TAXATION

Small business instant asset write-off: Govt to increase to $25,000

The Prime Minister has announced that the Government will increase the instant asset write-off already available for small businesses from $20,000 to $25,000.

TPB clamps down on practitioners' personal tax obligations

The Tax Practitioners Board (TPB) has written to over 6,000 tax practitioners with outstanding tax obligations, giving them 6 weeks to sort them out.

Overdue taxable payments annual reports

ATO has advised tax professionals they will contact them if their clients are businesses in the building and construction industry whose taxable payments are overdue.

ATO warns about new scams in 2019

ATO is warning taxpayers to be alert for scammers impersonating the ATO, as they may change tactics in 2019.

CPI: December quarter 2018

Australian Bureau of Statistics (ABS) has released the CPI indexation factor for the December quarter 2018 showing a 0.6 increase from the September 2018.

Cross-border testing program for fintech startups

ASIC has announced the launch of the Global Financial Innovation Network and invited applications from fintech startups to be part of a pilot to test their innovative products.

Fuel tax credit rates have increased

Fuel tax credit rates have increased for fuel acquired from 4 February 2019. The rates are indexed twice a year, in February and August, in line with the CPI.

Consolidation: Part IVA and the single entity rule

ATO has released an *Addendum to TR 2004/11*, its ruling on consolidation and the single entity rule.

Recovery of director penalty not subject to State limitation law

The WA District Court has held that the *WA Limitation Act 2005* not apply to penalties recoverable under a Director Penalty Notice (DPN) issued in 2008.

ATO's reasons for decision not to make product ruling "adequate"

The Federal Court has declined to make an order under the ADJR Act requiring the ATO to provide additional reasons for its decision not to make a product ruling.

AAT partially confirmed the amended assessment

The AAT has confirmed that an amended assessment was excessive and hence, it was reduced from $93,000 to $67,000: *Al Rubaei and FCT* [2019] AATA 71.

Sunshine Coast man jailed for GST fraud

ATO has advised that a Sunshine Coast man has been sentenced in the Maroochydore District Court to 30 months' jail for GST fraud.

FINANCIAL SERVICES

Banking Royal Commission report: Govt to act on all recommendations

Government has released the final report of the Royal Commission into misconduct in the banking, superannuation and financial services industry.

Financial adviser pleads guilty to $4.88m theft from SMSF clients

A former financial adviser has pleaded guilty in the Adelaide Magistrates Court to 28 dishonesty offences committed when he was a financial planner.

SUPERANNUATION

Common errors in claiming personal super deductions

ATO has reminded practitioners to avoid common errors when claiming a personal super contribution deduction.

Super anti-detriment payments a priority for complaints tribunal

Superannuation Complaints Tribunal has reported the biggest month of complaints received in its history, ahead of the transition to AFCA.

Family law superannuation split set aside by Full Court

Full Court of the Family Court has set aside a superannuation splitting order in relation to a defined benefit interest in the Commonwealth PSS Scheme.

Superannuation Contributions Tax Regulations

Government has released exposure drafts of *super contributions tax Regulations to* replace the current Regulations due to sunset in April 2019.

REGULATOR NEWS

Banking Royal Commission: Govt response and implementation process

Following the release of the final report of the Banking Royal Commission, the Treasurer has set out the details of the Government's response.

ASIC – New Regulatory Portal

ASIC is introducing a new Regulatory Portal that will improve how SMSF auditors transact and interact with us online.

TAXATION

Small business instant asset write-off: Govt to increase to $25,000

The Prime Minister has announced that the Government will increase the instant asset write-off already available for small businesses from $20,000 to $25,000. Mr Morrison also said that the instant write-off will be extended by 12 months to 30 June 2020. (It was due to revert to $1,000 on 1 July 2019.)

The measure is expected to benefit more than 3 million eligible small businesses with a turnover of up to $10 million a year to access the accelerated depreciation for assets costing less than $25,000. This means that, from 29 January 2019, small businesses can instantly deduct each and every asset under $25,000, Mr Morrison said. The Government said it will introduce legislation when Parliament resumes on 12 February 2019.

TPB clamps down on practitioners outstanding personal tax obligations

The Tax Practitioners Board (TPB) has emailed a letter, *Overdue personal tax lodgements and debts*, to over 6,000 tax practitioners with outstanding tax obligations and asked them to contact the ATO to address these matters. This followed the launch of its debt and lodgment strategy on 11 December 2018 when the TPB issued a media release urging tax practitioners to rectify outstanding personal tax obligations.

The TPB also advised that under the strategy, it would give tax practitioners 6 weeks to get their tax affairs in order. If tax practitioners failed to respond, firmer action would be taken to enforce the laws, including TPB investigations, ATO prosecutions and proactive collection action where appropriate. To assist tax practitioners, the TPB also released a new information sheet which provided guidance on Code item 2 (complying with the taxation laws in the conduct of personal affairs).

Overdue taxable payments annual reports

The ATO has advised tax professionals that from February it is contacting businesses in the building and construction industry about their overdue taxable payments annual reports by sending a list of the taxpayers and the years overdue.

The ATO says if tax agent clients have not lodged their 2018 or any prior year taxable payments annual reports, "now is the time to get them back on track to avoid penalties".

ATO warns about new scams in 2019

The ATO is warning taxpayers to be alert for scammers impersonating the ATO, as they may change tactics in 2019. Assistant Commissioner Karen Foat said scammers have been developing new ways to get taxpayers' money and personal information.

While the ATO regularly contacts taxpayers by phone, email and SMS, the ATO will not:

- send you an email or SMS asking you to click on a link to provide login, personal or financial information, or to download a file or open an attachment;
- use aggressive or rude behaviour, or threaten you with arrest, jail or deportation;
- request payment of a debt via iTunes or Google Play cards, pre-paid Visa cards, cryptocurrency or direct credit to a personal bank account; or
- request a fee in order to release a refund owed to you.

CPI: December quarter 2018

The Australian Bureau of Statistics (ABS) has released the CPI indexation factor for the December quarter 2018 showing a 0.6 increase from the September 2018 quarter to **114.1**. The ABS said inflation was running at 1.8% through the year to December quarter 2018.

The most significant rises this quarter were tobacco (+9.4%), and domestic holiday travel and accommodation (+6.2%). The rise was partially offset by falls in automotive fuel (-2.5%), and audio visual and computing equipment (-3.3%).

Cross-border testing program for fintech startups

ASIC has announced the launch of the Global Financial Innovation Network (GFIN) and invited applications from fintech startups to be part of a pilot to test their innovative financial products, services or business models across jurisdictions. GFIN is a group of 28 international organisations including ASIC, committed to supporting financial innovation in the interests of consumers.

Applications are due by 28 February 2019. Fintech startups interested in applying to take part in the pilot cross-border tests should review the list of participating regulators and submit an application.

Fuel tax credit rates have increased

Fuel tax credit rates have increased for fuel acquired from 4 February 2019. The rates are indexed twice a year, in February and August, in line with the CPI. The ATO says businesses claiming less than $10,000 in fuel tax credits in a year, should use the rate that applies at the end of the BAS period.

Consolidation: Part IVA and the single entity rule

The ATO has released an ***Addendum to TR 2004/11***, its ruling on consolidation and the single entity rule. The Addendum adds an appendix to TR 2004/11 to explain how the Commissioner will administer Pt IVA and the consolidation provisions in light of the decision in *Channel Pastoral Holdings Pty Ltd v FCT* [2015] FCAFC 57.

Appendix 1 to TR 2004/11 advises that where a Pt IVA tax benefit is obtained by an entity in connection with a scheme that includes, as a step, an entity becoming a subsidiary member of a consolidated group, the Commissioner will make a Pt IVA determination for that entity and give effect to that determination by including an amount in its assessable income. The Addendum applies from 30 January 2019.

Recovery of director penalty not subject to State limitation law

The WA District Court has held that the *WA Limitation Act 2005* ("Limitation Act") did not apply to penalties recoverable under a Director Penalty Notice (DPN) issued in 2008: *DCT v McWhirter* [2019] WADC 5, District Court of WA (Kingsley R, 30 January 2019).

The taxpayer received a DPN for amounts withheld and not remitted to the ATO. The taxpayer argued that the proceedings were not a proceeding for the recovery of a tax, but the recovery of a penalty. The Limitation Act bars the recovery of penalties after 6 years. The taxpayer added that as Div 269 of the TAA did not provide an alternative means for contesting a claim, the only method available to a taxpayer to contest a DPN is to wait for the Commissioner to commence proceedings, and then file a defence. Thus, as Div 269 was self-contained, including its own requirement that proceedings be commenced to recover the purported penalty, the limitation should apply.

The Court found that the moneys claimed by the Commissioner were a tax-related liability by virtue of s 250-10 of the TAA. The Court held that: "Not all tax-related liabilities require an assessment (s 250-5 TAA). In this case the tax-related liability is enforced by the Commissioner issuing proceedings, and then available to the defendant is a regime of defences. That regime for recovery, in my opinion, covers the field."

ATO's reasons for decision not to make product ruling "adequate"

The Federal Court has declined to make an order under the ADJR Act requiring the ATO to provide additional reasons for its decision not to make a product ruling: *Agriwealth Capital Ltd v FCT* [2019] FCA 56, Fed Ct (Robertson J, 1 February 2019).

The taxpayer carried on forestry operations. Every year between 2006 and 2016 (but not in 2017) it obtained a product ruling in respect of its proposed forestry project for the relevant year. In October 2017, the taxpayer applied for a product ruling in respect of its proposed 2018 timber project. However, on 5 February 2018, the ATO advised the taxpayer by letter that it would not issue a ruling. A month later, on 9 March 2018, the ATO advised the taxpayer's solicitors by letter that it was not obliged to provide a written statement under s 13 of the ADJR Act, but nevertheless provided written reasons for its decision in that letter.

The Federal Court firstly concluded that the decision not to exercise the statutory power to make a ruling was a decision to which the ADJR Act applied. The Court then decided that although the 9 March statement did not accompany the decision given on 5 February 2018, the statement contained adequate findings on material questions of fact, adequate reference to the material on which those findings were based and adequate reasons for the decision. Accordingly, the Court declined to make an order that the ATO provide an additional statement.

AAT partially confirmed the amended assessment

The AAT has confirmed that an amended assessment was excessive and hence, it was reduced from $93,000 to $67,000: *Al Rubaei and FCT* [2019] AATA 71 (AAT File Nos 2017/5538 and 2018/0624, Boyle DP, 30 January 2019). Following an audit of the taxpayer and his company, the ATO issued an amended assessment to the taxpayer for the 2014 income year increasing his assessable income by $93,000. This amount represented deposits to a Westpac account, which the taxpayer had failed to disclose in his return and in a questionnaire sent to him by the ATO. The ATO also imposed an administrative penalty of $19,504, being a 50% penalty on the tax shortfall (based on recklessness) and a 20% uplift under s 284-220 in Sch 1 TAA for obstruction or failure to disclose.

The taxpayer contended that the amounts in question were gifts, loans and the proceeds of the sale of gold and his wife's jewellery. On the evidence, the AAT accepted that $10,000 came from the sale of the jewellery and that $16,000 was a gift from his wife's family overseas. However, the AAT was not satisfied that the other amounts were not assessable income. The taxpayer was not a convincing witness and others who provided statutory declarations in support of the taxpayer were not called as witnesses, so their evidence was untested. The AAT agreed that the 50% shortfall penalty and 20% uplift were justified, although the amount of the penalty was reduced as the AAT had concluded that the jewellery proceeds and the gift ($26,000 in total) were not assessable income.

Sunshine Coast man jailed for GST fraud

The ATO has advised that a Sunshine Coast man has been sentenced in the Maroochydore District Court to 30 months' jail for GST fraud. He was also ordered to pay reparations of more than $130,000. Between October 2008 and February 2013, the ATO said the man lodged 8 BAS and fraudulently obtained $138,723 in GST refunds and attempted to obtain a further $962,772.

Although the man stated he was the director of a motor vehicle and yacht business, the audit found the company had no business activity, did not make any business sales or purchases, had not paid any GST and had no entitlement to receive the GST refunds claimed.

FINANCIAL SERVICES

Banking Royal Commission report: Govt to act on all recommendations

The Government has released the final report of the Royal Commission into misconduct in the banking, superannuation and financial services industry.

The Treasurer, Josh Frydenberg, said the Government will take action on all 76 of the recommendations made by Kenneth Hayne in the final report. Importantly, the Royal Commission did not call for a mandatory structural separation between the manufacture or sale of financial products, and the provision of financial advice. However, the grandfathering provisions for conflicted remuneration will be repealed.

Financial adviser pleads guilty to $4.88m theft from SMSF clients

A former financial adviser has pleaded guilty in the Adelaide Magistrates Court to 28 dishonesty offences committed when he was a financial planner and director of a financial services company in Adelaide. ASIC alleged that between August 2009 and July 2016, the adviser stole $4.88 million from funds he was managing for his clients, many of whom had SMSFs, for which he was able to access their bank accounts.

ASIC also alleged that between June 2012 and July 2016, the adviser created and used false documents, including banking documents and member statements. The former adviser was placed on bail and remanded to appear in the committal court on 27 February 2019. He faces a maximum penalty of 10 years imprisonment for each offence committed prior to May 2012, or 15 years imprisonment for each offence committed after that time.

SUPERANNUATION

Common errors in claiming personal super deductions

The ATO has reminded practitioners to avoid common errors when claiming a personal super contribution deduction.

The ATO says practitioners can avoid common errors that lead to disallowed personal super deductions by:

- checking if their client is eligible to claim, ie if they made personal (after tax) super contributions directly to their super fund before 30 June 2018;
- ensuring their client has sent a notice of intent to claim or vary a deduction for personal super contributions to their super fund and has received an acknowledgement;
- only claiming deductions for after-tax personal super contributions, and not from pre-tax income, eg the superannuation guarantee, salary sacrifice, or reportable employer super contributions shown on the individual's payment summary.

Super anti-detriment payments a priority for complaints tribunal

The Superannuation Complaints Tribunal (SCT) has released its newsletter for Q4 2018 reporting the biggest month of complaints received in its history ahead of the transition to the Australian Financial Complaints Authority (AFCA). The SCT accepted its last super complaint on 31 October 2018, and reported a 47% increase on the month prior (and a 76% increase on October 2017).

Chairperson, Helen Davis, said the SCT is now focused on resolving complaints received by 31 October 2018, following the transition to AFCA which started accepting new super complaints from 1 November 2018. The largest single complaint category continues to be death benefits. Of all the complaints resolved by the SCT during Q4 2018, 32.4% related to death benefits following the prioritisation of complaints with a potential anti-detriment payment. Superannuation funds may claim a deduction for an anti-detriment payment under s 295-485 of the ITAA 1997 as part of a death benefit if a fund member has died on or before 30 June 2017, and the benefit has been paid by 30 June 2019. Of the 149 death benefit distribution complaints finalised in Q4 2018, the SCT said 90 (60.4%) of them had a potential anti-detriment payment.

Family law superannuation split set aside by Full Court

The Full Court of the Family Court has set aside a superannuation splitting order in relation to a defined benefit interest in the Commonwealth Public Sector Superannuation (PSS) Scheme after ruling that the trial judge had failed to consider the scheme-specific rules when making the splitting order: *Bulow & Bulow* [2019] FamCAFC 3, Family Court of Australia, Full Court (Strickland, Murphy and Kent JJ, 18 January 2019.)

On appeal from the Federal Circuit Court, the Full Court set aside the super splitting order after ruling that the trial judge made a discretionary error at law by failing to consider the nature, form and characteristics of the PSS defined benefit interest. The Full Court said the single most significant consideration in seeking to achieve justice and equity in an alteration of the parties' superannuation interests (and the s 79 orders more broadly), is the nature, form and characteristics of the particular interests and what consequences and effects may flow. In this respect, the Full Court noted that the trial judge had made no mention of the potential effects of any proposed splitting order upon the husband's PSS interest, or the interest that would be created for the wife by reason of the splitting order. Accordingly, the Full Court remitted the matter for rehearing.

Superannuation Contributions Tax Regulations

The Government has released exposure drafts of the *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019* and *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019.* They will remake the current *Superannuation Contributions Tax (Assessment and Collection) Regulations 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997*, which are due to sunset on 1 April 2019.

The Draft Regulations look to repeal redundant provisions, omit provisions that are no longer operative and make information provision rules simpler and more consistent with practice elsewhere in the tax law. Note that the surcharge no longer applies, having been abolished with effect from the 2005-06 income year. However, Regulations are still required as the payment of certain surcharge liabilities accrued before 30 June 2005 have been deferred until the relevant members receive a superannuation benefit.
Submissions are due by 15 February 2019.

REGULATOR NEWS

Banking Royal Commission: Govt response and implementation process

Following the release of the final report of the Banking Royal Commission, the Treasurer, Josh Frydenberg, released the Government's response setting out the details on its agreement with, or support for, all 76 of the recommendations made by Kenneth Hayne.

IMPLEMENTATION PROCESS: Various commencement dates are specified for the Government's reforms in response to the recommendations. To coordinate these reforms, the Treasury Royal Commission Taskforce will continue as a Financial Services Reform Implementation Taskforce. An Implementation Committee will also be established consisting of the Treasury, ASIC, APRA, the Office of the Parliamentary Counsel and other agencies as required.

ASIC Chair, James Shipton, said the final report acknowledged that ASIC's enforcement culture was identified as an area for change. APRA Chair, Wayne Byres, said APRA is reviewing its enforcement strategy with the assistance of an Independent Expert Panel in light of the conclusion that APRA needs to adopt a stronger stance in relation to enforcement activities. This report is expected to be completed by the end of March 2019.

ASIC – New Regulatory Portal

ASIC is introducing a new Regulatory Portal that will improve how SMSF auditors transact and interact with us online.

Effective 4 March 2019, SMSF auditors will be required to maintain their registration and fulfil all related obligations via this portal. Applications to be registered as an approved SMSF auditor must be submitted via the portal too. For more information about the upcoming changes, go to the ASIC website: https://bit.ly/2DB1735