TAXATION

Coronavirus stimulus package

Government has announced a $17.6bn stimulus package in response to the coronavirus including increasing instant asset write off, stimulus payments and other measures.

ATO admin concessions for coronavirus

ATO has announced a series of administrative concessions for taxpayers impacted by the coronavirus including the deferral of some tax payments.

High wealth private groups: ATO looking to close the tax gap

ATO has provided an update on the income tax performance for high wealth private groups and future compliance strategies.

Cash payment limit: Senate Committee recommends passage

The Senate Economics Legislation Committee has released its report on the cash payment limit Bill recommending it be passed.

Independent review of ATO audit position pilot expanded

ATO has advised that it has extended and expanded its pilot program which offers an independent review service to eligible small businesses.

ATO consultation requirement to lodge 2020 returns

ATO has issued for consultation draft instrument requirements to lodge a return for the year ended 30 June 2020.

TPB register enhancements announced

The Tax Practitioners Board has advised that it has made changes to its public register designed to enable taxpayers to easily find registered agents who can be trusted.

FBT car parking draft ruling – ATO defers start date

ATO has indicated that it intends to defer the application of Draft Ruling TR 2019/D5 from 1 April 2020 to 1 April 2021.

ATO annual report 2018-19 inquiry launched

House of Reps Committee on Tax and Revenue has launched an inquiry into the Commissioner of Taxation Annual Report 2018-19.

Accountant fined for false invoice charges

ASIC has reported that a Melbourne accountant has been fined after pleading guilty to two charges of making a false or misleading statement in a document.

Auditor independence draft guide released

Accounting Professional & Ethical Standards Board (APESB) has issued a draft update of its independence guide to assist auditors.

Taxpayer not entitled to input tax credits

A taxpayer has failed to prove that he made creditable acquisitions and therefore was not entitled to input tax credits.

FINANCIAL SERVICES

Financial advice fee consents and independence

ASIC has issued a consultation paper on implementing the banking royal commission recommendations for financial advice fee consents and independence disclosure.

SUPERANNUATION

Super guarantee amnesty Bill receives assent

Government's super guarantee amnesty Bill has received Royal Assent with the amnesty period to run from 24 May 2018 to 7 September 2020.

Super contributions flexibility for recent retirees – draft legislation

Government has released draft legislation and regulations to give effect to its 2019-20 Budget proposals on changes to the work test and bring-forward arrangements.

Superannuation rates and thresholds for 2020-21

ATO has released superannuation rates and thresholds for 2020-21 including the contributions cap, super guarantee, co-contributions, super benefits, and others.

Pension deeming rates cut

Government has announced that it will lower the social security deeming rate for financial investments.

Change of fund status for SMSFs with overdue annual returns

ATO has warned SMSFs that the status of their fund will be changed if they are more than two weeks overdue on any annual return lodgment due date.

ATO speech: concern over non-lodgement

ATO says it is particularly concerned about 24,000 SMSFs who have never lodged a return.

Defined benefit super pensions and transfer balance cap changes

ATO has provided guidance in relation to Regulations which made technical amendments to the transfer balance cap rules for certain capped defined benefit income streams.

Early release super scheme operator banned by ASIC

ASIC has permanently banned an operator of an alleged illegal early access to superannuation scheme based in Perth.

REGULATOR NEWS

Board of Taxation CEO update

Board of Taxation CEO has provided an update following its most recent meeting including the progress of its reviews.

Government response to ACNC review

Government has released its response to the Australian Charities and Not-for-profits Commission Legislative Review 2018.

The Australian Accounting Standard Boards (AASBO) Weekly Update

The AASB's weekly snapshot of developments at the AASB and in international financial reporting.

ACCC Small Business & Franchising Consultative Committee Update

The ACCC has issued the following advice in relation to the coronavirus pandemic (COVID-19).

TAXATION

Coronavirus stimulus package

The Government has announced a $17.6 billion economic stimulus package in response to the coronavirus (COVID-19). The package, which is expected to provide direct support for up to 6.5 million individuals and 3.5 million business, includes four key parts:

Delivering support for business investment & Supporting apprentices and trainees

The Government is backing businesses to invest to help the economy withstand and recover from the economic impact of Coronavirus. The two business investment measures in this package are designed to assist Australian businesses and economic growth in the short term, and encourage a stronger economic recovery following the Coronavirus outbreak.

These measures will support over 3.5 million businesses (over 99 per cent of businesses) with aggregated annual turnover of less than $500 million employing more than 9.7 million employees.

INCREASING THE INSTANT ASSET WRITE-OFF

The Government is increasing the instant asset write-off (IAWO) threshold from $30,000 to $150,000 and expanding access to include all businesses with aggregated annual turnover of less than $500 million (up from $50 million) until 30 June 2020. In 2017-18 there were more than 360,000 businesses that benefited from the current IAWO, claiming deductions to the value of over $4 billion.

The IAWO threshold

The higher IAWO threshold provides cash flow benefits for businesses that will be able to immediately deduct purchases of eligible assets each costing less than $150,000. The threshold applies on a per asset basis, so eligible businesses can immediately write-off multiple assets.

The IAWO is due to revert to $1,000 for small businesses (turnover less than $10 million) from 1 July 2020.

Eligibility

The Government is expanding access so that more businesses can take advantage of the IAWO. The annual turnover threshold for businesses is increasing from $50 million to $500 million. Expanding the threshold will mean an additional 5,300 businesses who employ around 1.9 million Australians will be able to access the IAWO for the first time.

Timing

This proposal applies from announcement until 30 June 2020, for new or second-hand assets first used or installed ready for use in this timeframe.

Example 1 — Business benefits from increased asset threshold

Owen owns a company, ON Point Farms Pty Ltd, through which he operates a farming business in the Central Wheat Belt of Western Australia. ON Point Farms Pty Ltd has an aggregated annual turnover of $25 million for the 2019-20 income year. On 1 May 2020, Owen purchases a second hand tractor for $140,000, exclusive of GST, for use in his business.

Under existing tax arrangements, ON Point Farms Pty Ltd is not able to immediately deduct assets costing more than $30,000 and instead would depreciate the tractor using an effective life of 12 years. Choosing to use the diminishing value method, ON Point Farms Pty Ltd would claim a tax deduction of $3,899 for the 2019-20 income year.

Under the new $150,000 instant asset write-off, ON Point Farms Pty Ltd would instead claim an immediate deduction of $140,000 for the purchase of the tractor in the 2019-20 income year, $136,101 more than under existing arrangements. At the company tax rate of 27.5 per cent, Owen will pay $37,427.78 less tax in 2019-20.

This will improve ON Point Farms Pty Ltd's cash flow and help his business withstand and recover from the economic impact of the Coronavirus.

Example 2 — Business benefits from increased turnover threshold

Samantha owns a company, Sam's Specialty Roasters Pty Ltd, through which she operates a large food processing business in Brisbane. Sam's Specialty Roasters

Pty Ltd has an aggregated annual turnover of $150 million for the 2019-20 income year. On 1 May 2020, Samantha purchases five new conveyor belts for her production facility for $40,000 each, exclusive of GST, for use in her business.

Under existing tax arrangements, Sam's Specialty Roasters Pty Ltd is not eligible for the instant asset write-off and instead would depreciate the conveyor belts using an effective life of 15 years. Choosing to use the diminishing value method, Sam's Specialty Roasters Pty Ltd would claim a total tax deduction of $4,456 for the 2019-20 income year.

Under the new $150,000 instant asset write-off, Sam's Specialty Roasters Pty Ltd would instead claim an immediate deduction of $200,000 for the purchase of the conveyor belts (i.e. $40,000 for each conveyor) in the 2019-20 income year, $195,544 more than under existing arrangements. At the company tax rate of 30 per cent, Samantha will pay $58,663.20 less tax in 2019-20.

This will improve Sam's Specialty Roasters Pty Ltd's cash flow and help her business withstand and recover from the economic impact of the Coronavirus.

BACKING BUSINESS INVESTMENT (BBI)

The Government is introducing a time limited 15 month investment incentive to support business investment and economic growth over the short-term, by accelerating depreciation deductions. The key features of the incentive are:

- benefit — deduction of 50 per cent of the cost of an eligible asset on installation, with existing depreciation rules applying to the balance of the asset's cost;
- eligible businesses — businesses with aggregated turnover below $500 million; and
- eligible assets — new assets that can be depreciated under Division 40 of the Income Tax Assessment Act 1997 (i.e. plant, equipment and specified intangible assets, such as patents) acquired after announcement and first used or installed by 30 June 2021. Does not apply to second-hand Division 40 assets, or buildings and other capital works depreciable under Division 43.

Eligibility

Businesses with aggregated turnover below $500 million, purchasing certain new depreciable assets.

Timing

Applies to eligible assets acquired after announcement and first used or installed by 30 June 2021.

Example 3 — Middle-sized business benefits from the BBI

J Construction Solutions Pty Ltd has an aggregated annual turnover of $200 million for the 2020-21 income year. On 1 July 2020, J Construction Solutions Pty Ltd installs a $1 million truck mounted concrete pump for use in the business.

Under existing tax arrangements, J Construction Solutions Pty Ltd could claim 30 per cent depreciation in the first year (based on the asset's effective life of 6⅔ years).

Under the new BBI, J Construction Solutions Pty Ltd can claim a depreciation deduction of $650,000 in the 2020-21 income year. This consists of 50 per cent of the concrete pump's value under the new BBI ($500,000) plus 30 per cent of the remaining $500,000 under existing depreciation rules ($150,000). This is $350,000 more than under existing tax arrangements.

At the company tax rate of 30 per cent, J Construction Solutions Pty Ltd will pay $105,000 less tax in the 2020-21 income year (30 per cent of $350,000). This extra tax benefit is worth $14,000 to J Construction Pty Ltd over the asset's life (at an interest rate of 5 per cent). This will improve J Construction Solutions Pty Ltd's cash flow and lower the after tax cost of the concrete pump to the business.

Example 4 — Small business benefits from the BBI

Joan and Bruce own a company, NC Transport Solutions Pty Ltd, through which they operate a haulage business on the North Coast of New South Wales.

NC Transport Solutions Pty Ltd has an aggregated annual turnover of $8 million for the 2019-20 income year. On 1 May 2020, Joan and Bruce purchase a new truck for $260,000, exclusive of GST, for use in their business.

Under existing tax arrangements, NC Transport Solutions Pty Ltd would depreciate the truck using their small business simplified depreciation pool. Under the pooling rules, NC Transport Solutions Pty Ltd 4 would deduct 15 per cent of the asset's value upon entry to the pool, leading to a tax deduction of $39,000 for the 2019-20 income year.

Under the new BBI, NC Transport Solutions Pty Ltd would instead claim an up-front deduction of 50 per cent of the truck's value ($130,000) before placing the asset in their small business simplified depreciation pool. Joan and Bruce would then claim a further 15 per cent deduction on the depreciated value of the truck ($19,500). As a result of the two deductions, Joan and Bruce are able to claim a deduction totaling $149,500 in the 2019-20 income year, $110,500 more than under existing arrangements. At the company tax rate of 27.5 per cent, Joan and Bruce will pay $30,387.50 less tax in the 2019-20 income year.

This will improve NC Transport Solutions Pty Ltd's cash flow and help Joan and Bruce's business withstand and recover from the economic impact of the Coronavirus.

Cash flow assistance for businesses

This assistance will support businesses to manage cash flow challenges and help businesses retain their employees. These two measures are designed to support employing small and medium enterprises and to improve business confidence. In addition, the wage subsidy for apprentices and trainees will help to ensure the continued development of the skilled workforce that employers need.

BOOSTING CASH FLOW FOR EMPLOYERS

The Boosting Cash Flow for Employers measure will provide up to $25,000 back to business, with a minimum payment of $2,000 for eligible businesses. The payment will provide temporary cash flow support to small and medium businesses that employ staff. The payment will be tax free.

Eligibility

Small and medium business entities with aggregated annual turnover under $50 million and that employ workers will be eligible. Eligibility will generally be based on prior year turnover.

- The payment will be delivered by the Australian Taxation Office (ATO) as a credit in the activity statement system from 28 April 2020 upon businesses lodging eligible upcoming activity statements.
- Eligible businesses that withhold tax to the ATO on their employees' salary and wages will receive a payment equal to 50 per cent of the amount withheld, up to a maximum payment of $25,000.
- Eligible businesses that pay salary and wages will receive a minimum payment of $2,000, even if they are not required to withhold tax.

This measure will benefit around 690,000 businesses employing around 7.8 million people.

Timing

The Boosting Cash Flow for Employers measure will be applied for a limited number of activity statement lodgments. The ATO will deliver the payment as a credit to the business upon lodgment of their activity statements. Where this places the business in a refund position, the ATO will deliver the refund within 14 days.

Table 1

Quarterly lodgers will be eligible to receive the payment for the quarters ending March 2020 and June 2020. Monthly lodgers will be eligible to receive the payment for the March 2020, April 2020, May 2020 and June 2020 lodgments. To provide a similar treatment to quarterly lodgers, the payment for monthly lodgers will be calculated at three times the rate (150 per cent) in the March 2020 activity statement. The minimum payment will be applied to the business' first lodgment.

The ATO offers a range of support services to small and medium businesses experiencing hardship — visit ato.gov.au to find out more.

Examples

Sarah's Construction Business - Sarah owns and runs a building business in South Australia and employs 8 construction workers on average full-time weekly earnings who each earn $89,730 per year. In the months of March, April and June for the 2019-20 income year, Sarah reports withholding of $15,008 for her employees on each Business Activity Statement (BAS). Under the Government's changes, Sarah will be eligible to receive the payment on lodgment of each of her BAS.

Sarah's business receives:

- A payment of $22,512 for the March period, equal to 150 per cent of her total withholding.
- A payment of $2,488 for the April period, before she reaches the $25,000 cap.
- No payment for the May period, as she has now reached the $25,000 cap.
- No payment for the June period, as she has now reached the $25,000 cap.

Sean's Hairdresser Salon - Sean owns a hairdresser's salon on the Gold Coast. He employs one apprentice who earns $37,970 per year and two stylists who both earn $44,260 per year. In the March and June 2020 quarterly BAS, Sean reports withholding of $4,570 for his employees. Under the Government's changes, Sean will be eligible to receive the payment on lodgment of his BAS.

Sean's business will receive:

- A payment of $2,285 for the March quarter, equal to 50 per cent of his total withholding.
- A payment of $2,285 for the June quarter, equal to 50 per cent of his total withholding.

Sean's business will receive a total payment of $4,570. Sean may also benefit from the assistance for existing apprentices and trainees measure.

Tim's Courier Run - Tim owns and runs a small paper delivery business in Melbourne, and employs two casual employees who each earn $10,000 per year. In the March and June 2020 quarterly BAS, Tim reports withholding of $0 for his employees as they are under the tax-free threshold. Under the Government's changes, Tim will be eligible to receive the payment on lodgment of his BAS.

Tim's business will receive:

- A payment of $2,000 for the March quarter, as he pays salary and wages but is not required to withhold tax.
- No payment for the June quarter, as he has already received the minimum payment and he has no withholding obligation.

If Tim begins withholding tax for the June quarter, he would need to withhold more than $4,000 before he receives any additional payment.

SUPPORTING APPRENTICES AND TRAINEES

The Government is supporting small business to retain their apprentices and trainees. Eligible employers can apply for a wage subsidy of 50 per cent of the apprentice’s or trainee’s wage paid during the 9 months from 1 January 2020 to 30 September 2020. Where a small business is not able to retain an apprentice, the subsidy will be available to a new employer.

Employers will be reimbursed up to a maximum of $21,000 per eligible apprentice or trainee ($7,000 per quarter). Support will also be provided to the National Apprentice Employment Network, the peak national body representing Group Training Organisations, to co-ordinate the re-employment of displaced apprentices and trainees throughout their network of host employers across Australia.

Eligibility

The subsidy will be available to small businesses employing fewer than 20 full-time employees who retain an apprentice or trainee. The apprentice or trainee must have been in training with a small business as at 1 March 2020. Employers of any size and Group Training Organisations that re-engage an eligible out-of-trade apprentice or trainee will be eligible for the subsidy. Employers will be able to access the subsidy after an eligibility assessment is undertaken by an Australian Apprenticeship Support Network (AASN) provider.

Timing

Employers can register for the subsidy from early-April 2020. Final claims for payment must be lodged by 31 December 2020. Further information is available at:

The Department of Education, Skills and Employment website at: https://www.dese.gov.au/.

Australian Apprenticeships website at: www.australianapprenticeships.gov.au For further information on how to apply for the subsidy, including information on eligibility, contact an Australian Apprenticeship Support Network (AASN) provider.

Example

David's Plumbing is a small business that employs 10 people, including two full-time Australian Apprentices. Taylor is a first year Australian Apprentice, aged 20, undertaking a Certificate III qualification. She commenced her apprenticeship with David's Plumbing on 6 February 2020. Taylor receives a weekly wage of $532.89. Lisa is a third year Australian Apprentice, aged 29, undertaking a Certificate IV qualification. She commenced her apprenticeship with David's Plumbing on 18 November 2017. She receives a weekly wage of $772.71. David's Plumbing are eligible for Supporting Apprentices and Trainees which pays 50 per cent of the apprentices' wages that have been paid by David's Plumbing since 1 January 2020. David's Plumbing will receive:

- $9,059 subsidy for employing Taylor for 6 February 2020 to 30 September 2020; and
- $15,068 subsidy for employing Lisa for 1 January 2020 to 30 September 2020.

Household stimulus payment of $750 for pensioners

A one-off $750 stimulus payment will be made to pensioners, social security, veteran and other income support recipients and eligible concession card holders. Payments will be made from 31 March 2020 on a progressive basis, with over 90% of payments expected to be made by mid-April. The payment will be tax free and not count as income for Social Security, Farm Household Allowance and Veteran payments. There will be one payment per eligible recipient. If a person qualifies for the one-off payment in multiple ways, they will only receive one payment.

Support for impacted sectors, regions and communities

Support of $1bn will be provided for sectors, regions and communities that have been disproportionately impacted by the economic impacts of the coronavirus, including those heavily reliant on industries such as tourism, agriculture and education. This will include the waiver of fees and charges for tourism businesses that operate in the Great Barrier Reef Marine Park and Commonwealth National Parks. It will also include additional assistance to help businesses identify alternative export markets or supply chains.

Tax administrative relief will be provided for certain tax obligations, including deferring tax payments up to four months.

ATO admin concessions for coronavirus

The ATO has announced a series of administrative concessions for taxpayers impacted by the coronavirus (COVID-19), including the deferral of some tax payments, quicker access to GST refunds, and options to enter low interest payment plans for existing or future tax debts. Measures to assist businesses impacted by COVID-19 include:

- deferring by up to four months the payment of tax amounts due through the BAS (including PAYG instalments), income tax assessments, FBT assessments and excise;
- allowing businesses on a quarterly reporting cycle to opt into monthly GST reporting to get quicker access to any GST refunds;
- allowing businesses to vary PAYG instalment amounts to zero for the April 2020 quarter. Businesses that vary their PAYG instalment to zero can also claim a refund for any instalments made for the September 2019 and December 2019 quarters;
- remitting any interest and penalties, incurred on or after 23 January 2020, that have been applied to tax liabilities; and
- allowing affected businesses to enter into low-interest payment plans for their existing and ongoing tax liabilities.

Importantly, assistance measures for taxpayers impacted by COVID-19 will not be implemented automatically by the ATO (unlike the relief measures for the 2019-20 bushfires). Therefore, anyone impacted by COVID-19 is required to contact the ATO Emergency Support Infoline (tel: 1800 806 218) when they are ready to request assistance. Once a taxpayer contacts the ATO, Mr Jordan said a support plan will be tailored for the taxpayer.

High wealth private groups: ATO looking to close the tax gap

The ATO has provided an update on the income tax performance for high wealth private groups. There are currently around 5,000 high wealth private groups comprising 9,000 individuals and 18,000 companies. In 2016-17, they contributed over $9 billion in income tax and employed around 780,000 people.

While the vast majority of these high wealth private groups take their tax obligations seriously and are trying to "do the right thing", the ATO has estimated a $770m tax gap for high wealth private groups in 2016-17 (equivalent to 7.7%). Deputy Commissioner Tim Dyce said the ATO continues to observe a "small number that are deliberately engaging in tax avoidance". However, the ATO is confident that its compliance strategies are tackling the bad behaviour it has observed from higher-risk taxpayers and their agents, Mr Dyce said.

From 1 July 2020, the ATO said it will be expanding the work of its Tax Avoidance Taskforce and introduce a new program focusing on high wealth private groups to engage with them early to help get things right. Those seeking to obtain an unfair advantage by avoiding their tax obligations will attract the ATO's full attention and will be the subject of strong enforcement action, Mr Dyce said.

Cash payment limit: Senate Committee recommends passage

The Senate Economics Legislation Committee has released its report on the Currency (Restrictions on the Use of Cash) Bill 2019 recommending that the Bill be passed, subject to a deferred start date and other refinements. The Bill (which is currently before the Senate) proposes to make it a criminal offence for entities to make or accept cash payments of $10,000 or more.

The Committee said the Bill should be passed, subject to the start date of 1 January 2020 being deferred. The Committee thanked Assistant Treasurer, Michael Sukkar, for confirming that the Government will set a new start date following consideration of the report. The Committee said the final agreed start date should allow sufficient time for businesses to implement system changes. The Committee also recommended a communications strategy to assist in dispelling some of the unsubstantiated claims regarding the Bill. The Committee also called for a further assessment of the impact of the cash limit on migrant communities, particularly in relation to funerals.

While the Committee supports the Government's objective to crack down on the black economy, it said there were legitimate concerns for individuals and businesses that, due to various reasons, are unable to hold a bank account. The Committee also expressed concern that a disproportionate penalty could be applied to a small or medium-sized business. The Committee has also recommended that the exemption for payments relating to personal and private transactions be placed in the primary legislation (instead of the Exposure Draft Rules).

Independent review of ATO audit position pilot expanded

The ATO has advised that it has extended and expanded its pilot program which offers an independent review service to eligible small businesses disputing income tax related audits. The pilot will continue until 31 December 2020.

As originally set up, the pilot was limited to small business disputes involving income tax audits in Victoria and South Australia. It has now been expanded to include eligible small businesses with disputes involving: income tax; GST; excise; luxury car tax; wine equalisation tax; and fuel tax credits.

The audit case officer will contact a taxpayer if the taxpayer is eligible for an independent review. A written offer of independent review will also be included in the audit finalisation letter.

ATO consultation requirement to lodge 2020 returns

The ATO has issued, for consultation, draft instrument Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2020 (LODGE 2020/D1) which covers income tax returns and other lodgments for:

- franking account returns, including special rules for late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability;
- venture capital deficit tax returns;
- ancillary fund returns;
- trustees of SMSFs;
- member information statements by superannuation providers.

The draft also covers use of approved forms for lodgment, lodgment deferrals, lodgment exemptions, and penalties for non-lodgment.

The ATO also issued draft instrument Notice of Requirement for Parents with a Child Support Assessment to Lodge for the Income Year Ended 30 June 2020 (LODGE

2020/D2) for consultation. It requires liable and recipient parents under a child support assessment to lodge an income tax return for the income year, by the due date specified in the instrument. Such persons may not otherwise be required to lodge an income tax return. The return must be in the approved form.

Comments for both due by 8 April 2020.

TPB register enhancements announced

The Tax Practitioners Board has advised that it has made changes to its public register, designed to enable taxpayers to more easily find registered agents "who can be trusted".

There are no precise details of the changes, but the media release states that the "new" TPG register will include more details of practitioners who have been sanctioned for misconduct, and for others who have resigned or surrendered their agent's registration.

The register is updated daily at 5:00 pm. The TPB encourages anyone who is using a tax agent, or thinking of using one for the first time, to check the register.

FBT car parking draft ruling – ATO defers start date

The ATO has indicated that it intends to defer the application of Draft Ruling TR 2019/D5 (FBT: car parking benefits) from 1 April 2020 to 1 April 2021 to allow employers time to implement the changes once the ruling is finalised.

The draft ruling contains the ATO's revised view on the proposed treatment of a car park that charges prohibitive rates for all-day parking.

ATO annual report 2018-19 inquiry launched

The House of Reps Committee on Tax and Revenue has launched an inquiry into the Commissioner of Taxation Annual Report 2018-19. As Australia's principal revenue collection body, the annual report is a key mechanism for the ATO's accountability to the Government and the Australian community. The 2018-19 annual report was tabled in Parliament in October 2019.

The committee invites interested parties to make submissions that may assist with the inquiry.

Submissions due by 17 April 2020.

Accountant fined for false invoice charges

ASIC has reported that a Melbourne accountant has been fined $7,500 after pleading guilty to two charges of making a false or misleading statement in a document required for the purposes of the Corporations Act 2001.

The Court found that the accountant, an employee of an accounting and financial advisory firm, had raised two invoices for accounting services that were false or misleading contrary to s 1308(2) of the Corporations Act. These invoices totalled $275,000 and were addressed to NewSat Limited (a satellite communications provider) for purported financial and advisory services, however no such services were provided to NewSat.

Following the issuing of these invoices, NewSat made payments totalling $275,000 to the accounting and financial advisory firm at which the accountant was employed, with NewSat receiving no benefit for the payment. Of the total paid by NewSat on these invoices, ASIC said $245,000 was then transferred to a private company of which the accountant was a director.

The accountant was convicted by the County Court of Victoria on the two counts of contravening s 1308(2) of the Corporations Act and fined $7,500. In delivering the sentence, Judge Sarah Dawes said the accountant "held a position of trust and should be held accountable for providing misleading information. Offending of this nature undermines public confidence in the share market and public companies.".

Auditor independence draft guide released

The Accounting Professional & Ethical Standards Board (APESB) has issued a draft update of its Independence Guide to assist auditors, including approved SMSF auditors, to comply with the independence requirements.

The Draft Independence Guide (5th Edition) includes proposed changes to align the content and examples with the restructured APES 110 (Code of Ethics for Professional Accountants), effective from 1 January 2020, and the enhanced conceptual framework. Additional examples set out scenarios where an SMSF audit would always result in independence requirements being breached.

Comments are due by 23 March 2020.

Taxpayer not entitled to input tax credits

A taxpayer has failed to prove that he made creditable acquisitions and therefore he was not entitled to input tax credits (ITCs): Dobie and FCT [2020] AATA 292 (AAT, File no: 2018/1420, Tavoularis SM, 31 January 2020).

The taxpayer conducted a hairdressing business. He was registered with an ABN from 8 December 2004 to 3 November 2008, and again from 18 October 2010 to 10 June 2015. In addition, he was registered for GST on a cash basis with quarterly tax periods from 2 July 2006 to 30 June 2008 and 1 December 2010 to 30 June 2011. Following an audit, the ATO revised the taxpayer's BASs for seven quarterly tax periods spanning more than four years between 31 December 2006 and 30 June 2011 (the relevant tax periods). As a consequence, the ATO assessed the taxpayer to pay a net amount of GST for those tax periods. An administrative penalty was also imposed for failing to exercise reasonable care in claiming ITCs.

The taxpayer failed to satisfy the AAT that he had made creditable acquisitions during the relevant tax periods, with the result that he failed to show that he was entitled to ITCs for the relevant tax periods. The AAT also decided that the taxpayer was not carrying on an enterprise from 30 June 2011 and thus he was not entitled to be registered for GST. This was based on statements he made to the ATO that he was no longer trading from mid-April 2011 and that he was on sickness benefits, and oral evidence to the AAT that he was on Newstart allowance throughout the period between December 2010 and June 2011. Finally, the AAT upheld the administrative penalty imposed by the ATO, commenting that there was no reasonable requirement to remit the penalties any further than the 20% reduction made by the ATO.

FINANCIAL SERVICES

Financial advice fee consents and independence

ASIC has issued a consultation paper (CP 329) on implementing the Banking Royal Commission recommendations for financial advice fee consents and independence disclosure. The consultation paper also includes the following draft legislative instruments which are based on the Government's exposure draft legislation, released on 31 January 2020, in response to the Royal Commission recommendations:

- Draft ASIC Corporations (Consent to Deductions-Ongoing Fee Arrangements) Instrument 2020/XX - written consent to deduct, or to arrange to deduct, fees from a client account as part of an ongoing fee arrangement (Recommendation 2.1);
- Draft ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2020/XX - written consent to deduct fees from a superannuation account under an arrangement that is not an ongoing fee arrangement (Recommendation 3.3); and
- Draft ASIC Corporations (Disclosure of Lack of Independence) Instrument 2020/XX - written statement that discloses advice providers' lack of independence (Recommendation 2.2).

Date of effect: The draft instruments will not commence until the legislation takes effect. ASIC said the Government has proposed to introduce legislation implementing the Royal Commission recommendations from 1 July 2020.

Submissions are due by 7 April 2020.

SUPERANNUATION

Super guarantee amnesty Bill receives assent

The Government's Super Guarantee amnesty legislation, the Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019 has received Royal Assent as Act No 21 of 2020. The SG amnesty period runs from 24 May 2018 and ends on 6 September 2020 (being six months after the day the Bill received Royal Assent). However, as that end date falls on a weekend, the ATO says employers have until 11:59PM on 7 September 2020 to disclose, lodge and pay under the amnesty. The ATO guidance on the SG amnesty says employers who have already disclosed unpaid SGC to the ATO between 24 May 2018 and 6 March 2020 don't need to apply or lodge again. Employers who come forward from 6 March 2020 need to apply for the amnesty using the ATO approved SG amnesty form.

The amnesty applies to SG shortfalls up until the quarter starting on 1 January 2018 (inclusive). To qualify for the amnesty, a disclosure must be made to the ATO in the approved form (and must not have been previously disclosed). Under the amnesty, employers can self-correct SG underpayments without incurring additional penalties that would normally apply. Importantly, employers can claim a tax deduction for payments of SG charge or contributions made during the amnesty period (the SG charge is otherwise non-deductible). Employers must still pay all SG shortfall amounts owing to their employees, including the nominal interest and GIC (but not the $20 administrative component). Rather, the amnesty encourages employers to come forward and pay outstanding SG amounts by not hitting them with the penalties usually associated with late payment. If employers do not take advantage of the amnesty before 7 September 2020, they will face significantly higher penalties when they are caught - a minimum 100% penalty on top of the SG shortfall.

Super contributions flexibility for recent retirees – draft legislation

The Government has released draft legislation and regulations to give effect to its 2019-20 Budget proposal to allow those aged 65 and 66 to make voluntary superannuation contributions from 1 July 2020 without needing to meet the contributions work test. The age limit for receiving spouse contributions will also be increased from 69 to 74.

The Regulations will be amended to allow people aged 65 and 66 to make voluntary superannuation contributions (both concessional and non-concessional) without meeting the work test. Individuals aged 65 to 74 currently must work at least 40 hours in any 30-day period in the financial year in which the contributions are made (the "work test") in order to make voluntary personal contributions.

In addition, the Draft Bill will extend access to bring-forward arrangements to people aged 65 and 66. Currently only those under 65 may "bring forward" up to three times (ie $300,000) of their annual non-concessional cap of $100,000, provided that they meet the other eligibility rules.

Date of effect: 1 July 2020.

Submissions are due by 3 April 2020.

Superannuation rates and thresholds for 2020-21

While the concessional contributions cap of $25,000 will remain unchanged for the 2020-21 financial year, certain other important superannuation thresholds are set for a small boost from 1 July 2020.

- Contribution caps - the CGT cap amount for non-concessional contributions is $1.565m for 2019-20 (up from $1.515m). The concessional contributions cap is $25,000 for 2020-21 (unchanged since 2017-18), the cap is not expected to increase to $27,500 until 1 July 2021. The non-concessional contributions cap (which is set at four times the concessional cap) is also unchanged at $100,000 for 2020-21 (or $300,000 under the bring-forward rule over three years, subject to the other eligibility requirements).
- Super guarantee - the current super guarantee (SG) rate is not scheduled to increase from 9.5% to 10% until 1 July 2021, the "maximum contribution base" will rise to $57,090 per quarter for 2020-21 (up from $55,270 for 2019-20).
- Co-contributions - the Government co-contribution "lower income threshold" is $39,837 for 2020-21 (up from $38,564 for 2019-20); "higher income threshold" is $54,837 (up from $53,564).
- Super benefits - superannuation lump sum low rate cap is $215,000 (up from $210,000). Untaxed plan cap is $1.565m (up from $1.515m). ETP cap amount is $215,000 (up from $210,000).

- Genuine redundancy and early retirement payments - tax-free amounts: base amount - $10,989 (up from $10,638); service amount - $5,496 (up from $5,320).
- Pension cap - the general transfer balance cap will remain at $1.6m for 2019-20 (unchanged since 2017-18). This also means that the "defined benefit income cap" of $100,000 pa is unchanged for 2019-20 (being the general transfer balance cap divided by 16). Likewise, the "total superannuation balance" threshold of $1.6m is unchanged for 2020-21.

Pension deeming rates cut

The Government has announced that it will lower the social security deeming rate from 1.0% to 0.5% for financial investments up to $51,800 for single pensioners and $86,200 for pensioner couples. The upper deeming rate of 3.0% will be cut to 2.5% for balances over these amounts.

Under the new rates, Age Pensioners whose income is assessed using deeming will receive up to $62 a fortnight for couples ($1612 extra a year), and up to $50 a fortnight for singles, $1300 a year. On average, affected Age Pensioners would receive an additional $8.42 a fortnight, $219 a year. The Minister for Families and Social Services, Senator Anne Ruston, said the extra money will start flowing through into peoples bank accounts from 1 May 2020.

Change of fund status for SMSFs with overdue annual returns

The ATO has warned self-managed super funds (SMSFs) that the status of their fund will be changed to "Regulation details removed" if the SMSF is more than two weeks overdue on any annual return lodgment due date, and a deferral has not been requested. This status of "Regulation details removed" on Super Fund Lookup (SFLU) will remain in place until any overdue lodgments have been brought up to date.

Having a status of "Regulation details removed" means that APRA funds cannot roll over any member benefits to the SMSF, and employers cannot make any super guarantee contributions to the SMSF for its members. SMSF trustees can request an extension of time to lodge by contacting the ATO before the lodgment due date - tel: 3 10 20. The ATO also notes that the lodgment due date of 15 May 2020 does not apply to SMSFs in a bushfire-impacted area or non-taxable SMSFs.

ATO speech: concern over non-lodgement

The ATO says it is "particularly concerned" about the 24,000 SMSFs who have never lodged a return. Speaking at a recent conference, James O'Halloran, ATO Deputy Commissioner, Superannuation, said most of these non-lodging SMSFs have had a reduction in their APRA balance and this is highly correlated with illegal release.

Mr O'Halloran said the ATO has alerted these funds with overdue lodgments (on a blue branded ATO letter) and asked them to lodge or contact the ATO for assistance. The ATO said it is now writing to the SMSFs who didn't respond to the first reminder (on an orange branded ATO letter) alerting them if they fail to lodge the ATO will impose a failure to lodge penalty and may also seek to apply an administrative penalty. If these SMSFs still fail to engage with the ATO, Mr O'Halloran said a final warning will be issued informing the trustees that the next step will be to issue a "notice of non-compliance".

Other SMSF themes covered by Mr O'Halloran included:

- The responsibility rests with SMSF trustees to educate themselves about investment opportunities through a SMSF but also the obligations. In the near future the ATO will start autosubscribing SMSFs to a SMSF monthly online newsletter. SMSF News, provides the latest news, updates and features on what's happening in the industry. In February 2020, the ATO released a SMSF alert service, which advises trustees when there's a change to their SMSF information. The ATO also released 'best practice' advice and considerations for SMSF investment strategy;
- If in doubt, SMSF trustees should seek advice from the ATO or an adviser. If one makes a mistake, they should come forward or the consequences will grow. "Early engagement is key", said Mr O'Halloran. He also reiterated the importance of demonstrating transparency by lodging a SMSF return. This avoids the ATO taking action through the Super Fund Look up Service (SFLU). If trustees need more time with a due date, they need to let the ATO know why and more likely than not, the ATO will grant it; and

In terms of technology as a driver for change, SMSFs should consider how they can mitigate the risk of losing hard copy records by embracing technology or SMSF or accounting software.

Defined benefit super pensions and transfer balance cap changes

The ATO has provided the following guidance in relation to the Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 Regulations, which made technical amendments to the transfer balance cap rules for certain capped defined benefit income streams, effective from 1 July 2017:

- New transfer balance cap debit may affect some SMSF members - a new type of debit may impact SMSF members' transfer balance account (TBA) if they are receiving a prescribed defined benefit lifetime pension or annuity.
- Transfer balance cap changes - super funds need to consider if they have been affected by recent Regulation changes to the transfer balance cap (TBC) rules for certain capped defined benefit income streams, successor fund transfers, deferred superannuation income streams and innovative retirement income stream products.

The ATO says super funds should review their products and contact the ATO if they have members who are entitled to the transfer balance new debit. The ATO expects that only a small number of funds will be affected by this change. Following consultation, changes will be made to the ATO's reporting guidance to accommodate reporting of this new debit.

Early release super scheme operator banned by ASIC

ASIC has permanently banned an operator of an alleged illegal early access to superannuation scheme based in Perth. The scheme allegedly encouraged people to set up self-managed super funds (SMSFs) to invest their superannuation savings in a trust which then on-lent money for their house deposits.

ASIC alleged that the man had engaged in credit activities but neither he, nor his company, held an Australian credit licence, or were authorised credit representatives of a licensee. ASIC also alleged that the man was not a fit and proper person to engage in credit activities as he did not possess the attributes necessary for engaging in credit activities. ASIC further determined that the man was likely to contravene credit legislation and permanently banned him from engaging in any credit activities and from performing any function involving credit activities.

REGULATOR NEWS

Board of Taxation CEO update

The Board of Taxation CEO has provided an update following its 100th meeting. Interim CEO Lynn Kelly said the Board has now completed the second stage of its consultation on the review the corporate tax residency rules. The Board received 10 written submissions and is now in the process of finalising its review. This includes meeting with the Working Group, Treasury, and the ATO to explore how the potential reform options may impact on the practical interactions between the domestic and international tax systems and to develop appropriate recommendations. The Board expects to submit its final report to the Government following its meeting on 27 March 2020.

As part of its review of the CGT roll-over rules, the Board said it will conduct roundtable consultations in Sydney on 26 March 2020, Perth (21 April) and Brisbane (30 April). The first roundtable meeting was held in Melbourne on 20 February 2020. The review is seeking to identify and evaluate opportunities to rationalise the existing CGT rollovers and associated provisions. Submissions are due by 30 April 2020 with the Board due to report to Government by 30 November 2020. The Board also said there were now 179 signatories to the Voluntary Corporate Tax Transparency Code, with 169 of those organisations having published at least one report. A full list of signatories can be found on the Board's website.

Government response to ACNC review

The Government has released its response to the Australian Charities and Not-for-profits Commission Legislative Review 2018. The Government commissioned the review in December 2017, specifically to ensure that the regulatory environment is still appropriate in allowing the ACNC to deliver on policy objectives for the not-for-profit (NFP) sector. The panel's final report was tabled in Parliament on 22 August 2018 and made 30 recommendations.

Relevantly, the Government does not support the recommendation that the ACNC Act should be amended to provide that certain NFPs with annual revenue of $5m or more must be registered under the ACNC Act to be exempt from income tax and access Commonwealth tax concessions. Rather, the Government considers that eligibility for income tax exemptions and other tax concessions for non-charitable NFPs is best regulated by the ATO. However, it will "consider options for tightening the ATO's existing regulatory framework for not-for-profits and consider any implications for the regulatory scope of the ACNC".

In addition, the Government "noted" the recommendation that a single, national scheme for charities and NFPs should be developed. However, it stated that the proposal for a single national scheme involves a referral of powers by the States, which in turn would require States' agreement. The response then stated that the Government "will continue to work closely with the states and territories (via relevant cross-jurisdictional fora) to streamline and harmonise charities regulation".

The Australian Accounting Standard Boards (AASBO) Weekly Update

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ACCC Small Business & Franchising Consultative Committee Update

The ACCC has issued the following advice in relation to the coronavirus pandemic (COVID-19) including advice for consumers and businesses on their rights and obligations regarding travel and event cancellations.

- Australian Consumer Law (ACL) and COVID-19: https://www.accc.gov.au/consumers/consumer-rights-guarantees/covid-19-coronavirus-information-for-consumers
- ACCC Media Release dated 18 March, Advice on event and travel cancellations due to COVID-19: https://www.accc.gov.au/media-release/advice-on-event-and-travel-cancellations-due-to-covid-19
- Scamwatch information on Covid-19 scams: https://www.scamwatch.gov.au/news/covid-19-coronavirus-scams