

## Important points to note when making trust distributions

When distributions are made by a trust to its beneficiaries, it is important to ensure that various tax issues are properly considered and managed. This is a continued area of focus for the ATO and is regularly raised in various review and audit activity. Key areas of focus from the ATO include:

1. Confirming whether a discretionary trust has made the family trust election. Reasons for making a family trust election include:
  - a. Allow the discretionary trust to be able to carry forward its tax losses or bad debts
  - b. Allow a company owned by the discretionary trust to satisfy the continuity of ownership test so that the company can carry forward its revenue losses and capital losses.
  - c. Allow for the 45-day rule to be satisfied for any franking credits distributed by the family trust
  - d. To make the discretionary trust a member of the relevant family group
  - e. To manage the application of the reimbursement arrangement provisions in section 100A and the compliance framework in respect of the same as specified in PCG 2022/2.
  - f. Access to the Small Business Restructure roll-over.
  - g. Simpler reporting and compliance under the trustee beneficiary reporting rules.
2. Correct calculation of trust income, as defined in the terms of the trust deed, and present entitlement to such trust income by the end of the financial year to relevant beneficiaries.
3. Correct distribution of trust income to beneficiaries, including application of streaming rules in relation to franked distributions and capital gains.
4. Ensuring interposed entity elections are made by any relevant beneficiaries with non-fixed entitlements to ensure they are part of the family group.
5. Application of the 45-day holding period rule when franked dividend distributions are made to beneficiaries. In particular, the ATO has raised concerns with the satisfaction of this rule where the beneficiary did not exist at the time that the franked dividend was received by the discretionary trust.
6. Application of Division 7A to any unpaid present entitlements to a private company, noting that the Commissioner has been granted special leave to appeal to the High Court from the Full Federal Court decision in [\*Commissioner of Taxation v Bendel\* \[2025\] FCAFC 15](#) and the ATO's views have been outlined in [Interim Decision Impact Statement](#) released on 19 March 2025.

## Corporate Tax Reform – Productivity Commission Recommendations

The Productivity Commission (“PC”) has recently released an interim report which includes draft recommendations on corporate tax reform. The report contains three draft recommendations to the corporate tax system by:

1. Making the corporate tax system a more efficient mix of taxes;
2. Lowering the headline company tax rate to 20%; and
3. Introducing a net cashflow tax of 5%.

In relation to the first and second recommendations, the PC proposes a reduced reliance on company income tax. The reduced rate of 20% is proposed to apply to all companies with annual revenue of less than \$1 billion. The proposed changes are designed to attract foreign investment and to increase the viability of capital financing and expenditure decisions in Australia. The PC noted that the OECD average rate of company income tax is 21%.

In relation to the third recommendation, the proposed 5% net cashflow tax would apply alongside the reduced company income tax rate and would allow the cost of capital to be immediately written off (instead of over time through depreciation). The PC noted that the intent of the reforms is for companies to pay less overall tax, especially those that are undertaking new investment.

The PC will undertake further analysis and consultation, before releasing its final report in December 2025.

## First Supplementary Annual GST Return due this month

For December year-end large market taxpayers, this month (21 August) sees the due date for the very first Supplementary Annual GST Return ("SAGR"). The SAGR is a new development in the GST reporting framework that will impact Top 100 and Top 1,000 taxpayers. The SAGR aims to provide the ATO with comprehensive data to enable the identification of emerging GST risks while ensuring the accuracy of GST reporting and adherence to governance standards.

It requires taxpayers to undertake an annual self-assessment and make disclosures relating to the following key areas:

- ATO recommendations, areas of low assurance or red flags from prior GST assurance reviews;
- GST governance frameworks;
- The alignment between GST and financial statements (GST Analytical Tool or GAT);
- Any materially uncertain GST positions; and
- Material GST reporting errors or credits claimed in a later BAS.

With the SAGR now effectively legislating the GAT, it means that what started as an internal ATO case selection tool is now here to stay and very likely to apply to more taxpayers. Approaching the GAT usually begins with audited financial statements, however, most of the work focuses on the detailed trial balance and the application of key adjustment areas, including GST grouping, non-GST transactions (such as exports and salaries), and reconciling differences between accounting methods and GST invoicing.

While the GAT can present challenges, particularly for large corporate groups with mismatched economic and GST groups, the process can offer significant insights into a GST compliance framework. The first completion is always the hardest, but it becomes easier with practice. As you deepen your understanding of the differences between your profit & loss statement and BAS, you can identify valuable adjustments. Supporting these adjustments with solid evidence, such as general ledger balances, is essential to keep the ATO happy.

The due date for the SAGR will depend on the taxpayer's year-end and is generally at least seven months after the financial year-end. Importantly, the SAGR does not replace any other GST returns that are required to be lodged, and penalties can apply if it is not lodged on time, or if false or misleading statements (or omissions) are made. In reporting terms, it carries the same weight as the BAS.

Although the SAGR introduces an additional compliance requirement, it also serves as an opportunity for taxpayers to engage with the ATO concerning GST issues proactively. By integrating these new reporting obligations into their existing GST control frameworks, taxpayers can not only facilitate the annual preparation of their SAGR but also encourage a more tailored approach from the ATO concerning GST justified trust.

## Uber case: Rideshare company liable to pay payroll tax

The Chief Commissioner of State Revenue (NSW) has succeeded in its appeal against the recent Supreme Court decision. The NSW Court of Appeal held that amounts paid by Uber to drivers were wages for payroll tax.

The taxpayer operated a rideshare system that put individuals who wished to be transported by motor vehicle in contact with drivers offering such services using Uber's software applications. The Chief Commissioner assessed Uber to payroll tax pursuant to the contractor provisions in the *Payroll Tax Act 2007 (NSW)*. The assessments were made on the basis that most of the amounts collected on behalf of drivers by Uber and remitted to the drivers was taken to be wages and amounts paid or payable for the performance of work relating to a relevant contract. Interest was also charged.

At first instance, the Supreme Court revoked the assessments and remitted the interest imposed in full. The Chief Commissioner appealed against the decision of the primary judge and Uber cross appealed. The NSW Court of Appeal ultimately allowed the Commissioner's appeal and dismissed Uber's cross appeal. The amounts collected by Uber and remitted to the drivers were deemed to be paid or payable for the performance of work relating to a relevant contract.

## Contact

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