client alert | explanatory memorandum

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CURRENCY:

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Recovering from a natural disaster: what you need to know about tax

As Australia experiences another summer of unpredictable weather patterns, it's essential to be prepared for the unexpected – natural disasters like fires, floods, earthquakes and cyclones can turn your world upside down. While you're focused on rebuilding and recovery, tax may be the last thing on your mind, but understanding the tax implications of assistance payments and insurance payouts can help you make informed decisions. Let's address some common questions you might have about taxes after a natural disaster.

Are insurance payouts taxable?

When you receive an insurance payout after a disaster, whether it's taxable depends on the type of asset involved:

- *Your home:* If the insurance payout is for your main residence, it's generally not taxable. However, if you were using part of your home for business purposes, there may be some tax implications.
- *Personal assets*: Payouts for personal items like household goods, furniture and private vehicles are generally not taxable. For example, if your personal car's destroyed by a flood and you get an insurance payout, you don't need to report it on your tax return.
- *Rental properties and income-producing assets*: If the insurance payout relates to a property used to produce income, it may have tax implications. For instance, if part of your home was used for a business, such as a home office, the insurance payout might affect your capital gains tax (CGT) calculations.
- *High-value personal assets and collectables*: Special rules apply to personal assets over $10,000 and collectables over $500. If the payout exceeds the original cost, it might be taxable.
- *Business assets:* For business owners, insurance payouts for damaged or destroyed business assets (like equipment or inventory) are usually taxable and need to be reported as income.

What about rebuilding or selling my property?

If you're planning to repair or rebuild your home, or if you decide to sell your property after a disaster, here's what you need to know:

- *Main residence CGT exemption*: If you rebuild your home, move back in as soon as practicable and live there for at least three months before selling, the property can remain exempt from CGT. This exemption also applies if you sell the land without rebuilding, provided the destroyed property was your main residence before the disaster.
- *Engaging contractors*: It's important to ensure that any builders or contractors you hire are licensed and genuine. Check their Australian Business Number (ABN) and request written quotes and contracts to protect your rights.

How do disaster assistance payments affect taxes?

The Australian and state and territory governments offer various disaster assistance payments, such as the Disaster Recovery Allowance (DRA), which provide temporary income support to those affected by disasters. These payments are generally not taxable, but it's important to understand the relevant eligibility criteria and application processes, and check with the specific agency providing the assistance or with your tax professional to confirm the tax status of any payments you receive.

I want to help. Can I claim a deduction for donating?

Donating to disaster relief efforts can also have tax implications:

- *Donations to deductible gift recipients (DGRs)*: Monetary donations of $2 or more to registered DGRs are tax-deductible. Always ensure the charity is legitimate and registered by checking the Australian Charities and Not-for-profits Commission (ACNC) register or ABN Lookup.
- *Receipts and documentation*: Keep receipts for your donations, as they're necessary for claiming deductions on your tax return. In some cases, such as approved bucket donations under $10, receipts might not be required.

Source: www.disasterassist.gov.au/
www.ato.gov.au/individuals-and-families/financial-difficulties-and-disasters/support-in-difficult-times/natural-disaster-support/recovery-following-natural-disasters

Changes coming for buy now pay later services

If you're one of the millions of Australians who use buy now pay later (BNPL) services, important changes are coming that will give you stronger consumer protections. Here's what you need to know about the new regulations taking effect from 10 June 2025.

What's changing?

BNPL services will soon be regulated more like traditional credit products such as credit cards. Previously, BNPL services weren't regulated under the National Consumer Credit Act, leaving a gap in consumer protection. But now, under new laws passed in late 2024, all BNPL providers will need to hold an Australian credit licence and comply with consumer protection requirements.

This means your BNPL provider will need to:

- hold a credit licence or have applied for one by 10 June 2025;
- be a member of the Australian Financial Complaints Authority (AFCA);
- follow responsible lending practices; and
- meet other consumer protection requirements.

What does this mean for you?

These changes are designed to protect you while maintaining the benefits of BNPL services. The aim is that you'll have:

- better protection against becoming trapped by unaffordable lending;
- access to proper dispute resolution through AFCA;
- clearer processes for handling financial hardship; and
- more consistent consumer protections across all credit products.

The new framework recognises that BNPL services are generally lower-risk than traditional credit products. Most BNPL arrangements will be regulated as "low cost credit contracts", with modified requirements that balance consumer protection with the unique features of BNPL services.

How can you check if your provider is licensed?

From 10 June 2025, you can verify if your BNPL provider is properly licensed using the Australian Securities and Investments Commission's (ASIC's) Professional Registers Search.

This free online tool will let you search by the provider's name or licence number to confirm:

- their licence status;
- what services they're authorised to provide;
- any conditions that have been placed on their licence; and
- their business address and other key details.

What's happening behind the scenes?

BNPL providers are already preparing for these changes. They must submit their licence applications well before the June deadline – ASIC recommends by 11 May 2025 – to ensure they can continue operating. Providers who don't meet these requirements won't be able to legally offer BNPL services after 10 June 2025.

Why do these changes matter?

BNPL transactions now account for about $19 billion annually in Australia, or roughly 2% of all card purchases. While BNPL services offer convenient payment options and support thousands of local jobs, these new regulations are designed to help prevent debt spirals and ensure you have proper protections when using these popular payment methods.

Need more information?

If you're concerned about your BNPL arrangements or want to know more about these changes, you can:

- contact your BNPL provider directly;
- visit ASIC's Moneysmart website for financial guidance; and
- after 10 June 2025, check your provider's licence status through ASIC's Professional Registers Search.

These reforms aim to strike a balance between protecting consumers and maintaining the innovation and competition that BNPL services bring to the credit market. Stay informed about these changes to make the most of your BNPL services while keeping your finances healthy.

Source: https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/government-introduces-consumer-protections-buy-now-pay
https://asic.gov.au/about-asic/news-centre/news-items/asic-alerts-buy-now-pay-later-providers-to-apply-for-a-licence-under-new-laws/

ATO launches its small business focus areas for 2025

Understanding the ATO's focus areas for 2025 is essential to ensuring your business remains compliant and successful. The ATO has outlined specific areas of concern to help you avoid common pitfalls and manage your tax obligations effectively. Here's what you need to know to keep your business on the right track.

The ATO's primary focus areas for small businesses in 2025 include distinguishing business income from personal income, correctly claiming deductions and concessions, and ensuring all operations are within the tax system. These areas are crucial because they directly impact your business's financial health and compliance status.

Business income is not personal income

It's important to understand that your business's money and assets are not your personal funds. This distinction is vital for maintaining accurate financial records and avoiding penalties. The ATO is particularly vigilant about businesses using company funds for personal expenses without proper documentation. Familiarise yourself with Division 7A rules to prevent common errors, such as failing to declare interest on loans or not meeting repayment deadlines.

Deductions and concessions

Claiming deductions and concessions accurately is another key focus. The ATO sees frequent errors in the application of small business CGT concessions and non-commercial business losses. Ensure you're eligible for any concessions you claim and that all criteria are met. Misreporting can lead to amended assessments, repayments and potential penalties. Engage a tax professional if you're unsure about your eligibility or the correct application process.

Operating within the system

The ATO is committed to ensuring all businesses operate within the legal tax framework. Risky behaviours such as not declaring all income, over-claiming expenses or using business funds for personal gain are under scrutiny. Poor record-keeping and cash flow management can also attract attention. The ATO encourages businesses to develop strong compliance habits from the outset to avoid these pitfalls.

How the ATO supports compliance

The ATO provides various resources to help your small business meet its obligations. These include educational materials, self-paced courses, webinars and tailored support. Engaging with these resources can help you understand your responsibilities and implement best practices in your business operations.

If the ATO identifies issues within your business, they may contact you or your tax professional for clarification. Depending on the severity, this could involve pre-issue contacts, direct communication or moving your business to more frequent reporting periods. In cases of deliberate noncompliance, firmer actions such as audits, penalties and even legal sanctions may be applied.

Steps to take if you're concerned

If you're worried about your business's tax or superannuation position, consider taking the following steps:

- *Seek advice:* Engage with the ATO or a registered tax professional to get advice tailored to your situation.
- *Correct mistakes:* If you identify errors in your tax reporting, don't wait to hear from the ATO – request an amendment or make a voluntary disclosure to rectify them.
- *Report suspicious activity:* If you suspect illegal activity, such as tax evasion, you can report it confidentially to the ATO.

By staying informed and proactive, you can navigate the ATO's focus areas confidently and keep your small business on the path to compliance and success. Remember, the ATO is there to support you in getting it right, so take advantage of the resources available and seek professional guidance when needed.

Source: www.ato.gov.au/businesses-and-organisations/small-business-newsroom/our-focus-areas www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/our-focus-areas-for-small-business/small-business-focus-areas

ATO warns about GST refund fraud: check your arrangements

The ATO-led Serious Financial Crime Taskforce (SFCT) has issued a warning to businesses against trying to cheat the tax and super system by committing GST fraud. While seeking ways to optimise your tax position is legitimate, it's important to steer clear of arrangements that could lead you into fraudulent territory. The recent warning highlights the dangers of related-party structuring arrangements that exploit GST rules, noting that getting caught can result in significant penalties.

Recognising the risks

The ATO has noted a worrying trend: businesses becoming entangled in sophisticated schemes that manipulate GST refund claims. These schemes involve complex arrangements between related parties, creating artificial transactions to claim high-value GST refunds. This can include false invoicing, misaligned GST accounting methods and duplicating GST credit claims for non-existent transactions.

While some business owners may unknowingly get involved in these practices, believing them to be legitimate tax strategies, the reality is that these arrangements are fraudulent. The SFCT is actively working to identify and prosecute those involved in such schemes.

Features of illegal arrangements

Understanding the characteristics of these fraudulent arrangements can help you avoid unintentional involvement. Problematic features can include:

- *false invoicing*: issuing invoices for goods or services not provided, or inflating invoice amounts;
- *misaligned GST accounting*: using different GST accounting methods within related entities to manipulate refund claims;
- *duplicated GST credits*: claiming GST credits multiple times for a single transaction;
- *non-existent transactions*: claiming GST credits for purchases or developments that never took place; and
- *straw directors*: using individuals to obscure the true relationships between entities.

These activities are particularly prevalent in the property and construction sectors, but the ATO says they are spreading to other industries.

Reminders to keep your business safe

The ATO has issued several reminders to help businesses avoid involvement in fraudulent activities:

- Registering for an Australian Business Number (ABN) and applying for GST refunds when you're ineligible is fraud.
- The ATO does not offer loans or administer COVID disaster payments.
- If you're not operating a business, you don't need an ABN or to lodge a business activity statement (BAS).
- Backdating business registrations to apply for refunds is a red flag.
- False declarations can affect eligibility for other government payments.

- Sharing your myGov credentials can lead to identity theft.

Taking corrective action

If you suspect you've unintentionally become involved in a GST fraud scheme, it's vital to act swiftly. The ATO encourages voluntary disclosures, which can lead to reduced penalties. Corrective actions include revising activity statements, cancelling fraudulent ABN registrations and setting up repayment arrangements.

Seeking advice from an independent tax professional can also help you ensure compliance with tax laws. Remember, if something seems too good to be true, it likely is.

Reporting and seeking help

If you have information about potential tax fraud, report it confidentially to the ATO. They take all reports seriously and offer whistleblower protections for those who come forward.

By staying informed and vigilant, you can protect your business from involvement in fraudulent schemes and contribute to a fair and equitable tax system. Maintaining the integrity of the tax system is essential for ensuring that funds are available for vital community services like healthcare and education.

Source: www.ato.gov.au/media-centre/ato-cracking-down-on-gst-fraud
www.ato.gov.au/businesses-and-organisations/small-business-newsroom/taskforce-issues-gst-fraud-warning-to-dishonest-businesses

How tax works in Australia's superannuation system

Australia's super system plays a vital role in ensuring financial security for individuals in retirement. However, how superannuation is taxed can appear complex. This article will walk you through the basics of how tax on super works.

In Australia, superannuation is taxed at three main points: contributions, investment earnings and withdrawals. This structure is known as a TTE system.

TTE stands for taxed, taxed, exempt. This means that contributions to the superannuation fund are *taxed* and the investment earnings within the fund are also *taxed*, but withdrawals made during retirement are generally *exempt* from tax.

Within Australia's super system:

1. *Contributions:* Contributions to superannuation, including those made by employers under the super guarantee (SG) and voluntary concessional contributions, are taxed at a concessional rate of 15%. This flat rate is lower than the rates that apply to most other forms of income, providing a tax advantage that encourages saving for retirement.
2. *Investment earnings:* Earnings generated from superannuation fund investments during the accumulation phase are also taxed at a flat rate of 15%. This concessional rate is beneficial because it's lower than the tax rates that typically apply to investment income you earn outside of superannuation.
3. *Withdrawals:* Withdrawals from superannuation made during retirement are generally tax-free. This is intended to enhance the appeal of building superannuation savings over your working life, ensuring you have a tax-effective income stream in retirement.

Comparison with international systems

Australia's approach to taxing superannuation is somewhat unique compared to many other countries, which often use an EET model.

EET stands for exempt, exempt, taxed. In this type of system, contributions to the retirement fund are *exempt* from tax and the earnings within the fund are also *exempt*, but withdrawals made during retirement are *taxed*.

Taxing only at the point of withdrawal, as in an EET system, means individuals don't need to worry about tax on contributions or on investment earnings within their super fund during their working life, but must pay the tax once they retire and access their savings.

Benefits of Australia's super taxation

The Australian superannuation model was designed to generate government revenue sooner, with the concessional tax rates on superannuation contributions and earnings intended to encourage people to save consistently throughout their working life. The steady flow of tax revenue from contributions and earnings helps provide a more predictable and stable source of funding for government budgets over time. Australia's

TTE system also offers benefits from immediate tax concessions on your super contributions, which can reduce your current taxable income and provide immediate financial relief.

The tax-free status of withdrawals in retirement makes Australian super an attractive savings vehicle and simplifies financial planning in retirement. This can make it easier for retirees to manage their finances without worrying about tax liabilities on their retirement income.

Why do you need to know?

Understanding the basics of how tax affects your super is useful for several reasons:

- *Financial planning:* Knowing about how your super's taxed means you can make informed decisions about your contributions and investment choices, maximising your benefits while you're working and planning withdrawals effectively to maximise your retirement income.
- *Avoiding penalties:* Understanding contribution caps and tax implications can help you avoid penalties for exceeding contribution limits, ensuring you stay within legal guidelines and avoid unexpected tax liabilities.
- *Adapting to policy changes:* Tax laws and super policies can change over time. Understanding the basics can better allow you to adapt to changes and assess how new policies might impact your retirement planning.

Overall, having a grasp of super taxation is a valuable tool for effective retirement planning and managing your financial future.

Source: www.pbo.gov.au/about-budgets/budget-insights/budget-explainers/how-super-taxed

Super legacy pensions: regulations offer window to exit

For legacy lifetime, life expectancy and market-linked superannuation income stream products that generally commenced prior to 20 September 2007, the shackles have finally been released for retirees but care is still required.

The much-awaited *Treasury Laws Amendment (Legacy Retirement Product Commutations and Reserves) Regulations 2024* (the amending regulations), that came into effect on 7 December 2024, allow thousands of self managed super fund (SMSF) members to exit legacy income streams at any stage until 7 December 2029.

This also applies to income streams that commenced after 20 September 2007 as a result of a conversion of an earlier legacy product that commenced prior to that date.

Short history of legacy products

Prior to the introduction of the amending regulations, these legacy products – also known as non-commutable products – could not be converted to a lump sum, effectively trapping pensioners in their SMSF.

Although they have not been offered for almost 20 years, legacy products were originally introduced to offer retirees a guaranteed income for life or for a set term. Good in one way, but very restrictive strategically as the products could not respond to changing individual circumstances, market conditions and other legislative reforms.

Benefits of changes

During the five-year grace period that the amending regulations offer, retirees can exit these income streams without the previous heavy penalties and with the options of fully withdrawing their funds or moving them into a new income stream or an accumulation account.

According to the ATO, in addition to this increased flexibility, these changes allow for easier ways to make allocations from a reserve by:

- providing that where a reserve supported an income stream that is ceased, and the reserve is allocated to the former recipient of that income stream, it will be exempt from both contribution caps
- counting other reserve allocations towards an individual's non-concessional contributions instead of their concessional contributions.

There is further good news: the new reserve rules last indefinitely – not just for five years.

However, it may be prudent to not to jump in yet if a person's legacy pension was established for social security purposes. A new legislative instrument will ensure these pensions receive the proper treatment under the *Social Security Act 1991*.

If a person has already made some reserve allocations in 2024–2025 under the "old" rules, *both* the old and new rules will actually apply this year depending on when they made the allocation. But it's important not to assume everything allocated in 2024–2025 is covered under the new rules!

Impact of proposed Division 296 rules

Note also that SMSF members with a legacy pension may need to give the amending regulations consideration ahead of the proposed Division 296 rules from 1 July 2025 (if they are enacted in the currently proposed form). This is because Division 296 may count certain reserve allocations as part of the member's superannuation earnings under the proposed additional 15% tax for super account balances above $3 million.

Source: www.ato.gov.au/about-ato/new-legislation/in-detail/superannuation/legacy-retirement-product-conversions-and-reserves
www.ato.gov.au/tax-and-super-professionals/for-superannuation-professionals/super-funds-newsroom/changes-to-legacy-retirement-products

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