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# Top 10 Tax Considerations for Practice Owners

HOSTED BY
**Elena Bytch**
Principal, Prism Accounting

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aapm
Australian Association of Practice Management
AAPM Approved
2022
5 Points

**WED 1 JUNE**
**12:30pm AEST**

In the spirit of reconciliation, HotDoc acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community.

We pay our respect to their elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

# Disclaimer:

*All the information provided in this presentation is of general nature and does not constitute tax, legal or financial advice. It does not take into account your personal circumstances and is not intended to replace consultation with a qualified professional.*

# What we will cover:

- **Temporary full expensing** of depreciable assets and unprecedented tax planning opportunities it provides
- **Superannuation** changes and optimising super contributions for tax minimisation
- **Federal Budget tax incentives** to support your practice business
- **Tax compliance risks** and how to minimise them for your practice
- **Questions and Answers**

# 1. TEMPORARY FULL EXPENSING

**Immediate Tax Deduction for the cost of business asset**

- Businesses with aggregated turnover of **less than $5 billion** ($50 mil for second-hand assets) – not just small businesses
- No cap for asset cost (unless specific limits apply)
- Applies to **Depreciable Assets** (i.e. with limited effective life)
- Assets must be first held, first used or installed ready for use between 7.30pm on 6 October 2020 and 30 June 2023
- Improvements to existing eligible assets incurred between 7.30pm AEDT on 6 October 2020 and 30 June 2023
- Can opt out on asset by asset basis (unless electing to use simplified depreciation)

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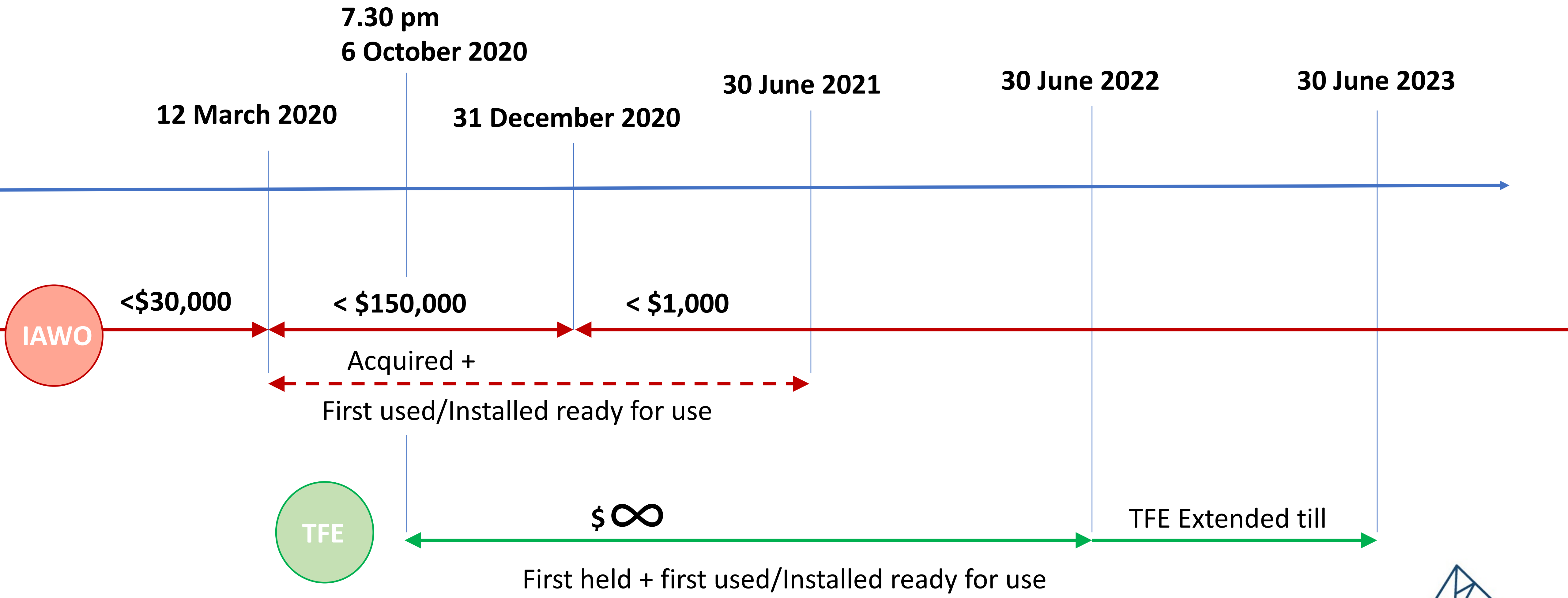
# Temporary Full Expensing vs IAWO



# Capital Works are <u>not</u> eligible

Including: buildings, structural improvements, alterations, extensions (Div 43 items):

Examples:

- Partition walls
- Doors and windows
- Tile or wooden flooring
- Electrical works
- Plumbing
- Suspended ceiling
- Shelving attached to walls
- Signage

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# Optimising Depreciation Deduction

**Using Temporary Full Expensing is not always beneficial.** Claiming instant deduction for expensive equipment may have adverse tax consequences for some taxpayers

For example:

- The deduction creates losses in a trust entity
- The individual who is ultimately taxed is driven into a lower tax bracket

**What can be done:**

- Opting out of Temporary Full Expensing on asset by asset basis
- Manipulate timing of asset acquisition and when the asset is available for the first use

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# 2. FINANCING OPTIONS

## Buying Outright

- Simplest and fastest solution
- No need to pay interest/financing costs
- Requires cash outflow
- Ties up working capital
- Cash could be used elsewhere

## Chattel Mortgage

- Frees up cash flow
- Periodic repayments over loan period
- Depreciation is deductible (including TFE)
- GST claimed on purchase upfront
- Interest component is deductible (no GST)

## Lease

- Flexible option, no ownership risks
- Frees up cash flow
- Ability to upgrade equipment
- Lease payments are 100% tax deductible
- Breaking lease early can be costly
- No Depreciation on costs (i.e. no TFE)
- Minimum % of residual payment apply

## Hire Purchase

- Legal treatment: like a lease
- Tax treatment: like a sale and loan
- Frees up cash flow
- Depreciation is deductible (including TFE)
- GST on purchase claimed upfront
- Notional interest charge is tax deductible
- GST applies on finance charges

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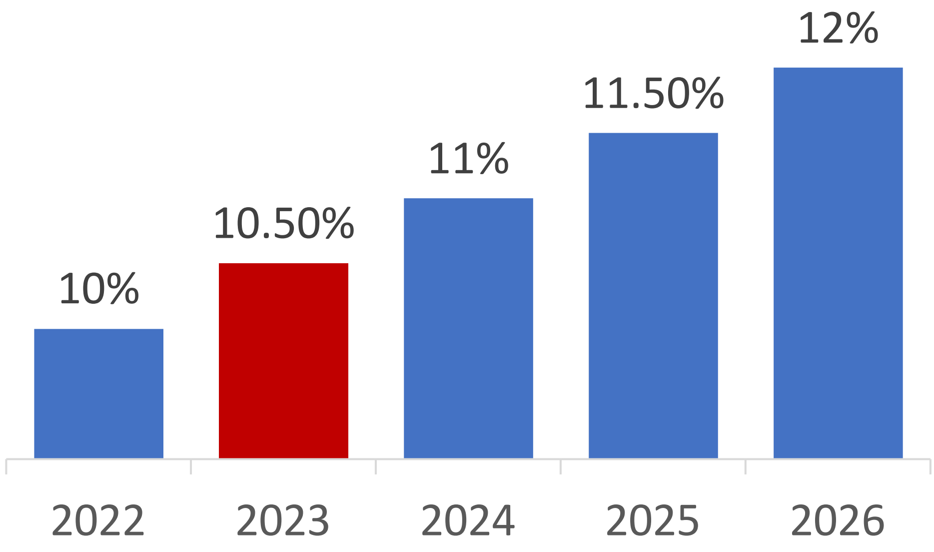
# 3. SUPER GUARANTEE OBLIGATIONS

**Super Guarantee Rates Increase**




**Changes from 1 July 2023**

- Super Guarantee increase to 10.5%
- Removal of $450-per-month threshold

**Compulsory Super Guarantee**

- Paid on Ordinary Time Earnings (OTE)
- Rate determined based on time of payment
- All employees are eligible for Super (including company directors and family members)
- Under 18 – if they work for you >30h per week
- Some contractors are "employees" for Super Guarantee purposes.
- High Income Earners with multiple employers may opt out of super for some employers.
- Maximum super contribution base is $58,920 per quarter.

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# Super Guarantee

## When is Super Guarantee due?

| Quarter ending | 30 September | 31 December | 31 March | 30 June |
|---|---|---|---|---|
| SG Due by | 28 October | 28 January | 28 April | 28 July |

Super is considered paid when **received** by the super fund.

## Late or missed super

- Lodge the super guarantee charge (SGC) statement **as soon as possible**.
- Must pay the SGC (the shortfall + admin fee + interest) to the ATO.
- Penalties of up to 200% may apply
- SGC is **not tax deductible**
- SCG is calculated on **Gross Earnings** (not just OTE)
- ATO can remit penalties but not SGC itself

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# 4. PERSONAL SUPER CONTRIBUTIONS

- Can be claimed by **all taxpayers** (subject to age restrictions).
- Concessional Cap is **$27,500** in 2022 and 2023.
- Super guarantee (on salary, sessional VMO earnings) and super sacrifice **count towards the cap** - keep in mind when making contributions!
- Eligible taxpayers may **carry forward** unused cap balance for up to 5 years if total balance on 30 June PY is <$500,000.
- **Excess concessional contributions** are added back to taxable income and taxed at your marginal rates (you get 15% offset for tax paid in the fund).
- If Adjusted Taxable Income >$250,000 (inc super), **extra 15% tax** applies to contributions (Div 293 Tax).

# Concessional Contributions Carry Forward

- Unutilised balances from 2019 and later years carried forward to the following years (up to 5 years)
- This is in addition to the current year cap
- Total super balance must be under $500,000 on 30 June previous year to be eligible to take advantage of this measure

| | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|---|---|---|---|---|---|
| Concessional Contribution Cap | 25,000 | 25,000 | 25,000 | 27,500 | 27,500 | 27,500 |
| Concessional Contributions | 0 | 0 | 0 | 0 | 0 | 0 |
| Unused Cap (Current) | 25,000 | 25,000 | 25,000 | 27,500 | 27,500 | 27,500 |
| Cumulative Unused Cap | 25,000 | 50,000 | 75,000 | 102,500 | 130,000 | 157,500 |

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# Example

**Dr Jeff**

- Salary in 2019 and 2020
- Working in own practice since 2021 (sole trader under SA)
- Total Super balance on 30.06.2019 $450,000

| | **2019** | **2020** | **2021** | **2022** | **2023** | **2024** |
|---|---|---|---|---|---|---|
| Concessional Contribution Cap | 25,000 | 25,000 | 25,000 | 27,500 | 27,500 | 27,500 |
| Concessional Contributions | 5,000 | 5,000 | - | - | - | - |
| Unused Cap (Current) | 20,000 | 20,000 | 25,000 | 27,500 | 27,500 | 27,500 |
| Cumulative Unused Cap (before PC) | 20,000 | 40,000 | 65,000 | 92,500 | 100,000 | 55,000 |
| **Personal Contribution** | - | - | - | **20,000** | **72,500** | - |
| Remaining Unused Cap | 20,000 | 40,000 | 65,000 | 72,500 | 27,500 | 55,000 |
| | | | | | | X |
| Total Super Balance | 450,000 | 455,000 | 455,000 | 475,000 | 547,500 | 547,500 |

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# Optimising Personal Super Contributions

**Concessional Contributions: to make now or to defer?**

- Consider your current and future marginal tax rates and income levels to determine the best timing and amount of contributions.
- Keep in mind that if your Adjusted Taxable Income is $250,000 or over (inc super), concessional super contributions attract extra 15% tax (Div 293 Tax).
- Unused caps expire after 5 years (e.g. the last year to utilise the 2019 cap is 2024)

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# 5. DISCRETIONARY TRUSTS

**Trustee resolutions**

**Trustee must pass the resolution by 30 June to make beneficiaries presently entitled.**

- Read the trust deed!
  - Classes of eligible beneficiaries
  - Excluded beneficiaries
  - Definition of trust income
  - Streaming
- Is the trust subject to Family Trust Election?
- Closely held trusts to withhold tax from beneficiaries who have not provided TFN
- Distribute PSI Income to practitioners
- Resolution must prescribe a methodology of calculating entitlements (e.g. % or $, balance paid to residual beneficiary)

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# ATO Focus on Trust Distributions

ATO may seek to apply **s100A** (Reimbursement Agreement) to trust distributions where someone other than a presently entitled beneficiary benefits from entitlement

**Example:**

A trustee makes an adult child presently entitled to trust income but it is paid to a parent who is in a higher tax bracket

**What is section 100A**

- Anti tax avoidance measure
- Was included in the legislation in 1979 to combat “trust stripping” arrangements
- Applies where a Present Entitlement (PE) to trust income arouse out of a Reimbursement Agreement where benefit is provided to someone other than a beneficiary
- If applies, income assessed to the trustee at top marginal tax rates

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# ATO Focus on Trust Distributions

**What is a Reimbursement Agreement?**

- Presently entitled beneficiary pays tax but someone else gets benefit from this entitlement
- There doesn’t have to be a reimbursement per se
- Any agreement, arrangement or understanding
- Doesn’t have to be formal. Can be express or implied.
- Agreement can pre-date trust (but must exist before PE irises)
- Beneficiary doesn’t have to be party to agreement

**When does the s100A apply?**

+ Beneficiary presently entitled to trust income
+ Beneficiary is not under a legal disability
+ Entitlement arising out of a “Reimbursement Agreement”
+ Someone else other than the beneficiary benefits from the entitlement
+ Tax reduction purpose

**Exclusions:**

- Minor children and other beneficiaries under a legal disability
- “Ordinary Family or Commercial Dealing”

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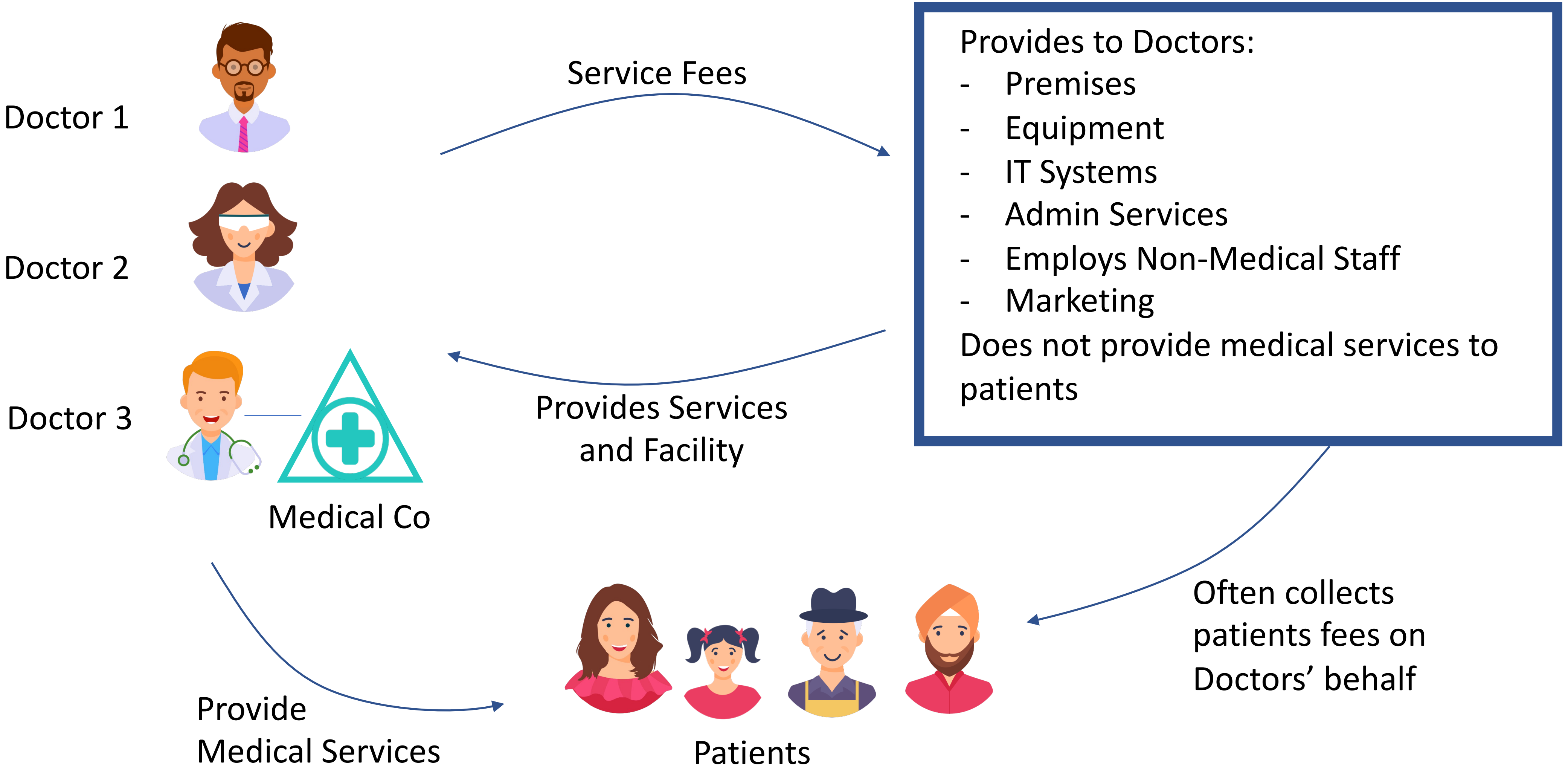
# 6. SERVICE AGREEMENTS

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# Current Issues

**Super and Payroll Tax Liability Exposure**

- Doctors working under Service Agreements are independent providers.
- HOWEVER, they may be regarded to be “employees” for Payroll Tax and Super Guarantee Purposes.
- Practices may be found liable for Super Guarantee or Payroll Tax or both.
- Service Agreement terms are important! But other factors are taken into considerations too.

# Risk Factors

## Contractual

- Imposing minimum work, rostering requirements
- Practitioners' absences must be approved by practice
- Practitioner is paid a guaranteed hourly rate
- Practitioner has no control over his/her billing policies
- Practice has ownership of patients records
- Imposing restraints of trades on practitioners
- Practitioner required to promote interests of the practice

## Operational

- Invoicing patients through practice ABN
- Billings under practice provider number
- Doctors' billings are paid to the practice business account
- Doctors' billings are recorded as practice income in accounting records

## Marketing

- Referring to doctors as "Our Doctors", "Our Team" in marketing materials
- Issuing documents under the practice letterhead.
- Making doctors wearing uniform with practice logo.

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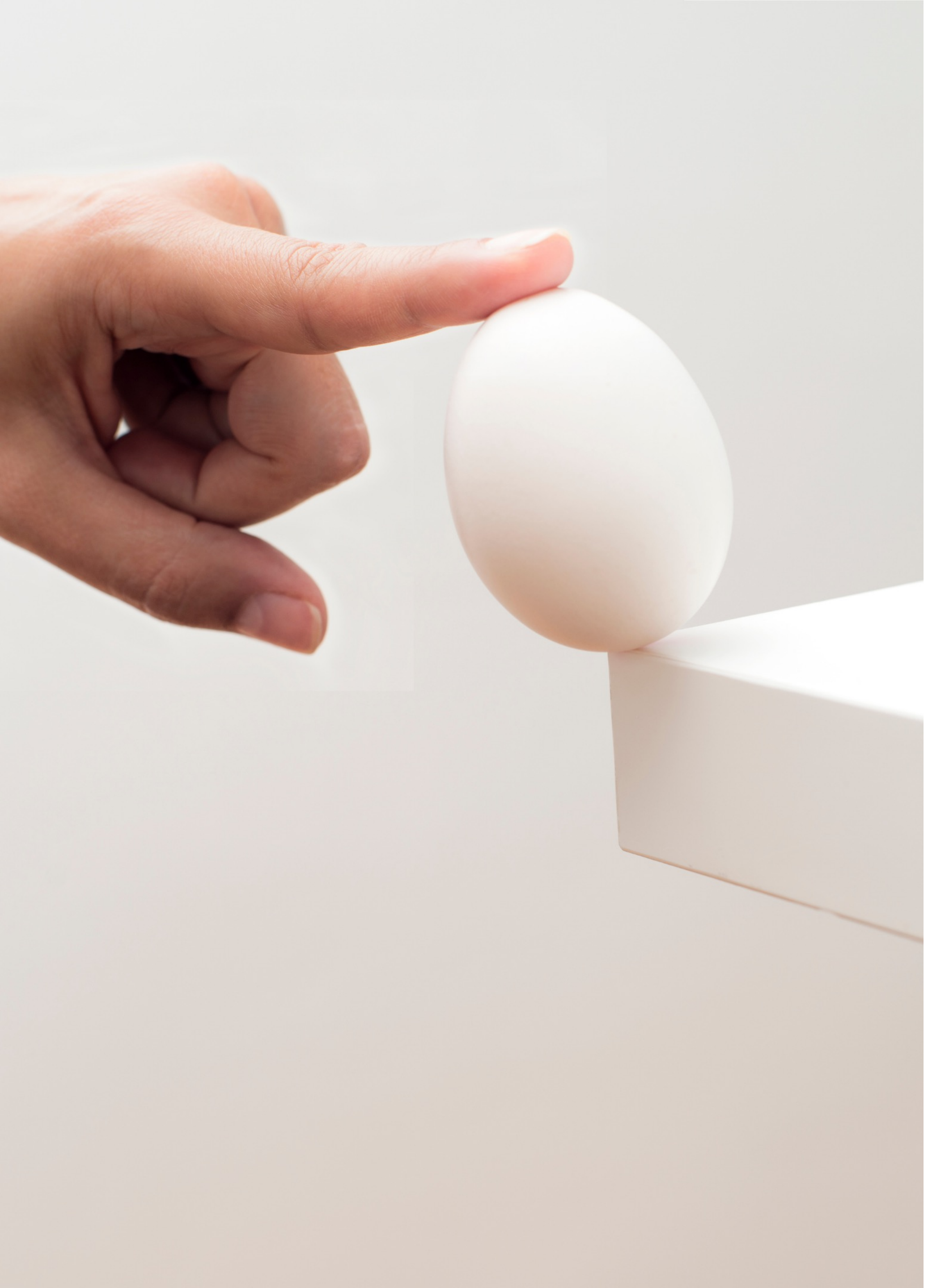

# How to Minimise the Risks

- Review your Service Agreements!
- Make sure accounting records are consistent with the nature of the arrangements
- Substance = Form
- Be diligent with keeping records
- Seek help from appropriately qualified professionals: Lawyer and Accountant who specialise in medical industry

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# 7. SERVICE ENTITY CHARGES & MARK-UPS

## Review your Service Entity Arrangements

### Step 1: Commercial benefits

**Can you explain how the service arrangement helps you run your business?**

- Gives you access to staff, resources, IP
- Relieves you of the responsibility for performing support functions
- Relieves you of certain risks
- Relieves you of certain financial or legal obligations

### Step 2: Level of service fees

**Are the service fees and charges calculated correctly?**

- **Indicative rates**
- **Comparable market prices**
- **Comparable profits:**

  - Net mark-up on costs
  - Gross mark-up on costs

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# 8.ALLOCATION OF PROFESSIONAL PROFIT FIRMS

**ATO PCG 2021/4**

**Gateway 1:** Commercial Rationale

**Gateway 2:** Absence of High-Risk Features

**Risk Assessment Framework**

| Risk Assessment Factors | Score | | | | | |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| (1) Proportion of profit entitlement from the whole of firm group returned in the hands of the IPP | >90% | >75% to ≤90% | >60% to ≤75% | ≥50% to ≤60% | >25% to <50% | ≤25% |
| (2) Total effective tax rate for income received from the firm by the IPP and associated entities | >40% | >35% to ≤40% | ≥30% to ≤35% | >25% to <30% | >20% to ≤25% | ≤20% |
| (3) Remuneration in hands of the IPP as a percentage of the commercial benchmark | >200% | >150% to ≤200% | >100% to ≤150% | >90% to ≤100% | >70% to ≤90% | ≤70% |

| Risk zone | ATO Audit Risk level | Factor 1+2 | Factor 1+2+3 |
|---|---|---|---|
| **Green** | **Low risk** | **≤7** | **≤10** |
| **Amber** | **Moderate risk** | **8** | **11 & 12** |
| **Red** | **High risk** | **≥9** | **≥13** |

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# Points to Remember

- **Practical Compliance Guidelines** will apply from 1 July 2022
- Now is a good time to review profit allocation in your practice
- Risk to be assessed annually.
- The PCG is not law and not ATO Tax Ruling.
- Purpose: to provide guidance on assessment of ATO audit risk
- High risk does not necessarily mean taxpayer is not tax compliant
- Keeping contemporaneous documents is essential!
- The guidance does not apply to income subject to PSI rules

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# 9. 2023 BUDGET MEASURES

## Technology Investment Boost

Bonus 20% tax deduction for business expenses and depreciating assets that support digital uptake.

- Expenditure incurred between 7:30pm on 29 March 2022 and 30 June 2023.
- Aggregated turnover < $50 mil.
- Cap $100,000 per year.
- Expenditure by 30 June 2022 - boost to be claimable in 2023 return
- Expenditure by 30 June 2023 - boost to be claimable in the same year.

## Skills and Training Boost

Bonus 20% tax deduction of expenditure incurred on external training courses provided to their employees.

- Expenditure incurred between 7:30pm on 29 March 2022 and 30 June 2024.
- Aggregated turnover < $50 mil.
- External providers registered in Australia.
- Courses provided in Australia or online.
- Expenditure by 30 June 2022 - boost to be claimable in 2023 return
- Expenditure in 2023 and 2024 - boost to be claimable in the same year.

**Warning:**

- At the time of recording, the measures are not law!
- Legislation has not yet been drafted!
- It is uncertain if the measures will be enacted at all!

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# 10. CAPITAL GAINS TAX

**Small Business Capital Gains Concessions**

### Small business 15-year exemption*

- Capital Gain is **disregarded** if the asset is continuously owned for 15 years.
- Does not eat up tax losses.
- Takes precedence over other concessions.

### Small business 50% active asset reduction*

- Capital Gain on disposal of active assets is **reduced by 50%**.
- Benefit may be reversed if asset is sold by a company or a unit trust
- Optional concession.

### Small business retirement exemption*

- Capital gains from the disposal of active assets are exempt from CGT up to a lifetime limit of $500,000.
- Contribution to super fund does not affect non-concessional limits.

### Small business rollover*

- Ability to defer Capital Gain by 2 years.
- Can roll over Capital Gain to acquire a replacement asset within 2 years.

*Eligibility criteria apply

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# Small Business CGT Concessions

**Eligibility criteria**

- Basic Conditions
  - SBE with aggregated turnover <2mil  OR
  - Maximum Net Asset Value Test
  - The asset must be an Active Asset
  - Additional Conditions if the asset is interest in a company or trust
- Specific Conditions apply for each concession
- Special requirements for passing over the benefits

**Order of Application**

- 15 years Exemption has priority
- 50% General Discount (if eligible)
- 50% Active Asset Discount (can choose not to apply)
- Can choose order of application for Retirement Exemption and Small Business Rollover

# Optimising Concessions and Choices

**Considerations**

- Asset Sale or Share/Units Sale
- Business Structure
- Timing of the event
- Is it better to maximise value on sale?
- Who are the concessions stakeholders?
- Who to make discretionary trust distributions in the last 4 years preceding sale?
- Whether or not to apply 50% Active Asset Reduction
- Order of application of Retirement Exemption and Small Business Rollover.
- Apply concessions to all or part of capital gain?
- How to pay out the benefits to stakeholders?
- When is contribution required to be made to super fund?
- Optimising super contributions
- Whether to liquidate the company

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# Understanding the Practice Incentives Program

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**Riwka Hagen**
Medical Business Services

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Suite 402 60 Park St
SYDNEY NSW 2000

1300 077 555
0475 077 555

info@prismaccounting.com.au

www.prismaccounting.com.au

Schedule a free 30 minutes phone consultation

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