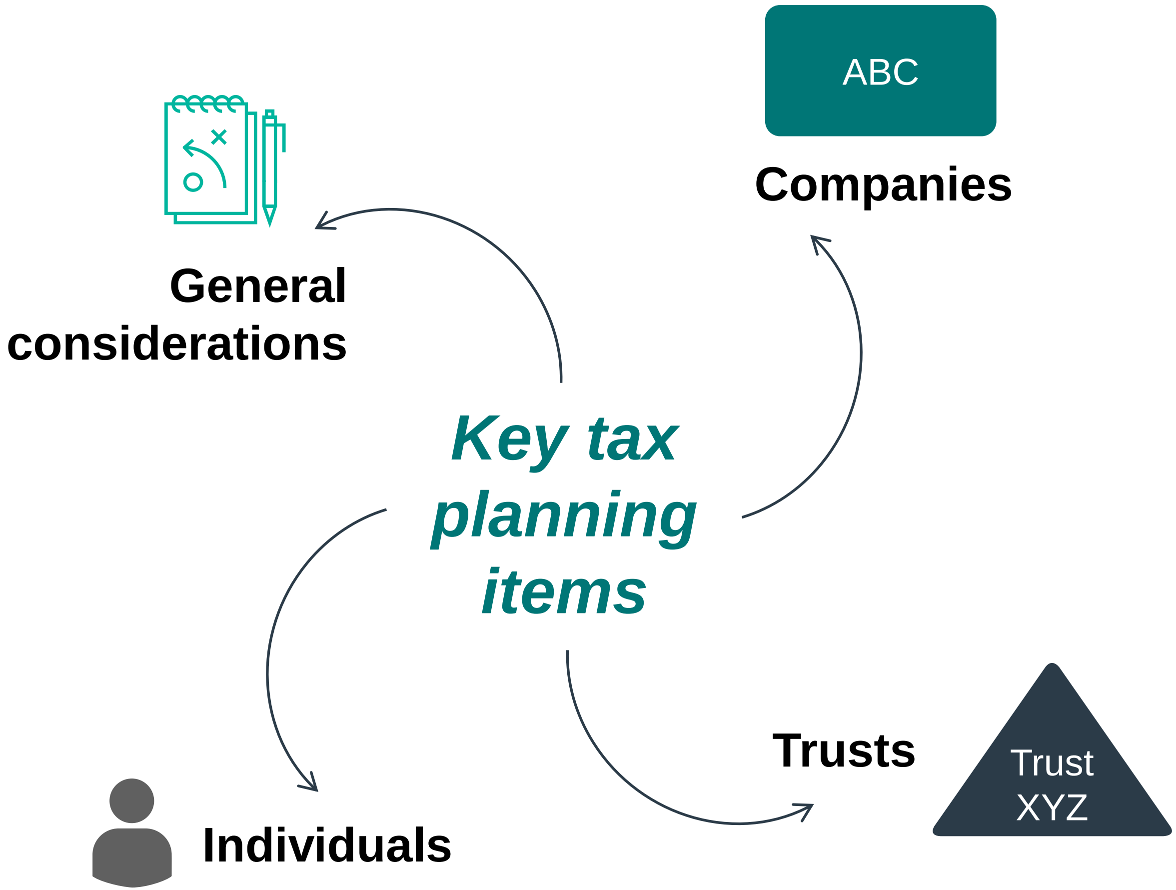

ABC
Companies
General considerations
Key tax planning items
Trusts
Trust XYZ
Individuals

General considerations

Complete review of standard year end items

- Timing of income & deductions
- Review large transactions
- Prepaying expenses
- Bad debt write-offs
- Trading stock elections
- Bonuses and accruals
- Gifts and donations
- Tax losses

Individuals

Year end tax planning considerations

Individuals

Tax rates and thresholds

Rate	2022-23	2023-24
Nil	$0 – $18,200	$0 – $18,200
19%	$18,201 – $45,000	$18,201 – $45,000
32.5%	$45,001 – $120,000	$45,001 – $120,000
37%	$120,001 – $180,000	$120,001 – $180,000
45%	$180,001 and over	$180,001 and over
Low income tax offset	Up to $700	Up to $700

Rates exclude the Medicare Levy

Individuals

Value of franking credits (residents) for 2023

Tax rate	30%	25%
Dividend	116,145	75,260
Gross up	49,777	25,086
Gross income	**165,922**	**100,347**
Marginal tax	46,458	23,080
MCL	3,318	2,077
Franking credit	(49,777)	(25,086.83)
Additional tax	**–**	**–**

Individuals

Other items of interest

Working from home expenses for FY22-23

67 cents per hour
Fixed rate plus depreciation of equipment and furniture

Superannuation

Maximising concessional contributions **$27,500 cap**

Catchup concessional contributions

Non-concessional contributions cap **$110,000**

HECS / HELP debts

Increasing by a factor of 7.1% from 1 June 2023

Consider voluntary repayments

SG rate increases to 11% from 1 July 2023

Individuals

Downsizer contributions

From 1 July 2022 for individuals over 60

Proceeds from selling their home	Maximum $300,000 – each spouse ($600,000 per couple)
Ownership duration	The individual (**or** their spouse) must have owned the home for at least 10 years
CGT main residence exemption	Eligible for a full or part or would be if acquired pre-19 September 1985
Other requirement	Contribution made within 90 days (or such further period as the ATO allows) of the **date of settlement** of the sale

From 1 Jan 2023 for individuals over **55**

ATO focus areas for individuals

Work related expenses
is greater than industry and occupational average

Non-commercial rental income
from holiday homes

Rental property
deductions

Interest deductions
from private proportion of loans

Data matching
including cryptocurrency transactions and transfers of units and shares

GST registrations
when not carrying on a business

Trusts

Year end tax planning considerations

Trusts

Year end trust distributions and resolutions

1	▶	Consider the trust deed and constitution of corporate trustee	✓
2	▶	Definition of income	✓
3	▶	Nomination of beneficiaries	✓
4	▶	Review family and interposed entity elections	✓
5	▶	Trust streaming requirements for franked dividends and capital gains	✓
6	▶	Evidencing your trust resolutions are made in time	✓
7	▶	Focus on intention and ensure consistent with deed	✓
8	▶	Obtaining TFNs from beneficiaries before the distribution	✓
9	▶	Take care on proposed distributions to loss entities	✓

Consider *Owies vs JJE Nominees Pty Ltd* [2022] VSCA 142

ATO guidance

Australian Government
Australian Taxation Office

Taxation Ruling
TR 2022/4

Status: **legally binding**

Taxation Ruling

Income tax: section 100A reimbursement agreements

Relying on this Ruling

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation*

Australian Government
Australian Taxation Office

Taxpayer Alert
TA 2022/1

Taxpayer Alert

Parents benefitting from the trust entitlements of their children over 18 years of age

About Taxpayer Alerts

Australian Government
Australian Taxation Office

Practical Compliance Guideline
PCG 2022/2

Practical Compliance Guideline

Section 100A reimbursement agreements – ATO compliance approach

Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers

Compliance approach 13

Australian Government
Australian Taxation Office

Taxation Determination
TD 2022/11

Status: **legally binding**

Taxation Determination

Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?

Table of Contents **Paragraph**
What this Determination is about **1**

On **23 February 2022**, the ATO released a package of advice and guidance products on the application of section 100A and Division 7A

Section 100A is designed to capture distributions to lower taxed beneficiaries where the benefit is enjoyed by another person

If section 100A applies → Beneficiary is **not presently entitled** to the relevant part of the income → Section 99A **assessment to the trustee**

Note that an unlimited period of review applies in respect of section 100A

Section 100A

PCG 2022/2 – a qualitative risk assessment framework

White

DESCRIPTION

Pre 1 July 2014 arrangements unless:

- outside Green Zone and continuing arrangement;

or

- otherwise under review for that year

COMPLIANCE ACTIVITY

None

Green

DESCRIPTION

Arrangements that resemble one of four scenarios, with no additional features

COMPLIANCE ACTIVITY

Only to confirm categorisation

Red

DESCRIPTION

Arrangements that resemble one of six scenarios

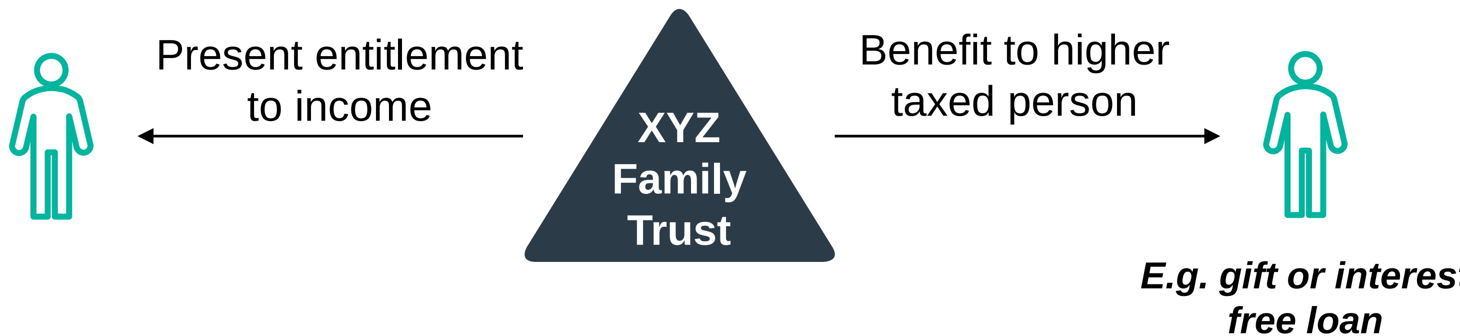
COMPLIANCE ACTIVITY

Will consider applying s 100A as high priority

Pre 1 July 2022 entitlements can rely on ATO “factsheet” where more favourable to taxpayer

Trusts

Reimbursement agreement (section 100A)



PCG 2022/2 This may be a ***Red Zone*** arrangement

Key themes arising out of ATO products

Section 100A

Distribution to family members

Trustee retention of funds

UPEs and loans back

Distributions to loss entities

Artificial or contrived arrangements

Exploitation of accounting vs tax differences

Circular flow of funds

Expenses of minors repaid

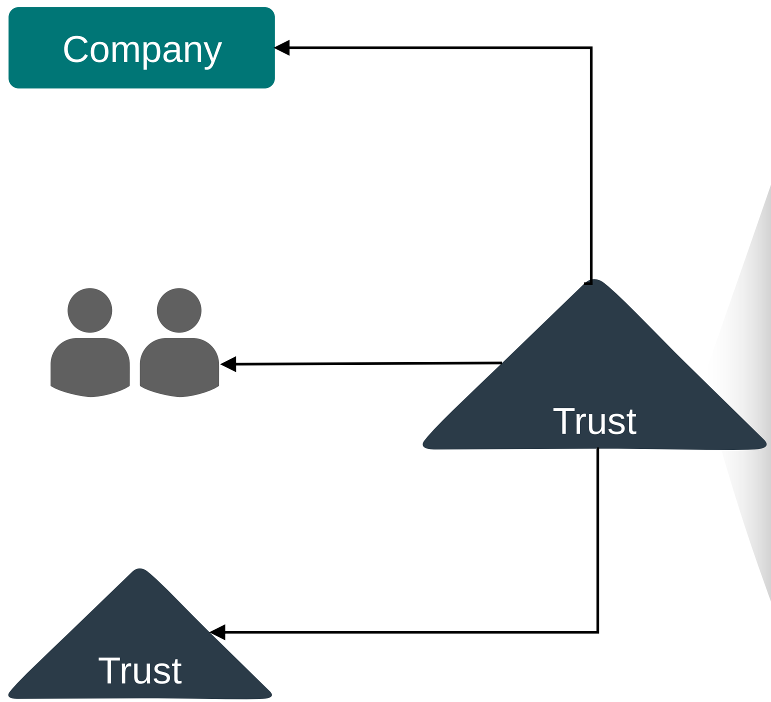
Section 100A

Green zone – Trustee retention of funds

SCENARIO 3B
Must be controlled by controller of trust and UPE on commercial terms

SCENARIO 3A
Individual (or spouse) must control the trust or manage the trust's business

SCENARIO 3B
Within the same "family group" and UPE or loan on commercial terms



Use of funds

- Working capital
- Investment asset or
- Commercial terms (eg s109N loans) for companies and trusts

Cannot benefit associate in other ways

e.g. non-commercial use of property

Arrangements are excluded from green zone if they have certain listed features

Key takeaways

for section 100A

Entitlements paid to beneficiary
and used for own benefit

Dealing with UPEs

Consider whether retention
of funds by trustee in accordance with guidelines

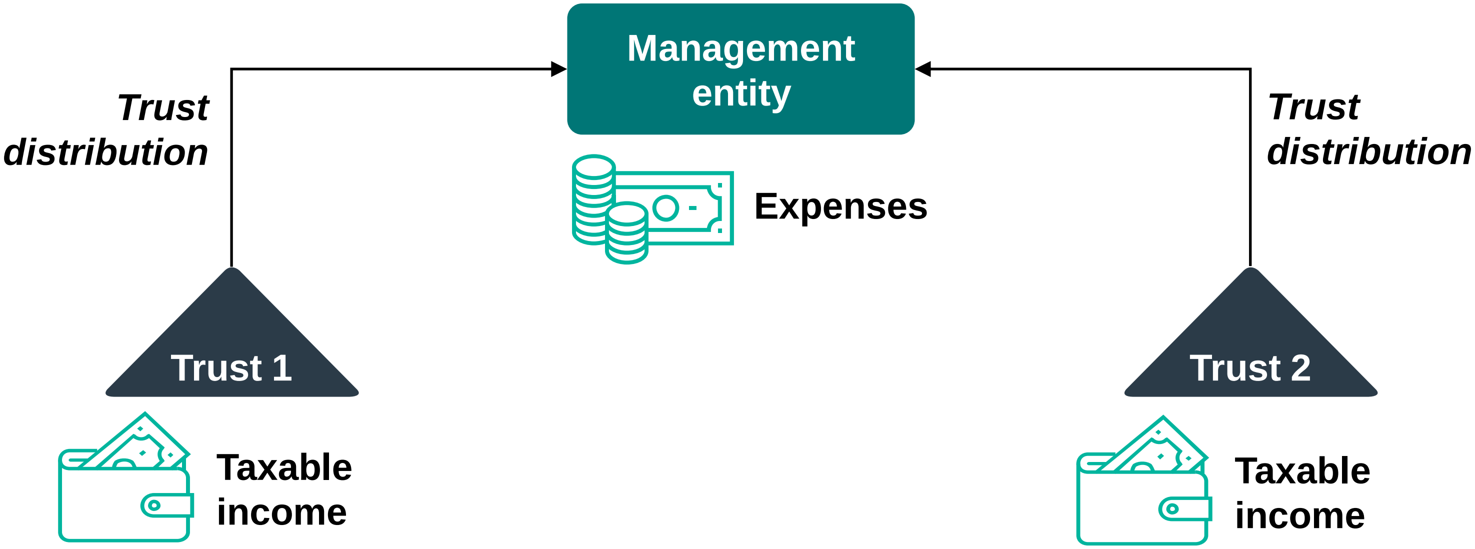
Review historic arrangements
and consider
risk classification

Appropriate record keeping and evidence

Document family dealings and commercial objectives

Trusts

Discretionary trust distributions and deductions



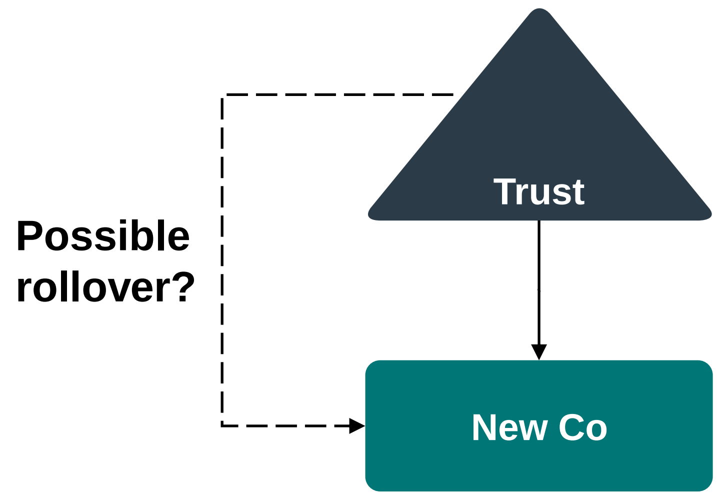
TD 2018/9 **and** ***Chadbourne [2020] AATA 2441***

Trusts

Consider restructuring from a trust to a company for new year

May provide

- Lower tax rate
- Simpler Division 7A
- Reduced risk of section 100A
- CGT concessions on sale of shares



Other considerations			
GST going concern	**Stamp duty**	**Funding**	**Contractual arrangements**

Companies

Year end tax planning considerations

Division 7A

General compliance before year end

1	▶	Benchmark interest rate for 30 June 2023 year repayments – 4.77%	✓
2	▶	Identify all inter company transactions (loans, payments, debt forgiveness)	✓
3	▶	Loan documents are in place	✓
4	▶	Investment agreements are in place	?
5	▶	Current year minimum yearly repayments paid	✓
6	▶	Franked dividends have been declared	✓
7	▶	Ensure re-borrowings do not occur (even through interposed entities)	✓
8	▶	Ensure transactions through interposed entities considered	✓

Div 7A interest rate to increase significantly from 1 July 2023

Australian Government
Australian Taxation Office

Taxation Determination
TD 2022/11

Status: **legally binding**

Taxation Determination

Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?

Unpaid present entitlements

From 1 July 2022, a private company that has an unpaid present entitlement (UPE) will be taken, under the Commissioner's ruling, to provide financial accommodation to anyone the company allows to have access to the amount to which they are entitled

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Division 7A

PCG 2017/13

Until 30 June 2022, PCG allowed UPE to be put on sub-trust and then refinance with a Division 7A loan on maturity

Allows up to 18 years to fully pay distribution to corporate beneficiary

7 / 10 year interest-only arrangements

Interest rates for year ending 30 June 2023

Option 1 (7-year) – 4.77%

Option 2 (10-year) – 6.82%

Interest rates to increase 1 July 2023

Division 7A

Change in treatment of UPEs

Loans subject to **Div 7A**

UPEs subject to **Div 7A** as financial accommodation

Availability of **PCG 2017/13**

Release of **TD 2022/11**

4 Dec 1997

16 Dec 2009

30 Jun 2017

30 Jun 2021

23 Feb 2022

1 Jul 2022

30 Dec 2022

PCG 2017/13, place maturing sub-funds on complying terms (up to **30 June 2021**)

Release of **TD 2022/D1**

All UPEs to be loans

TR 2010/3 and **PS LA 2010/4** to be withdrawn from 1 July 2022 but still have affect for pre-1 July 2022 entitlements

Pre-09 UPEs **unchanged**

PS LA 2010/4 sub-trusts allowed

Temporary full expensing

Thresholds – cost at year-end

First used or installed ready for use for a tax purpose by	Small business entity (SBE) < $10m aggregated turnover	Companies and other business entities < $5b aggregated turnover
2021-22	No limit	No limit#
2022-23	No limit	No limit#
1 July 2023 onwards	$20,000	No longer applicable

 # Watch outs

Second hand assets excluded where aggregated turnover >$50m

Exclusion where balancing adjustment event occurs

Entities not using simplified depreciation may make an irrevocable choice to opt-out of TFE on an asset-by-asset basis

TFE replaced by IAWO from 1 July 2023

Companies

Extension of temporary loss carry-back

Loss carry back measures **cease** from 1 July 2023

Who’s eligible?	Corporate tax entities < $5b turnover
Which losses?	2019-20, 2020-21, 2021-22 and 2022-23 income years
Carry back years	Previously taxed profits in 2018-19 or later income years
Other requirements	Limited by franking account balance at end of claim year

Carry back choice can be amended (subject to time limits)

Company tax and franking rates

2022-23 and later years

	Company tax rate	Franking rate
Default rate	30%	30%
Reduced rate	25%	25%
Criteria for reduced rate	Aggregated turnover for **CY < $50M** Passive income for **CY ≤ 80%**	Aggregated turnover for **PY < $50M** Passive income for **PY ≤ 80%**
First year rate		25%

ATO focus areas for companies

Private companies	Private use of business assets, Division 7A
Tax consolidation	Incorrect application of cost-setting rules, membership and loss utilisation
International transactions	Failure to report or incorrect reporting
Lower company tax rate	Artificial arrangements implemented to access
TFE and loss carry back	Consideration of eligibility

Q&A

Making business ***personal***

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