TAXATION

Apted DIS: ATO to review negative decisions

ATO has released a decision impact statement on the decision to exercise the “later time” discretion to extend the date to have an effective ABN re JobKeeper payments.

FBT car parking threshold 2021-22

The car parking threshold for the 2021-22 FBT year starting 1 April 2021 is $9.25, up from $9.15 for the 2020-21 FBT year.

ATO obligation to give reasons: IGT paper

IGT has released an article dealing with when the ATO Commissioner is required to give a taxpayer reasons for a decision.

Proof of client identity: TPB draft practice note

TPB has released a Draft TPB Practice Note which provides practical guidance and assistance to registered tax practitioners in relation to verifying client identities.

Job relocation assistance now available

Job seekers who relocate to take up on-going work, including an apprenticeship for more than 20 hours a week for more than six months may be eligible to receive up to $9,000.

ATO reminder: proof for WFH shortcut method

ATO has issued a reminder to taxpayers that when claiming WFH expenses using the shortcut method they will require proof such as a timesheet.

Digital games tax offset

The government has announced that it will provide a 30% Digital Games Tax Offset as part of its $1.2bn Digital Economic Strategy.

Community shed eligibility for DGR clarified

ATO has clarified its eligibility criteria for community sheds to obtain DGR endorsement including whether or not it is required to have “community” or “shed” in its name.

2021 Measures No 3 Bill introduced

Government has introduced a Bill containing various tax related measures including increasing the Medicare levy and Medicare levy surcharge income thresholds.

Private health insurance rebate percentages frozen: Bill

Bill has been introduced into the House of Reps to freeze the Private Health Insurance income thresholds for another two years to 2023.

Draft legislation: miscellaneous tax and super amendments

Treasury has released exposure draft legislation and regulations proposing minor and technical amendments to income tax, GST, superannuation, and corporations laws.

FINANCIAL SERVICES

Proxy advice regulation: consultation paper

Treasury has released a consultation paper on potential reforms to the regulation of proxy advisers who provide reports to institutional shareholder clients.

Credit license required for debt management services

ASIC has released an information sheet for providers of debt management services that explains their new regulatory obligations.

ASIC findings about "general advice" label

ASIC has announced it will not be making recommendations to the government in relation to changing the label of "general advice".

SUPERANNUATION

Super non-arm's length capital gains and pension assets

Technical amendments to super may have caused issues with non-arm's length capital gains made by segregated current pension assets.

Super death benefit nominations: adviser banned for false witnessing

ASIC has banned a former financial adviser for allegedly falsely witnessing super binding death benefit nomination forms for 17 clients.

REGULATOR NEWS

TPB to run online advertising campaign re registered agents

TPB has stated that it will run an online advertising campaign to create awareness amongst consumers to use only registered tax practitioners.

TPB webinars Q&As

TPB has released a compilation Q&As from various webinars on major compliance matters for the TPB, preventing data breaches and professional conduct.

TAXATION

Apted DIS: ATO to review negative decisions

The ATO has released a decision impact statement (DIS) on FCT v Apted [2021] FCAFC 45. In that case, the Full Federal Court upheld the AAT's decision to exercise the "later time" discretion in s 11(6) of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (the "CERP Rules") to extend the date by which the respondent had to have an effective ABN, thereby allowing him to qualify for JobKeeper payments.

The Commissioner accepts the Court's view that the discretion under s 11(6) of the CERP Rules to allow a later time to have an ABN is not restricted to the limited circumstances envisaged in the extrinsic material to the CERP Act and CERP Rules. The discretion allows for the consideration of a "broad range of circumstances" – and the approach must be guided by the purposes of the CERP Act and the CERP Rules, having regard to the integrity rules in their context. The Commissioner considers that this approach also applies to the discretions to allow a later time to provide notice of assessable business income/taxable supplies contained in ss 11(7) and (8) of the CERP Rules.

In response to the Court's decision, the ATO has updated Law Administration Practice Statement PS LA 2020/1 Commissioner's discretion to allow further time for an entity to hold an ABN or provide notice to the Commissioner of assessable income or supplies. The notable updates are those that clarify factors relevant in considering whether or not it is appropriate for the ATO to exercise discretion. Other changes are mostly machinery in nature to update language and references.

Those entities who applied for JobKeeper (and cash flow boost) who had their applications denied on the basis that they were not carrying on an enterprise/did not have an ABN as at the relevant date (ie in the case, 12 March 2021) should seek advice about having the ATO review the decision.

Comments: are due by 26 May 2021.

FBT car parking threshold 2021-22

The car parking threshold for the 2021-22 FBT year (ie the FBT year starting on 1 April 2021) is $9.25 (up from $9.15 for the 2020-21 FBT year).

ATO obligation to give reasons: IGT paper

The Inspector-General of Taxation has released what it terms a "thought leadership" article dealing with when the Commissioner is required to give a taxpayer reasons for a decision.

The introduction states that taxpayers should keep in mind that reasons are not always provided – nor are they required to be. However, the Taxpayer's Charter does set an expectation that the Commissioner will be "open, transparent and accountable" in dealings with taxpayers.

Accordingly, despite the limitations on a taxpayer's legal right to reasons, if a taxpayer is met with a refusal by the Commissioner to provide reasons, or receives insufficient reasons and this impedes their ability to understand a decision or weigh up next steps, the taxpayer should consider availing themselves of their right to complain, including via the ATO Complaints Unit and/or the IGTO complaints service.

Proof of client identity: TPB draft practice note

The TPB has released Draft TPB Practice Note TPB(PN) D45/2021, which provides practical guidance and assistance to registered tax practitioners in relation to verifying client identities.

The draft Practice Note specifies the TPB's minimum requirements for verifying the identity of a client or a client's representative and lists documents that can be accepted as evidence of a person's identity. It also sets out the steps a registered tax practitioner should take if they identify discrepancies.

Submissions are due by 10 June 2021.

Job relocation assistance now available

From 1 May 2021, job seekers who relocate to take up on-going work, including an apprenticeship, for more than 20 hours a week for more than six months, may be eligible to receive up to $9,000 from the Government to relocate for work.

Job seekers who are participating in employment services programs may be immediately eligible for help with their moving costs under the Relocation Assistance to Take Up a Job (RATTUAJ) program. From 1 May 2021, eligible job seekers may be eligible to receive up to:

- $3,000 if they relocate to a capital city (provided that their new capital city does not have fewer jobs);
- $6,000 if they relocate to a regional area;
- an extra $3,000 if they relocate with a dependent.

Up to $2,000 may also be available for their employment services provider to assist with the upfront costs of relocating. A job seeker who relocates to take up ongoing work must be at least 90 minutes away from where they currently live, based on their normal mode of transport, and cannot be within the same capital city. Further details are available on the Government's JobSearch Website.

ATO reminder: proof for WFH shortcut method

The ATO has issued an article to serve as a reminder to taxpayers when claiming for work-from-home (WFH) expenses. Taxpayers have three different methods to calculate WFH running expenses:

- an all-inclusive rate of 80 cents per work hour at home for all working from home expenses (the temporary shortcut method);
- a rate of 52 cents per work hour at home for the heating, cooling, lighting and cleaning of the dedicated work area and the decline in value of office furniture and furnishings. Then calculate the work-related portion of telephone and internet expenses, computer consumables, stationery and the decline in value of a computer, laptop or similar device; or
- the actual work-related portion of all running expenses, which needs to be calculated on a reasonable basis.

Taxpayers opting to use methods other than the temporary shortcut method is encouraged to research the ATO's guidance on the respective methods and keeping good records of each individual expense and calculating the relevant work-related use.

Taxpayers opting to use the shortcut method will not be able to claim individual expenses such as telephone and internet costs and the decline in value of new office furniture or a laptop as the 80 cents per hour is meant to be all-inclusive. The ATO said that the only proof required (for the shortcut method) is a record of the number of hours worked from home, such as a timesheet.

The ATO also noted the top four no-go expenses:

- Personal expenses like coffee, tea and toilet paper. While they might normally be supplied by your employer, they still aren't directly related to earning your income;
- Expenses related to an individual's child education, such as online learning courses or laptops;
- Large expenses up-front that costs over $300 (either in total or per item), such as a computer, can't be claimed immediately. Instead, these claims should be spread out over a number of years; and
- Employees generally can't claim occupancy expenses such as rent, mortgage interest, property insurance, land taxes and rates. Working from home does not mean an individual's home is a place of business for tax purposes.

Digital games tax offset

The Government has announced that it will provide a 30% Digital Games Tax Offset as part of its $1.2bn Digital Economy Strategy to be unveiled in the 2021-22 Federal Budget. Details are available on the Government's Digital Economy website.

The Treasurer said tax incentives will be provided to stimulate investment in digital technologies, including a 30% Digital Games Tax Offset for eligible businesses that spend a minimum of $500,000 on qualifying Australian games expenditure. Consultation with industry in mid-2021 will inform the criteria and definition of qualifying expenditure to support the development of digital games. Games with gambling elements, or that cannot obtain a classification rating, will not be eligible.

Date of effect: The Digital Games Tax Offset will be available from 1 July 2022 to Australian resident companies or foreign resident companies with a permanent establishment in Australia.

The Government will also amend the income tax law to allow taxpayers to self-assess the effective life of certain intangible assets (such as intellectual property and in-house software), rather than being required to use the effective life currently prescribed by statute. This amendment will apply to patents, registered designs, copyrights and in-house software for tax purposes. Taxpayers will be able to bring deductions forward if they self-assess the assets as having a shorter effective life to the statutory life.

Date of effect: The self-assessment of effective lives will apply to eligible assets acquired following the completion of temporary full expensing (introduced in the 2020-21 Budget).

The Government said it will also undertake an assessment review of the venture capital tax concession programs to ensure they are achieving their intended objectives. Public consultation will be undertaken in 2021.

The Minister for the Digital Economy, Senator Jane Hume, said the broader Digital Economy Strategy will provide over $100m to support digital skills, including a new pilot program for work-based digital cadetships. The Government will also invest $200m to overhaul myGov, to make it easier for people to find the services they need, as well as $302m to enhance the My Health Record and an expansion of the digital identity system.

Community shed eligibility for DGR clarified

The ATO has updated its community sheds webpage, in particular, the eligibility criteria for deductible gift recipients (DGR) endorsement. The update makes it clear that a community shed is not required to have "community" or "shed" in its name to be eligible for DGR endorsement.

2021 Measures No 3 Bill introduced

The Treasury Laws Amendment (2021 Measures No 3) Bill 2021 has been introduced into the House of Reps. The tax-related measures are set out under the headings below.

Medicare levy and Medicare levy surcharge income thresholds

The Bill will amend the Medicare Levy Act 1986 and the A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999 to:

- increase the Medicare levy low-income thresholds for individuals and families (along with the dependent child-student component of the family threshold);
- increase the Medicare levy low-income thresholds for individuals and families eligible for the SAPTO (along with the dependent child-student component of the family threshold); and
- increase the Medicare levy surcharge low-income threshold.

These rates apply to the 2020-21 and later income years.

Payments to Thalidomide survivors

The Bill amends the ITAA 1997, the Social Security Act 1991 and the Veteran's Entitlements Act 1986 to provide that annual and lump sum payments made by the Commonwealth to Thalidomide survivors are exempt from income tax and do not count as income for the purposes of any income support payments.

It takes effect from 1 July 2021.

Recovery grants for 2021 floods and storms

The Bill amends the ITAA 1997 to make disaster recovery grant payments in relation to the storms and floods that occurred in February and March 2021 non-assessable non-exempt income.

This measure implements a 2021-22 Budget measure and applies to payments made in the 2020-21 and later income years.

DGR – new recipients

The Bill grants deductible gift recipient status on the following.

- Alliance for Journalists' Freedom Ltd (gifts made on or after 1 July 2020);
- The Andy Thomas Space Foundation Limited (gifts made on or after 1 July 2020);
- Youthsafe (gifts made on or after 1 July 2020);

- RAS Foundation Limited (gifts made on or after 1 July 2020);
- The Judith Neilson Institute for Journalism and Ideas (gifts made on or after 1 July 2020);
- The Great Synagogue Foundation Trust (gifts made on or after 1 July 2020 and before 1 July 2025);
- The Centre for Entrepreneurial Research and Innovation Limited (gifts made on or after 2 January 2017); and
- Sydney Chevra Kadisha (gifts made on or after 1 January 2018 to 30 June 2022).

Private health insurance rebate percentages frozen: Bill

The Private Health Insurance Amendment (Income Thresholds) Bill 2021 has been introduced into the House of Reps.

The legislation will freeze the PHI income thresholds for the purposes of the private health insurance incentive (which takes the form of a reduction in premiums or a tax offset) for another two years (2021-22 and 2022-23). Indexation will start again from I July 2023.

As a result, the rebate adjustment factor (RAF) for the 2021-22 period will be the same as those of 2020-21 period (the prior year – and indeed 2019-20). Therefore, the PHI Rebates effective from 1 April 2021 to 31 March 2022 will be as follows:

Private Health Insurance Rebate percentages from 1.4.2021 - 31.3.2022				
Age	Base Tier	Tier 1	Tier 2	Tier 3
Under 65	25.059%	16.706%	8.352%	0%
65 - 69	29.236%	20.883%	12.529%	0%
70+	33.413%	25.059%	16.706%	0%

These are the income ranges: Base Tier: Singles - $90,000 or less; Families - $180,000 or less; Tier 1: Singles - $90,001-$105,000; Families - $180,000-$210,000; Tier 2: Singles - $105,001-$140,000; Families - $210,001-$280,000; and Tier 3: Singles - $140,001 or more; Families - $280,001 or more.

Draft legislation: miscellaneous tax and super amendments

Treasury has released exposure draft legislation and regulations proposing "minor and technical amendments" to certain Treasury portfolio laws for 2021, including tax, GST, superannuation and corporations laws.

The Exposure Draft - Treasury Laws Amendment (Measures for Consultation) Bill 2021 proposes to:

- **Country-by-country reporting** - clarify that a CBC reporting entity is to provide the ATO with a statement on the global operations and pricing policies of other members of any CBC reporting group that the CBC reporting entity was a member of during the income year to which the statement relates to, rather than the previous income year. DATE OF EFFECT: day after Royal Assent, applicable to statements for income years starting from 1 July 2020;
- **GST-free cars for disabled** - amend s 38-510 of the GST Act to allow medical practitioners to issue a disability certificate for a person with a disability to access the GST-free supply of a car. DATE OF EFFECT: first day of the next quarter after assent;
- **Franking credits** - will ensure that a franking credit arises in circumstances where: (i) a franking debit arises because the entity or company receives a tax offset refund; (ii) the entity or company's tax offset refund is subsequently reduced and the entity or company is liable to pay the Commonwealth the excess mentioned in s 172A(2) of the ITAA 1936; and (iii) the entity or company pays the excess. DATE OF EFFECT: day after assent;
- **Capital allowance** - clarify that, in working out the cost of a depreciating asset that is capital works for the purpose of calculating an entity's total cost of investment for the 2016-17 to 2018-19 years, ss 40-45 and 40-215 of the ITAA 1997 are disregarded. This clarification will ensure the investment test interacts appropriately with the existing provisions in Div 40. The provision applies from the 2020 budget time (consistently with the temporary full expensing regime). DATE OF EFFECT: day after assent;
- **Consolidation tax cost setting rule** - expand the operation of the rule so that it is not limited to finance leases but applies to all leases where the joining entity is the lessor or lessee under a lease of a depreciating asset to which Div 40 applies. DATE OF EFFECT: first day of the next quarter after assent;
- **Loss carry back** - clarify the mechanism through which an entity may change its loss carry back choice. DATE OF EFFECT: day after assent;
- **Other amendments** - New Zealand auditors, recovery of ATO overpayments of inactive superannuation, KiwiSaver schemes; and foreign takeovers.

The Exposure Draft - Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021 propose to amend reg 291-25.01(3) of the ITA Regs to clarify that a fee refund, made from a general reserve, is not a concessional contribution. **Date of effect**: applies from 2021-22 financial year.

Submissions are due by 25 May 2021.

FINANCIAL SERVICES

Proxy advice regulation: consultation paper

Treasury has released a consultation paper on potential reforms to the regulation of proxy advisers who provide reports to institutional shareholder clients (including superannuation funds) setting out voting recommendations on resolutions at company meetings.

The Minister for Superannuation and Financial Services, Senator Jane Hume, noted that super funds collectively own 20% of the Australian Stock Exchange (ASX), worth $440bn, while the market for proxy advice is dominated by just four firms. Currently, there is very limited regulation on how this proxy advice is formulated, provided, used and disclosed. Treasury is therefore consulting on measures that could potentially require proxy advisers to:

- obtain an Australian Financial Services Licence (AFSL) for the provision of proxy advice;
- provide their research and voting recommendations to the company that is the subject of their report at least five business days before providing it to their clients;
- notify their clients how to access the company's response to the report; and
- if their client is a super fund, be independent from their client.

For super funds, the consultation will consider requirements to make publicly available more detailed information on their voting record, including whether a vote was consistent with any proxy advice received; and outline how they exercise independent judgment in the determination of their voting positions.

Submissions are due by 1 June 2021.

Credit license required for debt management services

ASIC has released an information sheet for providers of debt management services that explains their new regulatory obligations, including the requirement to be licensed. This follows the registration of the legislative instrument National Consumer Credit Protection Amendment (Debt Management Services) Regulations 2021 (Regulations).

The information sheet explains:

- what is a debt management service
- the transitional arrangements set out in the Regulations
- how to apply for a credit licence (or variation) with a debt management authorisation, and
- the conduct obligations that must be met by licensees.

ASIC reminds providers of debt management services to take steps as soon as possible to lodge a complete license application before 1 July 2021 in order to rely on the transitional arrangements allowed for in the Regulations.

ASIC findings about "general advice" label

ASIC has announced that it will not be making recommendations to the Government in relation to changing the label of "general advice". This follows independent consumer research which found that changing the "general advice" label alone would be unlikely to prevent confusion about the nature of general advice.

ASIC commissioned the research in response to the Financial System Inquiry Final Report and the Productivity Commission Inquiry Report into Competition in the Australian Financial System. These reports recommended that general advice should be re-labelled to ensure that consumers are able to clearly distinguish between personal advice and general advice.

ASIC said the research found no evidence to suggest that changing the general advice label, including adding the word "only" to the general advice label, would have any measurable effect on consumers' perceptions about the nature of the advice given. However, the research found there are other ways advice providers can clarify what is meant by "general advice", such as by contrasting the descriptions of general and personal advice, and explicitly stating in the general advice warning that the provider is not required to act in the consumers' best interests.

ASIC noted that the Government has announced that it will conduct the Quality of Advice Review in 2022 to consider the full breadth of issues impacting on both quality and affordability of all forms of financial advice. In the meantime, ASIC said the decision in *Westpac Securities Administration Ltd & Anor v ASIC* [2021] HCA 3 provides guidance on circumstances that may lead to a conclusion that personal advice was given instead of general advice.

SUPERANNUATION

Super non-arm's length capital gains and pension assets

The Treasury Laws Amendment (2020 Measures No 6) Act 2020, which received assent on 17 December 2020, included a range of "minor and technical changes" in Sch 4, in addition to the temporary full expensing provisions contained in Sch 1. In a recent article on 27 April 2021, the SMSF Association has highlighted how such "minor and technical" amendments in tax Bills can contain "sleepers" that have a greater than inconsequential impact.

The 2020 Measures No 6 Act has amended s 118-320 of the ITAA 1997 from 1 July 2021 to ensure that the non-arm's length income (NALI) rules in s 295-550 operate as intended in relation to segregated current pension assets. The ordinary income and statutory income of a super fund from segregated current pension assets (ie assets set aside to pay retirement phase income streams) is exempt under s 295-385. However, the exemption does not apply to NALI.

The NALI provisions apply to ordinary income or statutory income. However, if a complying super fund has a capital gain from a CGT event in relation to a segregated current pension asset, s 118-320 causes the capital gain to be disregarded. Thus, there can be no amount of statutory income corresponding to the potential capital gain to which the NALI rules could apply. Mary Simmons, Technical Manager at the SMSF Association, further explains that this technical deficiency was because NALI only applies to ordinary income or statutory income, and a capital gain per se, is neither ordinary income nor statutory income. Therefore, if the gain is disregarded by s 118-320, the SMSF Association notes that it cannot become a net capital gain and it cannot become statutory income. Ultimately, it cannot become NALI, Ms Simmons said.

The 2020 Measures No 6 Act has inserted subs 118-320(2) to provide that a capital gain in relation to a segregated current pension asset is not disregarded if it would be NALI. This means such capital gains in relation to segregated current pension assets will remain statutory income and the NALI rules will apply to tax such non-arm's length transfers of assets at 45%.

Date of effect: The SMSF Association said the ATO has confirmed that s 118-320(2) only applies from the 2021-22 income year. Effectively, the SMSF Association says this means that if a non-arm's length capital gain is made by a segregated current pension asset before 1 July 2021, it does not cause NALI. If a non-arm's length capital gain is made by a segregated current pension asset on or after 1 July 2021, it does cause NALI..

Super death benefit nominations: adviser banned for false witnessing

ASIC has banned a former financial adviser for eight years for allegedly falsely witnessing superannuation binding death benefit nomination (BDBN) forms for 17 clients. ASIC further alleged that the former adviser backdated documents, and falsified a client's signature on documents. The Sydney-based adviser was a representative of Australia and New Zealand Banking Group Limited (ANZ) between 5 June 2010 and 15 June 2017, and another entity between 19 September 2017 and 19 November 2018. She is no longer providing financial advice.

REGULATOR NEWS

TPB to run online advertising campaign re registered agents

The TPB has released a news article stating that it will run an online advertising campaign to create awareness amongst consumers to use only registered tax practitioners when seeking tax practitioner services. The campaign will run in the months of June and July 2021 and will end on 31 July 2021.

Entitled Timely for Tax time 2021, the campaign will highlight the pitfalls of engaging unregistered agents and encourage consumers to check the TPB Register to ensure the tax practitioner they use or intend to use is registered with the TPB.

TPB webinars Q&As

The TPB has released a compilation of questions and answers from the following webinars:

- Compliance 2020: A retrospective. The webinar looks at major compliance matters of the TPB, covering topics such as investigation and complaints process, case studies, penalties and sanctions, etc. The Q&A is broken up into the following categories:
  - Handling of complaints;
  - Penalties; and
  - Unregistered providers.
- Preventing data breaches. This webinar looks at what cyber-attacks are, how to prepare for cyber-attacks, what to do in the event of an attack, etc. The Q&A is broken up into the following categories:
  - email security;
  - professional indemnity insurance;
  - cyber-attacks;
  - data breaches; and
  - preventative measures.
- Cracking the Code. The webinar explores each of the items under the Code of Professional Conduct, compliance matters and discussed a couple of case studies in relation to Code breaches. The Q&A is broken up into the following topics:
  - Lodgement;
  - Personal tax obligations;
  - Confidentiality;
  - Engagement letters;
  - Client money;
  - Complaints;
  - Continuing professional education;
  - Work-related expenses;
  - Professional indemnity insurance;
  - Reasonable care; and
  - Supervision and control.