

# CLIENT ALERT

Summer 2023/24



## NAVIGATING 2023: FACING NEW CHALLENGES AND CELEBRATING MILESTONES



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As the curtain draws to a close on 2023, we find ourselves reflecting on a year that was, in many ways, both challenging and rewarding.

While the difficulties faced by the COVID pandemic seem to be behind us, the global tensions experienced this year serve as a reminder that we live in uncertain and worrying times. The world's political landscape has been charged with events that demand our attention and concern, and impact our daily lives, even if from afar, including: the ongoing conflict between Russia and Ukraine, the disturbing atrocities in Israel and, even closer to home, the nationwide tensions which surrounded "The Voice" campaign in Australia. All these, coupled with the continuing inflationary pressures, increasing interest rates and a rising cost of living, have made 2023 a year of unprecedented challenges for many Australians.

Shifting focus from external events to our own journey at HLB Mann Judd, I'm genuinely proud of what we've achieved this year. 2023 stands as a clear indicator of our ongoing commitment to quality and our priority of always putting client service first. This dedication is reflected in the ratings across all our divisions in the Net Promoter Score surveys we conducted throughout the year. Firmwide, our overall NPS score for 2023 is 82 which is considered outstanding across industry standards (and above the industry average of 64), and reflects the incredible work done by staff across all divisions in what has definitely been another extremely busy year. The feedback gathered from clients allows us to evaluate our service and provides useful insights into how and where we need to improve in order to provide the type of service expected from the firm.

Furthermore, the global recognition of HLB as a "Most Loved Workplace" earlier this year serves as a positive endorsement of our endeavours to create a nurturing, growth-oriented, and fulfilling work environment for

our team. Our commitment to talent enhancement and leadership development has been further underscored by the appointment of Gaurav Chitnis as a Tax Partner and the well-deserved promotion of David Healy to Partner in our Corporate & Audit Services division. With additional promotions and appointments in our Business Advisory Services and Wealth Management divisions, I can confidently say that our firm stands on an extremely solid foundation.

This year also marked notable collaborations amongst members of the HLB Australasian Association. We held our annual Australasian Partner and Manager conference in Sydney in May, followed by a more intimate "mini" Conference in Adelaide in November, which saw participation from a smaller group of Partners across the network. Such gatherings allow for the sharing of ideas that ultimately benefit our clients, staff, and friends of the firm. Not surprisingly, many of the topics at these conferences focussed on the increased use of technology in our day-to-day operations, and how we can streamline what we do to enable us to deliver services to clients faster, more efficiently, and more effectively. The topics included the use of AI and robotics in performing some routine processes, automated document signing, and new software being used in audits and business advisory. Upcoming requirements relating to ESG reporting were also discussed, as was the focus on sustainability. Our Australasian Association is working on expanding our service offerings to assist clients in these areas.

Looking ahead, 2024 promises to be a year of growth and innovation, beginning with our upcoming office renovation which shows our commitment to adapting to a modern environment, ensuring a conducive and inspiring workspace for our team.

So, as we approach the holiday period and close of 2023, it's fitting to reflect on all we've achieved in 2023, as we plan ahead and look forward to the challenges awaiting us in 2024.

**We thank you for your business and support through 2023 and wish you and your family a wonderful Christmas and New Year filled with health, wealth and happiness.**

## ATO RENTAL PROPERTY BLITZ



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The ATO is steadily increasing the volume of rental property audits in the 'post-covid' era which includes adding more resources to their rental property audit team. Whilst they do not publicize the reason for targeting particular rental arrangements, it is obvious that negative gearing is a major factor. Generally, the ATO will send you a letter advising that they are 'reviewing' your rental property expenses and request some preliminary information, typically the lease agreement, support for bank account interest, depreciation and repairs and maintenance costs claimed and a broad explanation of the rental arrangement. Depending on your responses, the ATO will then either cease the 'review' or undertake further investigation.

You can support all expense deductions claimed with written evidence (for example, invoices, receipts, bank statements etc.). The key areas of rental property arrangements that may not be treated correctly are as follows:

- Charging a lower than commercial rental amount (e.g., 'cheap' rent to family members).
- Failure to apportion expenses where the property has been used for private purposes.
- Claiming interest deductions for 'multi-purpose' or refinanced borrowings where there is a private component to the borrowing.
- Claiming immediate income tax deductions for expenses as repairs when they are more appropriately classified as depreciable improvements to the property or complete replacements of depreciating assets.
- Excessive depreciation claims on the building.

While legitimate rental arrangements offer tax benefits, be aware that ATO scrutiny can still apply. Review your property arrangements, including:

- That you have a documented lease agreement setting out the usual terms and conditions, and that lease charges are commercial and arm's-length in nature.
- Where you have used a property for private purposes or have the right to occupy the property at certain times of the year and, even if you don't use it, whether expense claims have been apportioned.
- That borrowings used as a basis for claiming interest deductions were 100% used to purchase the property and there is no private component.
- You have general support for all rental property deductions claimed and can produce these if requested by the ATO.

**For more information, contact Rowan Tracey on (08) 9227 7500.**

## SUCCESSION PLANNING: DON'T LET YOUR FINANCIAL LEGACY GO TO WASTE



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The television series "Succession" may be entertaining, but it's also a cautionary tale about how not to prepare the financial legacy for your children. Backstabbing and sibling dogfights are not a formula for effective family financial planning.

In today's society, the transfer of wealth from one generation to the next is more important than ever before. This is due to a number of factors, including the increasing cost of living, the rising cost of education, and the growing gap between the rich and the poor.

Unfortunately, many families are unprepared for this important transition. Various studies have found that only just over half of Australians have a Will in place. And even fewer parents have discussed their financial legacy with their children.

There are a number of reasons for this lack of preparedness. One reason is that many people are uncomfortable talking about money. Another reason is that financial planning can be complex and time-consuming.

However, it is important to remember that financial planning is not just for the wealthy. It is for everyone who wants to ensure that their loved ones are financially secure after they are gone.

Here are a few tips for succession planning:

- Start early. The sooner you start planning, the more time you will have to make arrangements and save money.
- Talk to your family. It is important to have open and honest conversations with your spouse, children, and other loved ones about your financial situation and your wishes for your estate. You may choose to do this with a Family Board to formalise stewardship of family wealth in line with family values.
- Create a Will. A Will is a legal document that outlines your wishes for the distribution of your assets after your death.
- Consider financial planning. A financial advisor can help you create a comprehensive financial plan that includes your succession planning goals.

Succession planning can be a challenging process, but it is essential for ensuring that your loved ones are financially secure after you are gone. By following these tips, you can make the process easier and more effective.

**For more information, contact Brendan Bate on (08) 9227 7500.**

Brendan Bate (ASIC No. 1272327) and HLB Wealth Pty Ltd (ASIC No. 428645) are Authorised Representatives of Paragem Pty Ltd, ABN 16 108 571 875, AFSL 297276

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## ATO'S VIEW ON UPEs CHALLENGED: BENDEL V FCT DECISION BREAKDOWN



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In December 2009, the Australian Taxation Office (ATO) surprised taxpayers and their advisers by reinterpreting a longstanding legal principle. It asserted that an unpaid present entitlement (UPE) owed from a trust to a corporate beneficiary was equivalent to a loan. This stance, which is outlined in their publication TD 2022/11, marked a major deviation from prior interpretations. The shift in the ATO's view meant that a UPE to a company would be subject to Division 7A of the Income Tax Assessment Act 1936 whereby the amount of the UPE is assessable as an unfranked dividend to the relevant trust.

This reinterpretation was met with scepticism from tax professionals. Major industry bodies, including the Institute of Chartered Accountants and The Tax Institute, co-authored a submission to the ATO expressing their concerns. Their consensus? A UPE doesn't fit the standard or legal definitions of a loan.

Fast-forwarding to 2023, the case of Bendel v FCT brought this debate to the forefront. The Bendel Group, comprising various entities including the Steven Bendel 2005 Discretionary Trust (2005 Trust) and Gleewin Investments Pty Ltd (Gleewin), was under ATO scrutiny. Between 2013 to 2017, the 2005 Trust owed UPEs to Gleewin. The ATO argued these UPEs were loans, a position the taxpayer contested.

Central to this case was the taxpayer's submission in relation to the operation of Subdivision EA of Division 7A. In layman's terms, Subdivision EA seeks to treat a loan from a trust to a shareholder or an associate as a deemed dividend provided that there is a subsisting UPE to a company. In other words, the legislation does not treat the UPE itself as a loan, but instead deals with the situation where an interposed trust provides a loan to a shareholder or an associate. The Tribunal sided with the taxpayer. Their decision was straightforward: UPEs do not constitute loans. This verdict echoes the arguments presented by tax industry bodies 14 years prior.

The Bendel v FCT decision sends a clear message: a UPE is a right in equity and doesn't fit within the general law definition or section 109D(3) definition of a 'loan'. Moreover, if the legislative intent was to treat UPEs as loans, then provisions like Subdivision EA would not be needed.

While the AAT's decision isn't judicially binding, an appeal might result in a higher court reaching the same conclusion. Above all, the Bendel v FCT case underscores an important point: while the ATO can interpret laws, it can't create them. As taxpayers await the next steps, the consensus remains clear: UPEs are not loans for tax purposes unless explicitly legislated as such.

**For more information, contact Gaurav Chitnis on (08) 9227 7500.**

## DANISH SECONDEES BOOST PERTH AUDIT TEAM



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HLB Mann Judd Perth participates in an international initiative which provides accountants from all parts of the world the opportunity to experience another culture through its secondment program. The program has been revived since COVID restricted travel for a few years. During the busy Audit season, we welcomed five audit specialists as secondees from our sibling firm in Denmark to bolster the Perth team from July until October.

The skills shortage has had a profound impact on all Western Australian businesses, particularly those who are competing with the mining and resources sector to attract and retain talent. We are in a fortunate position to be able to call on our global partners.

The international collaboration with our Danish corporate colleagues reflects the strength of our global network and lets us tap into diverse skill sets, enabling us to deliver an even better service for our valued clients. These international secondment opportunities also provide our team with a unique chance to build lasting connections across borders, enabling a truly global community within our firm.

HLB Mann Judd's secondees program allows us to utilise the skills of highly experienced team members who are willing to share their ideas and learn more about Western Australian businesses and the Australian economy. Having our Danish counterparts on board for three months created an environment of professional growth, enabling our team members to broaden their perspectives and learn from international best practices.

The assistance within our Corporate and Audit Services Division made a substantial contribution to our output during the busy period - each year we audit approximately 120 listed companies representing over 5% of all ASX-listed companies and approximately 8% of listed resources companies. The audit work we do at this time of year is a key service underlying the provision of reliable and accurate financial information which is critical for the functioning of capital markets.

Our Danish secondees - Lasse, Emil, Michelle, Anna and Katrine settled in as part of the HLB Mann Judd Perth team and took advantage of the many opportunities to enjoy the sights and delights WA has to offer.

Our secondees program is an excellent opportunity for staff across the HLB international network to undertake these opportunities as it provides a global perspective as well as enhancing skillsets and workplace culture.

**For more information, contact Teresa De Abreu on (08) 9227 7500.**



# IMPORTANT DATES

## Important Tax Dates

during the period 1 December 2023 to 31 March 2024

Large taxable taxpayers (total income > \$10m) final payment of 2023 tax due to the Australian Taxation Office (tax return due 31/01/24)	<b>01/12/23</b>
November monthly BAS & IAS (PAYG Withholding)	<b>21/12/23</b>
December monthly BAS & IAS (PAYG Withholding)	<b>21/01/24</b>
Deadline for making superannuation contributions for the quarter ending 31 December 2023 to avoid incurring penalties	<b>28/01/24</b>
Large taxable taxpayers last year (total income > \$10m) 2023 income tax return due for lodgement with the Australian Taxation Office (balance of tax previously due on 1/12/23)	<b>31/01/24</b>
January monthly BAS & IAS (PAYG Withholding)	<b>21/02/24</b>
October to December quarterly BAS & IAS due for lodgement	<b>28/02/24</b>
New superannuation funds registered with no previous lodgement history, 2023 income tax return and final payment of tax due to the ATO	<b>28/02/24</b>
Large non-taxable taxpayers last year (total income > \$10m), 2023 income tax return and final payment of tax due to the ATO	<b>28/02/24</b>
February monthly BAS & IAS (PAYG Withholding)	<b>21/03/24</b>
Companies and superannuation funds last year with total income > \$2m but < \$10m, 2023 income tax return and final payment of tax due to the ATO	<b>31/03/24</b>
Individuals and trusts with final tax payable last year > \$20,000, 2023 income tax return due to the ATO	<b>31/03/24</b>
End of the fringe benefits tax year	<b>31/03/24</b>

*When a due date falls on a weekend or public holiday, you can lodge and pay on the next business day.*

## Liability Statement

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## Important Reporting Dates

for Listed Public Companies during the period 1 December 2023 to 31 March 2024

Quarterly Reports	<b>31/01/24</b>
Half Yearly Reports (Reviewed)	<b>29/02/24</b>
Preliminary Final Reports (December Year End)	<b>29/02/24</b>
Half Yearly Reports (Explorers only - Reviewed)	<b>15/03/24</b>
Annual Financial Report (December Year End - Audited)	<b>28/03/24</b>



**CLIENT CHOICE Awards**

**Best Accounting & Consulting Services Firm**  
(revenue \$100m - \$200m)  
**WINNER - 2022, 2021, 2020**  
**FINALIST - 2023, 2019**

**Best Professional Services Firm**  
(revenue \$50m - \$200m)  
**WINNER - 2021, 2018**



**Christmas Closing Dates**

Our Office Will Close from 12.00pm on Friday 22 December 2023 and reopen on Monday 8 January 2024.