TAXATION

Temporary COVID disaster payment announced

The government has announced a temporary COVID disaster payment to assist workers who reside or work in a Commonwealth declared hotspot who are unable to attend work.

Car depreciation limit increased for 2021-22

ATO has updated the car cost limit for depreciation for 2021-22 financial year to $60,777, it was previously $59,136.

ATO data-matching programs

ATO will commence data matching programs on novated leases and cryptocurrency, the programs relate to 2018-19 to 2022-23 and 2020-21 to 2022-23, respectively.

ATO reminder: cryptocurrency and CGT

ATO has issued a media release reminding taxpayers that investments in crypto-assets are subject to CGT.

Data-matching protocols updated

Australian Information Commissioner has issued Rules to ensure the use of data-matching is based on clear and publicly know standards.

Capital allowance reviews

ATO has flagged reviews of effective life determination of various capital assets including plastic safety screens, e-bicycles, and some assets used in manufacturing.

2021 Measures No 3 passes House of Reps

Bill to implement changes to Medicare levy low-income threshold and exempting certain compensation payments has passed the House of Reps without amendment.

Draft LCR on temporary full expensing

ATO has released Draft LCR 2021/D1 which deals with temporary full expensing, with the final ruling to take effect before and after its date of issue.

Increased tax/BAS agent application fees

TPB has announced an increase in application fees for tax and BAS agents from 1 July 2021.

FINANCIAL SERVICES

APRA's perspective of good conduct and culture: speech

APRA has published a recent speech by APRA Executive Director, Superannuation Division, Suzanne Smith on conduct and culture.

APRA data collection: testing update

APRA has published further information to assist reporting entities in getting ready for APRA Connect, the new data collection solution for reporting entities.

SUPERANNUATION

Your Future, Your Super Bill passes Reps with amendments

Bill to implement various super amendments has passed the House of Reps but the amendment to act in the best interest of beneficiaries was removed.

Super pension drawdowns: reduction extended

Government has announced the extension of the temporary 50% reduction in minimum annual payment amounts for super pensions and annuities to 30 June 2022.

Pressure on super industry to lift game working: APRA

APRA chair has delivered an opening statement to the Senate Economic Legislation Committee highlighting APRA's efforts in improving outcomes for super members.

Super information for family law proceedings: draft legislation

Treasury has released draft legislation proposing to facilitate the identification of super assets by parties to family law proceedings by leveraging information held by the ATO.

REGULATOR NEWS

TPB investigating COVID compliance cases

TPB has advised that it currently has 99 active COVID compliance cases under investigation, ranging from error to fraudulent claims.

Draft supervisory arrangements guidance

TPB has released exposure draft developed to help tax practitioners understand its views on supervisory arrangement requirements under the TASA.

IGTO Quarter 3 FY21 reporting pack released

IGTO has released it Q3 reporting pack highlighting its activities during the quarter including total complaints received and KPI results.

Board of Taxation CEO update May 2021

CEO of the Board of Taxation has issued its update for May 2021 which contains reflections on the Federal Budget and a summary of its last meeting.

TAXATION

Temporary COVID disaster payment announced

The Government has announced a temporary COVID Disaster Payment to assist workers who reside or work in a "Commonwealth declared hotspot", who are unable to attend work and earn an income as a result of state imposed health restrictions that last for greater than one week.

Available for Australian citizens, permanent residents and eligible working visa holders, recipients will receive up to $500 per week for losing 20 hours or more of work, and $325 per week for losing under 20 hours.

The media release states that the payment is available:

- to workers who have liquid assets of no more than $10,000;
- to workers who have exhausted any leave entitlements (other than annual leave) or other special pandemic leave;
- in respect of the second and any subsequent weeks of restrictions; and
- to workers who are **not** already receiving income support payments, business support payments, or the Pandemic Leave Disaster Payment.

Access to the payment will be available through Services Australia from 8 June 2021.

Car depreciation limit increased for 2021-22

The ATO has updated the car cost limit for depreciation for 2021-22 financial year to $60,733 (previously $59,136). The car limit is indexed annually in line with movements in the CPI motor vehicle purchase sub-group. The ATO used to issue annual Taxation Determinations for the car limit but these are no longer published (the last one published was TD 2018/6).

ATO data-matching programs

The Commissioner has gazetted two notices dealing with data-matching.

The Notice of Data Matching Program - Novated Leases 2018-19 to 2022-23 financial years enables the ATO to acquire novated lease data from eight major finance companies for 2018-19 to 2022-23. The ATO estimates that the records will involve approximately 260,000 individuals.

Second, the Notice of Data Matching Program - Cryptocurrency 2020-21 to 2022-23 financial years will allow the ATO to acquire account identification and transaction data from cryptocurrency designated service providers for the 2021 financial year through to the 2023 financial year inclusively. The ATO estimates that the records relating to approximately 400,000 to 600,000 individuals will be obtained each financial year.

ATO reminder: cryptocurrency and CGT

The ATO has issued a media release stating that its analysis estimates that there are over 600,000 taxpayers that have invested in crypto-assets in recent years. The primary concern of the ATO is that many taxpayers believe their cryptocurrency gains are tax free or only taxable when the holdings are cashed back into Australian dollars.

"We are alarmed that some taxpayers think that the anonymity of cryptocurrencies provides a licence to ignore their tax obligations," Assistant Commissioner Tim Loh said. Mr Loh added that while it appears that cryptocurrency operates in an anonymous digital world, the ATO closely track where it interacts with the real world through data from banks, financial institutions, and cryptocurrency online exchanges to follow the money back to the taxpayer.

Mr Loh said that this year, the ATO will be writing to around 100,000 taxpayers with cryptocurrency assets explaining their tax obligations and urging them to review their previously lodged returns. He also expects 300,000 taxpayers will be prompted to report their cryptocurrency capital gains or losses as they lodge their 2021 tax return.

"Gains from cryptocurrency are similar to gains from other investments, such as shares. Generally, as an investor, if you buy, sell, swap for fiat currency, or exchange one cryptocurrency for another, it will be subject to capital gains tax and must be reported", Mr Loh explained.

"The best tip to nail your cryptocurrency gains and losses is to keep accurate records including dates of transactions, the value in Australian dollars at the time of the transactions, what the transactions were for, and who the other party was, even if it's just their wallet address," Mr Loh said.

Data-matching protocols updated

The Australian Information Commissioner has issued the Data-matching Program (Assistance and Tax) Rules 2021.

By way of background, the Data-matching Program (Assistance and Tax) Act 1990 regulates how the ATO and what is termed the "assistance agencies" (defined in the Data-matching Act as the Education Department, the Social Services Department, the Veterans' Affairs Department, and the Human Services Department) use TFNs to compare personal information so they can detect incorrect payments.

The purpose of the Rules is to ensure that the use of data-matching is based on clear and publicly known standards, and that individuals are protected by appropriate safeguards in the design and implementation of the data-matching program. The Rules ensure that there are reasonable limits on the use of personal information in the data-matching process.

It covers things such as program protocols, safeguards for affected individuals (ie confirming validity of matches, notifying individuals etc) and data destruction.

It replaces the current Data-Matching Program (Assistance and Tax) Act 1990 - Guidelines (31/10/1994), due to sunset on 1 October 2021.

Capital allowance reviews

The ATO has flagged that it is to review the effective life determinations of the capital assets listed below. The new effective life determinations will apply from 1 July 2022, ie next year.

- Capital allowances: review of plastic safety screens – plastic safety screens (commonly referred to as "sneeze guards") used to prevent the spread of COVID-19;
- Capital allowances: review of e-bicycles and e-scooters;
- Capital allowances: review of assets used in wooden and upholstered furniture (including seat) manufacturing industry – assets used in the wooden

and upholstered furniture (including seat) manufacturing industry defined within ANZSIC code 25110;
- Capital allowances: review of assets used in the fertiliser manufacturing industry – assets used in the fertiliser manufacturing industry defined within ANZSIC code 18310; and
- Capital allowances: review of assets used in the clothing manufacturing industry – assets used in the clothing manufacturing industry defined within ANZSIC code 13510.

2021 Measures No 3 passes House of Reps

The Treasury Laws Amendment (2021 Measures No 3) Bill 2021 has been passed by the House of Reps, with no amendments.

The tax-related measures include:

- changes to the Medicare levy low-income thresholds;
- exempting annual and lump sum payments made by the Commonwealth to Thalidomide survivors from income tax;
- making disaster recovery grant payments in relation to the storms and floods; and
- granting deductible gift recipient status on a number of worthy entities.

The next sitting day for the Senate is Tuesday 15 June 2021.

Draft LCR on temporary full expensing

The ATO has released Draft LCR 2021/D1, which deals with temporary full expensing.

By way of background, the temporary full expensing ("TFE") rules apply to assets first held at or after 6 October 2020 (2020 Budget time). TFE is accessed by taxpayers through Div 40-BB of the Income Tax (Transitional Provisions) Act 1997, but for small business entities ("SBEs") using the simplified depreciation rules access is via the modification of Div 328 of the IT(TP)A.

An eligible entity will need to start holding the depreciating asset and start to use the asset, or have it installed ready for use, for a taxable purpose on or before 30 June 2022. Second element costs will also need to be incurred by that date, and TFE for general small business pools applies only in relation to income years ending at or after the 2020 Budget Time and no later than 30 June 2022. As part of the 2021-22 Budget, TFE is to be extended for another year – however this is not yet law.

There are three important things to note at this preliminary stage.

The first is that, under the rules as they stand, SBEs cannot opt out of temporary full expensing on an asset-by-asset basis if they use the Subdiv 328-D simplified depreciation rules. This was the subject of some lobbying as it was considered to be problematic for discretionary and unit trusts that are commonly used in the SME sector. The Draft confirms this (at paras 133 and 134) and the Government has not otherwise flagged any legislative changes.

The second is that the ATO confirms (at para 127) that the car limit applies, ie if the depreciating asset is a car, the deduction cannot exceed the business portion of the car limit ($59,136 for 2020-21, $60,733 for 2021-22).

Third, the Draft makes a pointed reference to possibly invoking Pt IVA "to apply to arrangements whose features suggest they are driven by tax, rather than commercial, outcomes". It states that a focus for the ATO will be arrangements involving transactions between related parties that facilitate the claiming of TFE, and potentially also loss carry-back tax offsets, without any increase in the business asset base of the economic group.

Comments are due by 9 July 2021.

Date of effect: the final ruling will take effect before and after its date of issue (ie while the TFE measures are in effect).

Increased tax/BAS agent application fees

The TPB has announced an increase in application fees for tax and BAS agents from 1 July 2021. The application fee to register or renew as a tax agent, BAS agent or tax (financial) adviser is subject to a CPI adjustment on 1 July each year. The CPI adjustment was introduced by the Government in the 2018-19 Federal Budget.

Agent application fees from 1 July 2021 will be:

- Tax agents - $704 (up from $700);

- Tax (financial) advisers - $563 (up from $560);
- BAS agents - $141 (up from $140).

The TPB says agents must pay the application fee in full when they submit their application to register or renew their registration. The fee is not subject to GST. If agents have an upcoming renewal, and they pay and submit by 30 June 2021, the TPB says the payment will be based on the old fee. Applications paid and submitted after 1 July 2021 will be based on the new fee.

FINANCIAL SERVICES

APRA's perspective of good conduct and culture: speech

APRA has published a recent speech by APRA Executive Director, Superannuation Division, Suzanne Smith. The speech highlights APRA's perspective on the building blocks of "good" conduct and culture in the superannuation industry.

In the speech, Ms Smith discusses what APRA looks for in terms of conduct and culture, using the "10 Dimensions of Risk Culture":

- Leadership
- Risk appetite and strategy
- Decision-making and challenge
- Communication and escalation
- Risk capabilities
- Risk governance and controls
- Responsibility and accountability
- Performance management and incentives
- Shared values
- Risk culture assessment

The speech covers some of the Dimensions and walks through what constitutes good practice and what types of behaviour gives cause for concern to the regulator.

Ms Smith points out that the introduction of the Financial Accountability Regime (FAR) will be an important lever in bringing greater transparency to those accountable in superannuation. She encourages trustees to think about the new regime to ready themselves for its implementation, highlighting the benefits of the Banking Executive Accountability Regime (BEAR), the pre-cursor to FAR, that had been implemented in three major Australian banks.

In the speech, Ms Smith also indicated that APRA will be running its own risk culture survey through a number of superannuation entities in 2022, which will directly survey staff within entities with questions focusing on all 10 Dimensions.

APRA data collection: testing update

APRA has published further information to assist reporting entities in getting ready for APRA Connect - the new data collection solution for reporting entities. APRA said all entities should be nominating their initial Regulatory Reporting Administrator (RRA) through D2A so that they can access the new APRA Connect test environment from 17 June to become familiar with it and trial submission of data. An APRA webinar is also scheduled for 10 June 2021 which will include a demonstration of APRA Connect and an overview of available information and support. The first data collections to be introduced in APRA Connect at the 13 September 2021 "go live" will be the Superannuation Data Transformation collections.

SUPERANNUATION

Your Future, Your Super Bill passes Reps with amendments

The Treasury Laws Amendment (Your Future, Your Super) Bill 2021 has been passed by the House of Reps with one Government amendment.

Broadly, Sch 3 of the Bill proposes to amend the SIS Act to require each trustee of a registrable superannuation entity and each trustee of a SMSF to perform the trustee's duties and exercise the trustee's powers in the best financial interests of the beneficiaries (and require each director of the corporate trustee of a registrable superannuation entity to perform the director's duties and exercise the director's powers in the best financial interests of the beneficiaries).

As originally introduced, Sch 3 would also have amended the SIS Act to allow regulations to be made to specify that certain payments or investments made by trustees of registrable superannuation entities were prohibited, or prohibited unless certain conditions were met: proposed s 117A of the SIS Act. It has now been amended by the Government to remove the measure.

The Bill will now proceed to the Senate, which is next due to sit on 15 June 2021 (which is the next sitting day of the House as well).

Super pension drawdowns: reduction extended

The Government has announced that the temporary 50% reduction in minimum annual payment amounts for superannuation pensions and annuities will be extended by a further year to 30 June 2022. This follows the Government's Coronavirus economic response in March 2020 to reduce the minimum pension drawdowns by 50% for the 2019-20 and 2020-21 income years. That measure was due to end on 30 June 2021. However, the Government said it will amend the SIS Regulations to extend this temporary 50% reduction for minimum annual pension payments to the 2021-22 income year.

Pressure on super industry to lift game working: APRA

APRA Chair, Wayne Byres delivered an opening statement to the Senate Economics Legislation Committee highlighting that APRA's efforts in driving superannuation trustees to improve outcomes for their members "is working". This, he said, is demonstrated by two discernible trends:

1. the number of funds have fallen from 279 to 170 since 2013, where demand for lesser products or funds has waned in substitution for better ones; and
2. the decline in fees as regulation for transparency allows members a better understanding of the fees they pay.

Mr Byres went on to acknowledge that there was still more to do. Some initiatives currently underway include:

- extending APRA's Heatmap work to choice products, allowing APRA to assess performances of products beyond MySuper products. APRA expects to publish its Heatmap sub-set of choice products later this year but

preliminary findings show choice products are producing more variability in outcomes, and often at higher costs, than MySuper products;
- review of trustee expenditure, eg advertising campaigns, TV program sponsorship, sponsorships of sporting teams and payments to external organisations. My Byres said that preliminary results show that industry practice, in terms of demonstrating how certain expenditure translates to quantifiable benefits to members, varies considerably. APRA expects to be in a position to determine next steps, including whether any enforcement action is appropriate and/or whether adjustments to prudential requirements are necessary, in the coming months.

Mr Byres also said that APRA's regulatory work is closely aligned with the reforms introduced in the Government's Treasury Laws Amendment (Your Future, Your Super) Bill 2021 especially:

- clear benchmarks, with consequences should they not be met, will reinforce the work APRA is doing to protect and improve outcomes for superannuation members;
- amending the best interests' duty to be the best financial interests duty, and increasing transparency of trustee expenditure, will sharpen trustees' current obligations and will leverage the enhanced reporting requirements that APRA has been working to implement; and
- having a capacity, in the form of a reserve power, to quickly and decisively deal with areas of ambiguity or avoidance activity in relation to expenditure by trustees, on an industry-wide basis, is helpful to improve the protection of members' funds.

Super information for family law proceedings: draft legislation

Treasury has released exposure draft Treasury Laws Amendment (Measures for Consultation) Bill 2021: Superannuation information for family law proceedings. The draft legislation proposes to amend the TAA 1953 and the Family Law Act 1975 to facilitate the identification of superannuation assets by parties to family law proceedings, leveraging information held by the ATO. The intention is that the legislation is to create an "information sharing mechanism", to allow the family law courts (including court registry staff) to access certain superannuation information held by the ATO for the purposes of permitted family law proceedings.

Comments are due by 28 June 2021.

REGULATOR NEWS

TPB investigating COVID compliance cases

The Tax Practitioners Board has advised that it currently has 99 active COVID compliance cases under investigation, with conduct ranging from practitioner error or incompetence, to reckless or fraudulent claims made either for themselves or on behalf of their clients. To this point, the TPB has terminated six practitioners for COVID stimulus related misconduct (with varying exclusionary periods), suspended seven and issued written cautions and orders to another three.

The TPB highlighted this in a recent release advising of the termination of tax agent registration where the agent had breached the Code of Professional Conduct by submitting over 100 BAS's and 43 JobKeeper applications for clients without obtaining the necessary prior authority, among other things.

Draft supervisory arrangements guidance

The Tax Practitioners Board (TPB) has released exposure draft TPB(I) D46/2021 Supervisory arrangements under the Tax Agent Services Act 2009 (TASA). This draft was developed to help tax practitioners understand the TPB's views on the supervisory arrangement requirements under the TASA.

The draft guidance includes considerations to assist in determining whether adequate supervision and control exists, including in situations where:

- remote supervision is being undertaken in practices, and
- a tax practitioner is providing supervision for multiple related or unrelated entities.

The draft also includes factors to be considered to ensure company and partnership entities have a sufficient number of individuals registered to meet the sufficient number requirement. This includes the requirement to obtain prior informed written consents from registered individual tax practitioners forming the sufficient number.

Additional guidance are included for tax (financial) advisers in recognition of different business models and structures as opposed to tax and BAS agent practices.

Comments are due by 28 June 2021.

IGTO Quarter 3 FY21 reporting pack released

The IGTO has released its Q3 reporting pack highlighting its activities during the quarter. It provides a couple of case studies of how the IGTO has assisted taxpayers in their complaints. The report also provides an update on the following:

- total complaints received and the Top five complaints received in Q3;
- IGTO's KPI results in Q3; and
- IGTO's Key Performance Areas, including remedies and outcomes up to May 2021.

Board of Taxation CEO update May 2021

The CEO of the Board of Taxation has issued its CEO Update - May 2021.

The update reflects on the Federal Budget, noting that the announcement of reforms to the individual tax residency rules was an important outcome to make those rules easier to understand and apply in practice. It also advises that details of the administrative framework of the R&DTI review and the Terms of Reference are now available on the Board's website. The review aims to identifying opportunities to reduce duplication between the two administrators, simplify administrative processes, or otherwise reduce the compliance costs for applicants.

The update provides a summary of its last meeting in April, in Brisbane, where much of the meeting was devoted to Board's work program for the coming financial year, including the R&D review. The update also noted a "lively discussion" on recent developments on the OECD's "Blueprints" for Pillar one and Pillar two.

The update farewells Dr Mark Pizzacalla and Mr Craig Yaxley, both served as members of the Board for the past six years.

The update also noted the appointments of Mrs Tanya Titman and Mr Ian Kellock as part-time members of the Board for a three-year period from 12 May 2021, both of whom will be at their first Board meeting in May.