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In Our
Sights

Tax Insights Series

Presenter:

Robyn Jacobson, CTA, Senior Advocate, The Tax Institute

October 2021 | Online

Overview of session

- Legislative update
- Update on extension to NSW and Victorian COVID-19 business support measures
- AAT case — *MJ and IT Holdings Pty Ltd*: Cash Flow Boost eligibility
- ATO rulings and guidance products:
 - Gifts and loans from related overseas entities
 - Taxation of cryptocurrency
 - Claiming deductions for working from home expenses
- Upcoming key dates



Introduced on 25 August 2021

Treasury Laws Amendment (2021 Measures No. 7) Bill 2021



- **Sharing economy reporting regime** — **Schedule 1** to the Bill will amend the TAA 1953 to require electronic platform operators to provide information on transactions made through the platform to the ATO
- Implements a recommendation of the report of the Black Economy Taskforce
- Applies from **1 July 2022** for transactions relating to the supply of taxi travel and short-term accommodation, and from **1 July 2023** for all other transactions
- **Removing the self-education expenses threshold** — **Schedule 3** to the Bill will remove the \$250 non-deductible threshold for work-related self-education expenses by repealing s 82A of the ITAA 1936 — from **2022–23**

Tapering of JobSaver — weekly amount

| Rate of payment (% of NSW weekly payroll) | Non-employing | Employing and registered charities ¹ | Larger businesses in the hospitality, tourism and recreation sectors ² |
|---|---------------|---|--|
| 26 July to 10 October: 40% | \$1,000 | \$1,500 to \$100,000 | <ul style="list-style-type: none"> Up to \$300,000 Up to \$500,000 |
| After 10 October: 30% (75% of original amount) | \$750 | \$1,125 to \$75,000 | <ul style="list-style-type: none"> Up to \$225,000 Up to \$375,000 |
| At 80% double dose: 15% (37.5% of original amount) ³ | \$375 | \$562.50 to \$37,500 | <ul style="list-style-type: none"> Up to \$112,500 Up to \$187,500 |

¹ Certain registered charities require a minimum DIT of 15% rather than 30% for general employers and NFPs

² Aggregated turnover of more than \$250m to \$500m and more than \$500m to \$1b

³ JobSaver ends on 30 November 2021

Extension to Victorian support

Business Costs Assistance Program Round Five

| Business size | Weekly amount | Fortnightly payment | Total maximum support ¹ |
|--|---------------|---------------------|------------------------------------|
| Eligible non-employing businesses | \$1,000 | \$2,000 | \$6,000 |
| Employing business — payroll up to \$650,000 | \$2,800 | \$5,600 | \$16,800 |
| Employing business — payroll \$650,000 to less than \$3m | \$5,600 | \$11,200 | \$33,600 |
| Employing business — payroll \$3m to \$10m | \$8,400 | \$16,800 | \$50,400 |

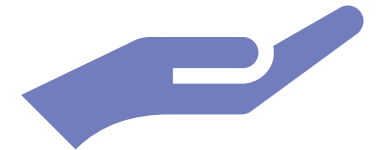
Extension to Victorian support

Licensed Hospitality Venue Fund — weekly amount

| Period | Capacity for 0–99 patrons or patrons not specified | Capacity for 100–499 patrons | Capacity for 500+ patrons |
|--|---|---------------------------------|---------------------------|
| 1 Oct to 29 Oct 2021 | \$5,000 | \$10,000 | \$20,000 |
| 29 Oct to 13 Nov 2021 — Metropolitan Melbourne | \$3,750 | \$7,500 | \$15,000 |
| 29 Oct to 13 Nov 2021 — Regional Victoria | \$2,500 | \$5,000 | \$10,000 |

Small Business COVID Hardship Fund

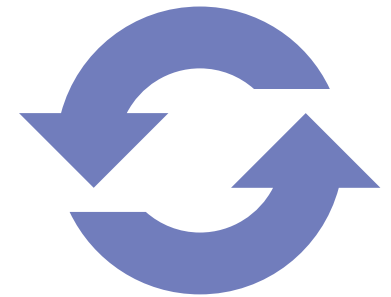
- A further 30,000 businesses will be able to receive a **one-off payment of \$20,000** under the Fund
- Will assist businesses that have previously fallen between the cracks in terms of government support as they have not been eligible for other Victorian government support programs
- Must have a decline in turnover of at least **70%** and a Victorian payroll of up to **\$10m**
- Earlier applications for the Fund closed on 10 September 2021
- More information about the extension to the Fund will be available soon



Use of journal entry to pay director's wage

*MJ and IT Holdings Pty Ltd
and FCT* [\[2021\] AATA 3250](#)

- Usual practice was to fix remuneration at year end but not withhold PAYGW
- 1 July 2019 to 30 March 2020 — company made payments to director totalling \$28,417 for 'director's loan' or 'director's drawing'
- End of March 2020 — company recorded a journal entry for a wage of \$25,000
- STP, payslip issued, March 2020 BAS included PAYGW, paid SG contributions (albeit late)
- Following audit, **entitlement to Cash Flow Boost was denied** by the ATO on the basis that no payment '... of a type that was subject to withholding under Subdivision 12-B, 12-C or 12-D in Schedule 1 of the TAA' was made to the director
- Tribunal found there was constructive payment but the integrity rule in the CFB Act applied



Taxpayer Alert [TA 2021/2](#)

Issued 17 September 2021

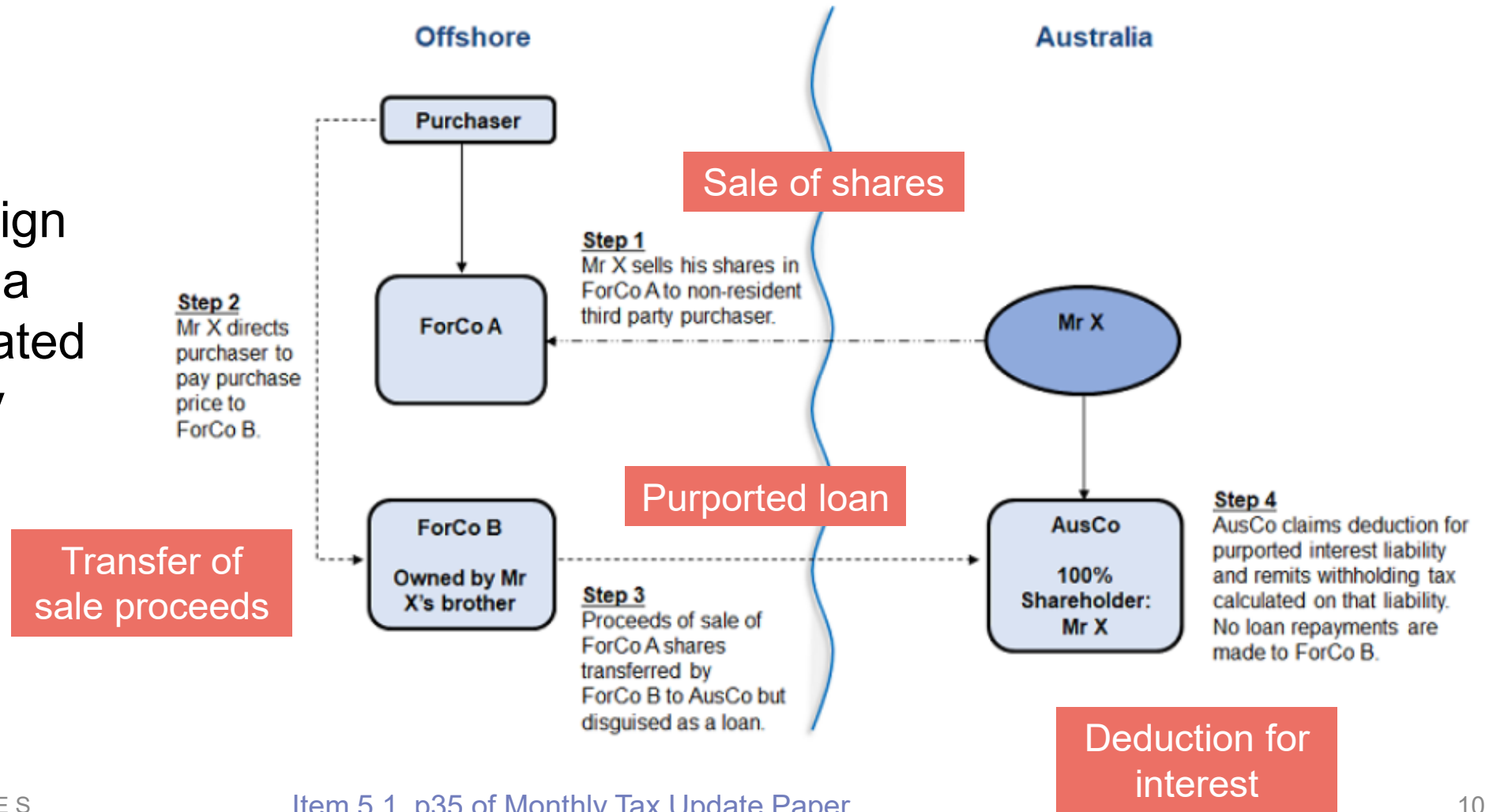
- ATO concerned about arrangements whereby Australian tax residents fail to declare foreign income in their tax return and conceal the character of the funds when they are repatriated back to Australia by disguising the income received as a 'gift' or loan from a related overseas entity (i.e. a family member, friend, related company or trust)
- Australian-resident taxpayers may be entering into these arrangements to attempt to avoid or evade Australian tax on their foreign assessable income
- Where the funds are repatriated to Australia in the form of a purported loan, the ATO is also concerned that taxpayers may be entering into, or taking additional advantage of, these arrangements to claim deductions for interest that was never incurred



Gifts and loans from related overseas entities

Example 1

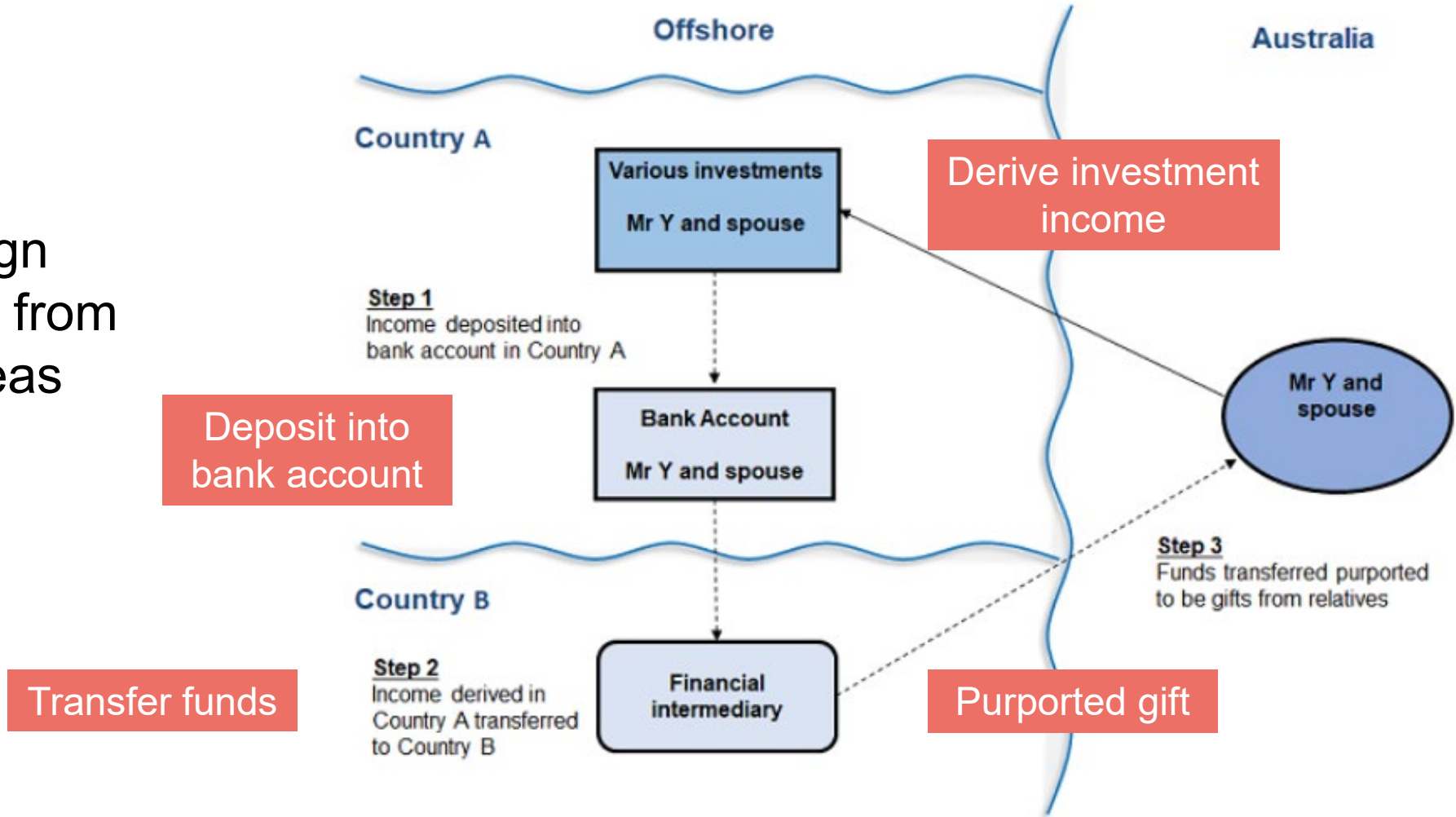
Disguising foreign capital gain as a loan from a related overseas entity



Gifts and loans from related overseas entities

Example 2

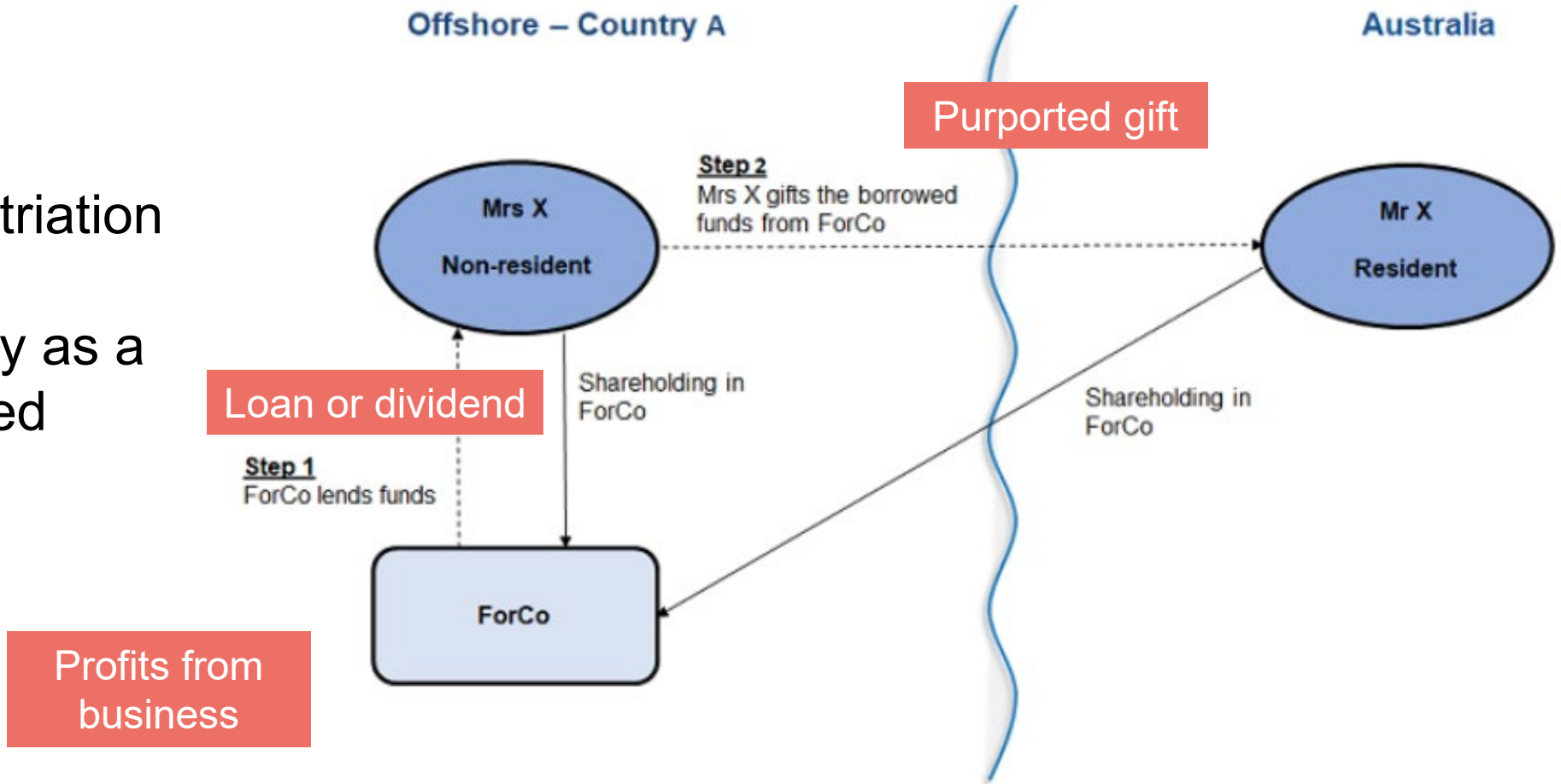
Disguising foreign income as a gift from a related overseas entity



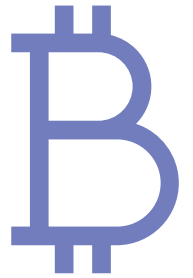
Gifts and loans from related overseas entities

Example 3

Disguising repatriation of profits from a foreign company as a gift from a related overseas entity

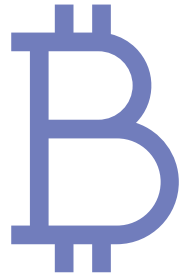


- Cryptocurrency is treated like shares and similar investments — generally regarded as a CGT asset
- If the cryptocurrency is held for more than 12 months and on capital account, the CGT discount may apply
- Ownership of cryptocurrency falls into one of three categories for tax purposes:
 1. Held as an **investment** — any gain or loss is on capital account and the resulting gain or loss is dealt with under the **CGT** provisions
 2. Person holding the cryptocurrency is a **miner or trader** of cryptocurrency — where the activities amount to a business, the **trading stock rules** apply not the CGT rules
 3. Held as a **personal use asset (PUA)** ...



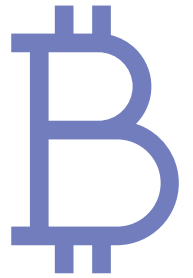
Personal use assets

- Section 108-20(2) of the ITAA 1997 — a CGT asset that is used or kept mainly for your (or your associate's) personal use or enjoyment
- Cryptocurrency is not commonly regarded by ATO as being a PUA
- The longer the cryptocurrency is held, the less likely it will be a PUA
- Cryptocurrency will not be a PUA if it is kept or used mainly as an investment, in a profit-making scheme or in the course of carrying on a business
- Disregard all capital losses from PUA
- Disregard only capital gains made from PUA acquired for less than \$10,000



Useful questions for practitioners to ask your clients

- How did the taxpayer receive the cryptocurrency?
- When did they receive it?
- Why are they holding it?
- How long will they keep it?
- What will they do with it?
- Did they receive any income from it, for example, airdrops and staking rewards?
- How much is it worth in Australian dollars?
- When did they sell or dispose of it?



Important to keep accurate records of cryptocurrency transactions including:

- Dates
- Value in Australian dollars at the time
- What the transactions were for
- Who the other party was (even if this is just the person's wallet address)

Temporary shortcut method for WFH expenses

- Has been available from 1 March 2020 to 30 June 2020, and all of 2020–21
- **Now, 80 cents per hour extended to all of 2021–22**
- Employees may continue to use either of the alternative methods:
 - Fixed-rate method (52 cents per hour)
 - Actual cost method

Only two methods available for claiming deductions for WFH expenses after 30 June 2022

- Keep accurate records of hours WFH
- ATO is looking to modernise the 52 cents per hour fixed rate method from 2022–23



ATO guidance:

www.ato.gov.au/Individuals/Income-and-deductions/Deductions-you-can-claim/Home-office-expenses/Shortcut-method/

Upcoming key dates

| Date | Obligation |
|-----------------|---|
| 28 October 2021 | Last day for funds to receive employer SG contributions for the September 2021 quarter to avoid an SGC liability (otherwise SG statement and SGC due 28 November) |
| 31 October 2021 | <p>Last date for taxpayers who have not appointed a tax agent to lodge their 2021 income tax return</p> <p>Last for date for taxpayers to appoint a tax agent for their 2021 income tax return</p> |
| 1 November 2021 | <p>Introduction of new superannuation stapled fund measure</p> <p>Requires employers to check with the ATO whether a new employee who does not advise of their choice of fund has an existing superannuation account before they make SG contributions to the employer's default fund</p> |
| November 2021 | Can apply for new Director Identification Number (DIN) via www.abrs.gov.au |



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Thank you

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Robyn Jacobson, CTA is the Senior Advocate at The Tax Institute.

Her role is a key engagement and advocacy contact for Tax Institute members, government, non-government organisations, regulators and other stakeholders. She brings to the role her 23 years' experience as a professional tax trainer, and preceding roles in public practice.

Robyn is a Chartered Tax Adviser of The Tax Institute, Fellow of both Chartered Accountants Australia & New Zealand and CPA Australia, and a registered tax agent.

Disclaimer: The material and opinions in the paper should not be used or treated as professional advice and readers should rely on their own enquiries in making any decisions concerning their own interests.



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