TAXATION

Contract work income declaration under scrutiny

ATO has issued a media release stating that it is making sure payments to contractors have been properly declared.

FBT thresholds, lodgment dates and instructions

ATO has released FBT rates and thresholds for the 2021-22 FBT year including the record-keeping exemption and statutory benchmark interest rates.

Inquiry into ATO annual report 2018-19

Inquiry by the House of Reps Committee on Tax and Revenue into the Commissioner of Taxation Annual Report 2018-19 has held a public hearing.

Electronic payment system transactions exemption

ATO has issued a legislative instrument which excludes certain transactions from reporting obligations of administrators of payment systems.

MBR program: director ID transition period

Treasury has issued three exposure drafts of legislative instruments relating to the director identification regime.

ASIC to adopt “no action” position for AGMs

ASIC has advised that it will shortly adopt a temporary “no action” position in relation to the convening and holding of virtual meetings.

Registrars’ added function to assist ASIC

Government has registered a legislative instrument that specifies additional functions for Commonwealth Registrars to assist ASIC.

2020 Measures No 4 passes House of Reps

Bill to allow refunds of large scale generation shortfall charges to count as NANE income has been passed by the House of Reps.

Allocation of professional firm profits: consultation period extended

ATO has extended the due date for comments on Draft PCG 2021/D2 to 16 April 2021, the deadline was originally set as 26 March 2021.

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 to 1 April 2022 to allow employers more time to implement changes.

GST and land development in the ACT

GST Determination GSTD 2021/1 considers the GST consequences of certain building arrangements between government agencies and private developers.

Development lease arrangements with government agencies

ATO has issued an Addendum to GSTR 2015/2 to specify that that the original ruling does not apply to arrangements covered by GSTD 2021/1.

FINANCIAL SERVICES

Lack of independence disclosure: ASIC instrument

ASIC has released an instrument which sets out how any entity is to declare that it is not independent, impartial or unbiased in a Financial Services Guide.

Financial advice fee consents: ASIC instruments

ASIC has issued two instruments dealing with the requirement to obtain the permission of fee recipients and super fund members in relation to fees.

APRA chair addresses Senate committee

APRA has released a transcript of the speech that its chair, Mr Wayne Byres, gave to a Senate Economics Legislation Committee.

ASIC chair address to Senate committee

ASIC Chair has made a statement to the Parliamentary Joint Committee on Corporations and Financial Services.

SUPERANNUATION

Reuniting more super bill now law

Bill to facilitate the closure of eligible rollover funds by 30 June 2021 has received Assent as Act No 24 of 2021.

Release authorities and SMSF rollovers: ATO instrument

ATO has released an instrument that requires APRA-regulated super entities and SMSFs to send and receive rollover information using SuperStream framework.

Super trustee communications during COVID-19

ASIC has reported that super trustees were quick to resolve any matters the regulator raised during 2020 in relation to communication of COVID-19 issues.

New super data collection regime: APRA

APRA has announced that it has released the response paper and final reporting standards for Phase one of its multi-year super data transformation project.

REGULATOR NEWS

TPB’s COVID-19 concessions

TPB has reminded tax practitioners of ongoing concessions it has implemented to assist during the COVID-19 period.

New appointee to APRA

Treasurer has announced Ms Margret Cole as a new full-time member of APRA, she has been appointed for a five-year period.

$1,200 rebate for digital adaption plug incentive

Government rebates are available for digital tools including web creation, e-commerce, online accounting and more.

ASIC article regarding business interruption insurance

ASIC has published information to assist SMEs with business interruption insurance (BII) claims resulting from the pandemic. The article points to AFCA's BII resources.

TAXATION

Contract work income declaration under scrutiny

The ATO has issued a media release stating that it is making sure more than $172b of payments to contractors have been properly declared, using its Taxable Payments Reporting System (TPRS).

According to ATO Assistant Commissioner Peter Holt, more than 158,000 businesses have now reported all payments made to contractors in the 2019–20 year and that the ATO will be using the data to "proactively contact contractors to make sure they haven't forgotten to declare the income reported through the TPRS". The ATO also said that TPRS allows it to check that businesses are registered for GST if required and are using valid Australian Business Numbers.

The ATO is encouraging taxpayers who have not declared or under-declared income from contract work to either lodge an amendment request or speak to their registered tax professional for assistance.

FBT thresholds, lodgment dates and instructions

The ATO has issued a worksheet which summarises the FBT rates and thresholds for 2021-22 (ie 1 April 2021 to 31 March 2022). Most of the rates have been previously announced, but the worksheet helpfully puts the numbers in one place and does include two previously unknown thresholds.

New numbers for 2021-22 include:

- record keeping exemption ($8,923 – up from $8,853); and
- statutory or benchmark interest rate (4.52% – down from 4.8%).

The ATO has also released details of the lodgment date for FBT returns (21 May, unless the taxpayer uses a registered tax agent or has been granted an extension of time). The instructions for completing the 2021 FBT return have also been released.

Inquiry into ATO annual report 2018-19

The inquiry by the House of Reps Committee on Tax and Revenue into the Commissioner of Taxation Annual Report 2018-19 held a public hearing on 19 March 2021.

The transcript shows the focus of that day's hearing was on the way in the ATO approaches cases of tax evasion. The submissions that the Committee has received are also available on the Parliamentary website.

Electronic payment system transactions exemption

The ATO issued a legislative instrument 2020/SDP/0023 on 11 March 2021, which excludes certain transactions from the reporting obligation of administrators of payment systems (Classes of Electronic Payment System Transactions Exempt From Being Reported in Third Party Reports Determination 2021).

All administrators of payment systems (eg banks) have reporting obligations in relation to electronic transactions that they "reasonably believe" are for business purposes: table item 9, s 396-55 Sch 1 TAA. The Commissioner had earlier excluded certain transactions from the reporting obligation of administrators of payment systems by way of legislative instrument, which was due to expire on 30 June 2020. The latest determination extends the current exclusions and also adds extra exemptions from 1 July 2020 (ie with retrospective effect), namely:

- payments involving members of the same consolidated and GST group; and
- loan repayments, chattel mortgage repayments, hire purchase payments and finance lease payments.

MBR program: director ID transition period

Treasury has issued three exposure drafts of legislative instruments relating to the director identification regime, which forms part of the Modernising Business Registers (MBR) Program.

The MBR program was introduced through legislation in 2020 to improve business registry services. The director identification number ("director ID") is designed to prevent the appointment of "fictitious" directors, combat illegal phoenixing and, over time, facilitate traceability of individual's profile and relationships with companies.

The director ID will require all directors to establish their identity with the Commonwealth Registrar. It will be a unique identifier for each individual who consents to being appointed a director.

The exposure drafts focus on the transitional application periods that directors will have to apply for a director ID during the early stages of the director ID regime. For those directors appointed under the Corporations Act 2001, the transitional period to obtain a director ID is between 4 April 2021 and 30 November 2022. This timeframe will apply for both existing directors who were appointed prior to the commencement of the Director ID regime and directors appointed during the testing phase (testing phase being the period from the commencement of the director ID provision in the Corporations Act and 31 October 2021).

The proposed transitional period for directors of indigenous corporations under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) is between 4 April 2021 and 30 November 2023.

Submissions are due by 16 April 2021.

ASIC to adopt “no action” position for AGMs

ASIC has advised that it will shortly adopt a temporary "no action" position in relation to the convening and holding of virtual meetings.

This position follows on from the Corporations (Coronavirus Economic Response) Determination (No 3) 2020 which expired on 21 March 2021. This operated to facilitate the holding of meetings (including AGMs) by temporarily removing legal uncertainty around the validity of virtual meetings.

In order to provide the market with a degree of certainty, ASIC's "no action" position will:

- support the holding of meetings using appropriate technology;
- facilitate electronic dispatch of notices of meeting including supplementary notices; and
- allow public companies an additional two months to hold their AGMs.

Registrars' added function to assist ASIC

The Government has registered legislative instrument Commonwealth Registers Rules 2021. The instrument is part of the Government's Modernising Business Registers (MBR) program to modernise its approach to managing Commonwealth business registers. The instrument basically specifies additional functions for the Commonwealth Registrars to:

- assist ASIC in the performance of the functions that will eventually be transferred to the Registrars; and
- prepare for the conferral of such functions on the Registrars.

The registers affected include the Commonwealth Registrar, Business Names Registrar, Corporations Act Registrar and the National Consumer Credit Protection Registrar.

Date of effect: 31 March 2021.

2020 Measures No 4 passes House of Reps

The Treasury Laws Amendment (2020 Measures No 4) Bill 2020 has been passed by the House of Representatives.

By way of reminder, Sch 1 of the Bill amends the ITAA 1997 to allow refunds of large scale generation shortfall charges to count as non-assessable income, non-exempt income, for income tax purposes. Schedule 2 provides additional transitional measures to support the transition from the Superannuation Complaints Tribunal to the Australian Financial Complaints Authority (AFCA being the successor body to the Super Complaints Tribunal). These aspects passed without amendment.

The Bill also contains amendments relating to the franchising code in Australia and allowing for the extension of certain arrangements for meetings and documents which were put in place in response to the COVID-19 pandemic. The C-19 related measures were, by Government amendment, extended to 31 December 2021.

Allocation of professional firm profits: consultation period extended

The ATO has extended the due date for comments on Draft PCG 2021/D2 to 16 April 2021. The deadline was originally set as 26 March 2021.

Draft Practical Compliance Guideline PCG 2021/D2 sets out the ATO's proposed compliance approach to the allocation of professional firm profits and also provides a risk assessment framework to assist individual professional practitioners to self-assess their risk. The Draft applies to arrangements that have a genuine commercial basis (including in relation to how profits are distributed) and do not include any high-risk features.

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) to 1 April 2022 to allow employers time to implement the changes once the ruling is finalised. Draft TR 2019/ D5 focuses on the meaning of "commercial parking station".

The ATO says that concerns were raised in consultation that the Draft relied "too heavily on subjective factors" – such as the profit-making intention of a car parking operator – which an employer would have difficulty establishing for a nearby car park. To address this, the final Ruling will revise the test for determining what is a "commercial car parking facility" to focus on a car parking facility's "objective characteristics".

This is the second extension. The ATO had previously extended the start date from 1 April 2020 to 1 April 2021. The ATO acknowledges the impact that the ongoing uncertainty has on employers and for this reason has again extended the date of effect.

GST and land development in the ACT

GST Determination GSTD 2021/1, considers the GST consequences of certain building arrangements between government agencies and private developers in the context of land development in the ACT. These arrangements typically involve a developer entering into a contract for the grant of a long-term Crown lease over land in the ACT for a monetary purchase price. The contract is contingent upon the developer entering into a project delivery agreement or deed, with the developer being required to complete building works and associated site works within a specified time period.

The ATO says that the building works carried out by the developer do not represent non-monetary consideration for the supply of the Crown lease. In relation to the associated site works, if ownership of these works is retained by the developer, they are also not non-monetary consideration for the supply of the lease. However, associated site works that automatically belong to the government agency (or are transferred to the agency or third party nominee) do constitute non-monetary consideration for the supply of the lease (provided Divs 81 and 82 GST Act do not apply). This aspect of GSTD 2021/1 differs from the Draft Determination (GSTD 2019/D1), which simply stated that associated site works are not consideration for the supply of the Crown lease.

Date of effect: retrospective. However, developers with a favourable private ruling can continue to rely on that ruling "in all aspects of the development arrangement". Further, the ATO will not seek to disturb assessments issued in reliance on Draft GSTD 2019/D1 if both parties applied the view in GSTD 2019/D1 "to all aspects of the development arrangement for the entire period of the arrangement".

Development lease arrangements with government agencies

The ATO has issued an Addendum to GSTR 2015/2, its GST Ruling on development lease arrangements with government agencies. The key changes made by the Addendum are:

- specifying that GSTR 2015/2 does not apply to the arrangements covered by GSTD 2021/1; and
- expanding the commentary on the use of professional valuations to calculate the market value of development works.

Date of effect: the Addendum applies from 24 March 2021.

FINANCIAL SERVICES

Lack of independence disclosure: ASIC instrument

ASIC has released an instrument which sets out how an entity is to declare that it is not independent, impartial or unbiased in a Financial Services Guide, ie the ASIC Corporations (Disclosure of Lack of Independence) Instrument 2021/125. The instrument takes effect from 1 July 2021.

The instrument provides the following examples of why a providing entity is not able to use the words "independent", "impartial" or "unbiased" in a Financial Services Guide:

- the providing entity is receiving commissions in relation to the sale of life risk insurance products that are not rebated in full to clients;
- the providing entity is wholly owned by an issuer of financial products that the providing entity gives personal advice on to retail clients; or
- the providing entity's AFS licensee or another authorised representative that is authorised by the same AFS licensee, receives commissions, volume-based payments or other gifts or benefits.

The requirements for the Lack of Independence Disclosure include where the disclosure should appear, font size etc.

Financial advice fee consents: ASIC instruments

ASIC issued two instruments dealing with the requirement to obtain the permission of fee recipients and super fund members in relation to ongoing and non-ongoing fees. They commence on 1 July 2021. Both are a result of recommendations from the Banking Royal Commission.

The ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124 prescribes the requirements for the giving of consent to deductions or arranging for deductions from an account under an ongoing fee arrangement. The written consent requirements in the Instrument must be met before the ongoing fees are deducted from that account.

The ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2021/126 sets out the requirements of a fund member's written consent that trustees of regulated superannuation funds must obtain before directly or indirectly passing the cost of providing financial product advice in relation to the member on to their superannuation account(s) under a non-ongoing fee arrangement. A non-ongoing fee arrangement is any arrangement that relates to a particular service provided to the member on a one-off basis or over a period of up to 12 months.

APRA chair addresses Senate committee

APRA has released a transcript of the speech that its chair, Mr Wayne Byres, gave to a Senate Economics Legislation Committee.

The Chair said that, while most of APRA's resources and effort over 2020 were devoted to ensuring the continuing operational and financial resilience of the institutions APRA supervises. However, late in the year it restarted some of the important supervision and policy activities it had put on hold when the pandemic first hit.

- APRA has a "busy agenda" in superannuation with four key channels: (i) enhanced data, (ii) greater transparency, (iii) a stronger prudential framework, and (iv) more intense supervision.
- APRA has released its new cyber security strategy, designed to substantially lift standards of cyber security within the financial sector "in the face of rapidly increasing risks". APRA has commenced a program of independent reviews of compliance with its Information Security standard (CPS 234) and has kicked off a data collection exercise on technology and cyber risks.
- APRA is "on track" to complete the 10 recommendations of the Royal Commission directed to APRA this calendar year – the major outstanding issue being the finalisation of a new standard on remuneration.

ASIC chair address to Senate committee

The ASIC Chair, Mr James Shipton, has made a statement to the Parliamentary Joint Committee on Corporations and Financial Services.

Stating that ASIC has "a very full agenda at the moment", the Chair highlighted a number of steps that ASIC has taken or is currently undertaking as a result of the proposed Governance reforms flagged in the review by Dr Vivienne Thom.

In terms of superannuation, ASIC currently has:

- eight matters in litigation;
- two briefs of evidence in support of criminal charges with the CDPP;
- more than 20 enforcement investigations; and
- multiple surveillances about potential super trustee misconduct.

SUPERANNUATION

Reuniting more super bill now law

The Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020 has received assent as Act No 24 of 2021. The measures in the Act facilitate the closure of eligible rollover funds (ERFs) by 30 June 2021. The balance of all ERF accounts less than $6,000 on 1 June 2020 are required to have been transferred to the ATO by 30 June 2020. All remaining ERF accounts are required to be transferred to the ATO by 30 June 2021.

During the course of its passage through Parliament, the Senate requested amendments. The amendments delay the operation of the charges proposed to be made by Sch 1 of the Act to provide trustees of eligible rollover funds additional time to exit the market. In addition, the Government amendments inserted Sch 2, which provides that a superannuation provider may pay to the Commissioner any amount it holds on behalf of a member, former member or non-member spouse subject to certain conditions.

Release authorities and SMSF rollovers: ATO instrument

The ATO has released the Superannuation Data and Payment Standards (Release Authorities, and SMSF Rollovers) Amendment 2021 ("instrument").

It requires APRA-regulated superannuation entities and SMSFs to send and receive rollover information and payments using the SuperStream framework (ie electronically). It applies to rollovers and transfers, to and from SMSFs, requested on and after 31 March 2021.

The instrument was released in draft form as SPR 2020/D3. The only change of note to the draft form is that it is specified that the instrument does not apply trustees of

SMSFs and APRA-regulated superannuation entities who have received a release authority issued on or after 31 March 2021 under Div 131 of Sch 1 to the TAA 1953 outside of the Superannuation Data and Payment Standards 2012, eg where the Commissioner has sent a paper release authority by mail.

Super trustee communications during COVID-19

ASIC has reported that superannuation trustees were quick to resolve any mattes the regulator raised during 2020 about how COVID-19 issues were communicated to members. ASIC said it reviewed 51 super fund websites looking at how trustees presented information for members during the COVID-19 crisis. For example, information about the temporary early release of superannuation (ERS) scheme; the impact of ERS on retirement balances; insurance held through superannuation; temporary changes to minimum drawdown rates; investment performance; and scams and fraudulent behaviour.

While ASIC found that most fund websites contained accurate information about legislative and economic changes, many lacked detail about how members' insurance through their superannuation might be affected if they chose to access their super early, or if their employment status changed because of COVID-19. Several websites were also found by ASIC to have inaccurate or incomplete information about insurance eligibility in superannuation if an ERS payment resulted in a low account balance.

ASIC identified projection tools on 14 websites that could have discouraged members from applying for the ERS because the tools used assumptions that exaggerated the long-term impact of withdrawal. Accordingly, ASIC contacted 26 trustees (and one third party provider) about its concerns, and all of the problematic communications were removed or amended quickly. As part of checking intra-fund advice provided to members in relation to insurance issues, ASIC assessed eight of the 18 files as complying with the best interests' duty and related obligations. The remaining files were assessed as non-compliant because of issues with procedures and record keeping. However, ASIC did not identify any serious consumer detriment.

New super data collection regime: APRA

APRA has announced that it has released the response paper and final reporting standards for Phase one of its multi-year Superannuation Data Transformation (SDT) project.

Launched November 2019, APRA's SDT project aims to improve member outcomes by enhancing the comparability and consistency of reported data on APRA-regulated superannuation funds. Phase one of the project (Breadth) addresses the highest priority gaps in APRA's data collection, particularly for choice products and investment options.

In addition to the paper, APRA released 10 finalised new reporting standards covering Registrable Superannuation Entity (RSE) structure and profile, performance, member demographics, expense management, asset allocation, insurance arrangements, and fees and costs. These are available on APRA's website. The reporting framework has also been updated to facilitate proposed legislative amendments to be introduced under the Treasury Laws Amendment (Your Future Your Super) Bill 2021.

REGULATOR NEWS

TPB's COVID-19 concessions

The Tax Practitioners Board has reminded tax practitioners of ongoing concessions it has implemented to assist during the COVID-19 period.

The TPB has temporarily removed the 25% cap for relevant technical/professional reading activity in the CPE policy until 30 June 2021. However, practitioners must "first and foremost" explore and undertake online CPE offerings and keep a log book detailing all the CPE activities undertaken.

The TPB has also temporarily waived the requirement to complete annual declarations for some tax practitioners. If an annual declaration is due on or before 30 June 2021, the practitioner does not have to complete it until 2022 or 2023 (ie, if registration renewal is due in 2022).

New appointee to APRA

The Treasurer has announced a new full-time member of APRA.

Ms Margaret Cole has been appointed for a five-year period commencing 1 July 2021. Ms Cole has worked as Managing Director of Enforcement and Financial Crime and a Board Member of the UK Financial Services Authority. More recently Ms Cole has worked as General Counsel and Chief Risk Officer of PwC in the UK and subsequently PwC's Global Regulatory Policy and Engagement Leader. Ms Cole also spent over 20 years in private practice as a solicitor specialising in commercial litigation with an emphasis on financial services.

She will join the APRA Executive Board alongside the Chair, Mr Wayne Byres, and the Deputy Chairs, Mr John Lonsdale and Ms Helen Rowell.

$1,200 rebate for digital adaption plug incentive

Government rebates are available for digital tools including web creation, e-commerce, online accounting and more.

Is your business making the most of digital technology? You could be benefiting from online tools that help make your business stand out, attract and keep customers, improve your cash flow and be more productive.

Join the Small Business Digital Adaptation Program now to trial a range of digital products and access free digital adaptation training and workshops to help your business adopt and implement online tools.

After you purchase a digital product from a participating provider, you can apply for a rebate of $1,200 to access the product for 12 months.

Learn more about the Small Business Digital Adaption Program

Validate your ABN and join the program now
business.vic.gov.au

ASIC article regarding business interruption insurance

ASIC has published information to assist SMEs with business interruption insurance (BII) claims resulting from the pandemic. The article points to AFCA's BII resources.

For business interruption insurance claims and COVID-19: what you need to do, click here.