TAXATION

Federal Budget 2022 confirmed for 29 March

Treasurer has confirmed that the 2022-23 Federal Budget will be handed down Tuesday 29 March 2022.

Car expenses: draft cents per km rate

ATO has released the draft cents per km rate for work-related car expense for the 2022-23 income year.

FBT on airline provided car parking: Decision Impact Statement

ATO has issued a decision impact statement on the car parking fringe benefits provided to flight and cabin crew by an airline.

Deductibility of payment to cancel entitlement: DIS

ATO has released a Decision Impact Statement on Full Federal Court's decision relating to deductibility of payments to cancel employee incentive entitlements.

Updated Tax Agent Services Regulations registered

Treasury has registered replacement Tax Agent Services Regulations to repeal redundant provisions, simplify language and other improvements.

DGR category for school pastoral care services

Government has released a consultation paper on its proposal to establish a DGR category for funds providing pastoral care services to school students.

BoT update: review of CGT rollovers; digital assets

CEO of the Board of Taxation has provided an update to the current work program including its review of CGT rollovers and digital assets and transactions.

Tax relief for flood affected communities announced: Treasurer

The Treasurer has announced a range of tax relief measures to alleviate cashflow pressures of small business and individuals in flood-affected areas.

Queensland - Extraordinary Disaster Assistance Recovery Grants and Disaster Assistance Loans

Please be aware of the 'Extraordinary Disaster Assistance Recovery Grants and Disaster Assistance Loans' which are now available to assist small businesses, primary producers and non-profits who were impacted by the South East Queensland rainfall and flooding events between 22 February – 7 March 2022.

FINANCIAL SERVICES

Operation of Financial Services and Credit Panel

ASIC has released a consultation paper on proposed updates to the Regulatory Guide for the operation of the Financial Services and Credit Panel.

Climate-related financial risks: APRA survey

APRA has released a letter on its voluntary climate risk self-assessment survey for medium-to-large APRA-regulated entities.

SUPERANNUATION

Super contributions work test repealed for under 75s

Regulations have been registered to implement the repeal of super contributions work test for individuals aged between 67 and 75 from 1 July 2022.

Superannuation retirement income covenant: APRA/ASIC letter

APRA and ASIC have issued a joint letter to registrable super entity licensees setting out their expectations on the implementation of the retirement income covenant.

ASIC action against SMSF auditors for independence breaches

ASIC has accepted voluntary cancellations or imposed conditions on the registration of a number of SMSF auditors for allegedly being involved in reciprocal audit arrangements.

Treasurer urges super funds to divest Russian assets

Treasurer has issued a media release confirming the government's "strong expectation" that Australian super funds will divest any holdings in Russian assets.

SMSF in-house asset exemption for COVID-19 rent deferrals

ATO has registered an instrument that provides a SMSF asset will not be considered an in-house asset where rent payable by a related party is deferred due to COVID-19.

REGULATOR NEWS

Total super assets $3.5 trillion at December 2021

APRA has released its quarterly super performance publication for the December 2021 quarter.

Cyber security guidance for ASIC-regulated entities

Australian Cyber Security Centre has urged ASIC-regulated entities to adopt an enhanced cyber security position.

News from the International Federation of Accountants (IFAC)

The global body for the accounting profession - IFAC - and its member bodies are very active across a number of topics, issues and sectors, including ethics, sustainability, the future of accounting, public sector accounting, education, events, anti-corruption, digital readiness, business advisory, auditor independence, and much more. There is something for everyone.

TAXATION

Federal Budget 2022 confirmed for 29 March

The Treasurer has confirmed that the 2022-23 Federal Budget will be handed down Tuesday 29 March 2022. The 2022-23 Budget documents will become available on the Budget website at https://budget.gov.au from 7.30 pm on 29 March, when the Treasurer hands down his Budget Speech. With an election anticipated in May 2022, it is expected that the measures proposed in the Budget will form a key part of the Government's election platform.

Car expenses: draft cents per km rate

The ATO has released the Draft Income Tax Assessment - Cents per Kilometre Deduction Rate for Car Expenses Determination 2022 (LI 2022/D8). The draft instrument proposes to set the rate of work-related car expense deductions at 75 cents per kilometre for 2022-23 (up from 72 c/km). The determination will apply to eligible taxpayers who elect to use the cents per kilometre method when calculating income tax deductions for their work-related car expenses.

Date of effect: Once finalised, the instrument will apply from 1 July 2022, and remain applicable to subsequent income years until such time as it is varied.

Comments are due by 31 March 2022.

FBT on airline provided car parking: Decision Impact Statement

The ATO has issued a decision impact statement (DIS) on FCT v Virgin Australia Regional Airlines Pty Ltd [2021] FCAFC 209. In that case, the Full Federal Court allowed the ATO's appeal and held that Virgin Airlines provided car parking fringe benefits to its flight and cabin crew at Sydney, Brisbane or Perth airports. The case concerned the interpretation of "primary place of employment" in s 136(1) of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) when read with the extended meaning of "business premises" in s 136(2).

The ATO says the Full Court's decision is consistent with the Commissioner's application of s 39A of the FBTAA and par (c) of the definition of "primary place of employment" in s 136(1). The Commissioner also accepts the Court's view on the application of para (d) of the definition of "primary place of employment" in s 136(1). The ATO said Taxation Ruling TR 2021/2 will be amended to include further guidance on the concept of "primary place of employment" in light of the Full Court's decision.

Comments are due by 1 April 2022.

Deductibility of payment to cancel entitlement: DIS

The ATO has released its decision impact statement (DIS) on Clough Limited v FCT [2021] FCAFC 197. In that case the Full Federal Court upheld the first instance decision that payments totalling $15m to cancel entitlements under an employee options plan and incentive scheme were not deductible under s 8-1 of the ITAA 1997. However, the payments were deductible over five years under s 40-880.

The Commissioner noted that whether a payment for the cancellation of employee entitlements in the context of a merger or acquisition event is deductible under s 8-1 is "fact and circumstance-specific", nevertheless "the decision in Clough provides authority for the characterisation of the outgoings in similar arrangements".

The DIS also noted that in relation to the deductibility of the payments under s 40-880, it is in accordance to TR 2011/6: Income tax: business related capital expenditure - section 40-880 of the Income Tax Assessment Act 1997 core issues.

Comments are due by 8 April 2022.

Updated Tax Agent Services Regulations registered

Treasury has registered the Tax Agent Services Regulations 2022 (the "Regulations") that replace the Tax Agent Services Regulations 2009 (the "2009 Regulations"), which were due to sunset on 1 April 2022.

The Regulations are stated to remake and improve the 2009 Regulations by repealing redundant provisions, simplifying language, and restructuring and renumbering provisions for ease of navigation. These changes do not affect the substantive meaning or operation of the provisions. Notable updates to the Regulations include amendments:

- from the Financial Sector Reform Amendment (Hayne Royal Commission Response – Better Advice) Regulations 2021, eg non-financial advisers (individuals, partnerships and companies) who were registered as tax (financial) advisers immediately before 1 January 2022 can continue to provide tax (financial) advice services between 1 January 2022 and 31 December 2022 without being registered as a tax agent; and
- to the Certificate IV qualifications as a result of updates to the qualifications administered by the Department of Education, Skills and Employment.

Date of effect: The Regulations commence on 1 April 2022.

DGR category for school pastoral care services

The Government has issued a consultation paper on its proposal to establish a deductible gift recipient (DGR) category for funds providing pastoral care services to students in Australian primary and secondary schools. The Paper proposes three key criteria for the proposed new DGR category:

- A DGR category for funds operated by an Australian Charities and Not-for-profits Commission (ACNC) registered charity or Australian government agency;
- The fund must be established and maintained solely to support the activity of delivering pastoral care services to Australian primary and secondary school students; and
- The provision of pastoral care must be delivered by an appropriately qualified worker whose predominant purpose and function is to provide pastoral care to students in a school environment.

Submissions are due by 29 April 2022.

BoT update: review of CGT rollovers; digital assets

The CEO of the Board of Taxation, Ms Christina Sahyoun, has issued the CEO Update – February 2022.

In its last Board Meeting on 18 February 2022, the Board discussed its 2022 work program (see below), and feedback from recently completed reviews in relation to the dual-agency administration model of Research and Development Tax Incentive and Goods and Services Tax on Low Value Imported Goods.

Updates to the current work program include:

- Review of CGT Roll-overs – the Board is now focusing on delivering its final report on CGT roll-overs to the Government on 22 April 2022. The review's objective is to identify and evaluate opportunities to rationalise the existing CGT rollovers and associated provisions into a simplified set with the same practical effect; and
- Review of Digital Assets and Transactions - on 8 December 2021, the Government announced that it will undertake a review of the regulation of digital assets and transactions in Australia with the Board undertaking a review into the appropriate policy framework for the taxation of digital assets and transactions. The Terms of Reference for the review are currently being finalised.

The next Board meeting is to be held in Brisbane on 8 April 2022.

Tax relief for flood affected communities announced: Treasurer

The Treasurer has announced a range of tax relief measures to alleviate cashflow pressures of small businesses and individuals in flood-affected areas in Queensland and New South Wales:

- additional time afforded to meet any upcoming BAS obligations - business activity statements and instalment notices with an original due date of 28 February 2022 or 21 March 2022 have been extended 28 March 2022 (note that this concession does not apply to significant global entities or large businesses);
- affected taxpayers that pay their Pay-As-You-Go Instalments quarterly will be allowed to vary upcoming instalments and claim a refund of previously paid instalments;
- GST refunds will also be fast tracked to free up cash flow and help fund their recovery efforts.

More information on tax relief support can be found on the ATO's website. See also the ATO's media release on the matter.

Queensland - Extraordinary Disaster Assistance Recovery Grants and Disaster Assistance Loans

What is available?

- Grants of up to $50,000 to eligible applicants available for directly impacted businesses. Up to $15,000 is available to support an initial claim, with up to $35,000 available to support subsequent claims. This grant can be used for clean-up activities, repairs including damage to equipment, flooring, and walls, and to replace lost stock.

- Disaster Assistance Loans offer up to $250,000 for businesses who were directly impacted by the SEQ rainfall and flooding events. This loan can be used to repair or replace damaged plant, equipment, or buildings, replace stock or meet carry on costs including rents or rates.

- Disaster Assistance (Essential Working Capital) offer up to $100,000 for businesses who have been indirectly impacted by the SEQ rainfall and flooding events. This loan can be used to pay staff, creditors, rent or rates and purchase goods that are essential for your business such as fuel.

Please note, applications will be assessed in order of receipt. Grant applications close on 5 September 2022, and loan applications close on 31 December 2023

How to apply

Apply online via the Queensland Rural and Industry here, or you can download a copy of the application and complete offline.

Where can go to get more information?

Please note QRIDA is the agency responsible for administering these grants. For more information about the grants QRIDA has published helpful information, including dealing with insured property, FAQs and downloadable guidelines here. We recommend reading the guidelines, they are reasonably short and provide good, clear information. Should you need further information please call 1800 623 946 or email QRIDA here.

FINANCIAL SERVICES

Operation of Financial Services and Credit Panel

ASIC has released a consultation paper (CP 359) on proposed updates to Regulatory Guide RG 263 for the operation of the Financial Services and Credit Panel (FSCP). Draft RG 263 includes updates to reflect changes made by the Financial Sector Reform (Hayne Royal Commission Response - Better Advice) Act 2021 which granted the FSCP its own legislative functions and powers to address a range of misconduct by financial advisers from 1 January 2021.

The consultation paper sets out ASIC's approach to determining when to convene a sitting panel of the FSCP. Hearings will generally be convened using audio-visual teleconferencing. Decisions will be publicised via media releases but the names of financial advisers will only be publicised if the sitting panel's decision must be displayed on the Financial Advisers Register.

Submissions are due by 28 March 2022.

Climate-related financial risks: APRA survey

APRA has released a letter on its voluntary climate risk self-assessment survey for medium-to-large APRA-regulated entities. The survey will gather insights on how entities are managing climate risks, using APRA's Prudential Practice Guide CPG 229 as a benchmark. Medium-to-large APRA-regulated entities will be invited to complete the survey via an online questionnaire.

SUPERANNUATION

Super contributions work test repealed for under 75s

The Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022, has been registered to implement the 2021 Budget measures to repeal the superannuation contributions work test for individuals aged between 67 and 75 from 1 July 2022, and allow funds to accept downsizer contributions from age 60. The Regulations support the measures that allow individuals under 75 to make or receive non-concessional contributions (including under the bring-forward rule) or salary sacrifice contributions without meeting the work test.

The Regulations simplify the SIS contributions acceptance rules for regulated super funds by repealing the work test in reg 7.04 of the SIS Regs for those aged between 67 and 75. The contributions acceptance rules have been replaced and simplified as follows from 1 July 2022.

If member is…	Fund may accept contributions made in respect of member that are..
under 60	employer contributions; or member contributions
not under 60, but under 75	employer contributions; or member contributions (including downsizer contributions)
not under 75	mandated employer contributions; or downsizer contributions

While the work test requirement has been repealed from the SIS Regs, an individual aged 67-75 will still need to meet the work test in s 290-165(1A) of the ITAA 1997 for the income year in which the contribution is made in order to deduct a personal contribution from 1 July 2022.

Date of effect: The Regulations apply to contributions made in 2022-23 and later financial years.

Superannuation retirement income covenant: APRA/ASIC letter

APRA and ASIC have issued a joint letter to registrable superannuation entity (RSE) licensees setting out their expectations on the implementation of the retirement income covenant. The letter follows recent amendments to the SIS Act which require RSE licensees to formulate a retirement income strategy and publish a summary of the strategy on the entity's website by 1 July 2022.

APRA and ASIC said they do not intend to issue detailed guidance on how RSE licensees should implement the covenant. Rather, implementation of the strategy is expected to be subject to a "continuous improvement process" from 1 July 2022 onwards. The letter outlines an indicative implementation pathway for RSE licensees to consider when embedding the covenant into their business operations. It also sets out considerations that a prudent RSE licensee would consider in order to develop an effective retirement income strategy.

ASIC action against SMSF auditors for independence breaches

ASIC has accepted voluntary cancellations or imposed conditions on the registration of a number of SMSF auditors for allegedly being involved in reciprocal audit arrangements. ASIC said 18 SMSF auditors were referred to it by the ATO for allegedly contravening the independence requirements under APES 110 due to reciprocal audit arrangements involving SMSF auditors who audited each other's personal SMSFs. Consequently, ASIC accepted voluntary cancellation requests from nine of the SMSF auditors, and imposed additional conditions on the registration of the other nine.

Treasurer urges super funds to divest Russian assets

The Treasurer has issued a media release confirming the Government's "strong expectation" that Australian superannuation funds will review their investment portfolios and take steps to divest any holdings in Russian assets in light of the ongoing invasion of Ukraine. Mr Frydenberg welcomed the voluntary actions taken to date by some super funds to divest their Russian assets.

APRA also issued a media release that it "will not be taking any action against trustees who seek to divest Russian assets in this context where trustees have considered such divestments in accordance with their duties." (Note that super trustees have a specific duty to act in the "best financial interests" of beneficiaries.)

SMSF in-house asset exemption for COVID-19 rent deferrals

The ATO has registered the Superannuation Industry (Supervision) Self-Managed Superannuation Funds (COVID-19 Rental Income Deferrals - In-House Asset Exclusion) Determination 2022. The Instrument provides that an SMSF asset will not be considered an "in-house asset" where rent payable by a related party under a lease is deferred due to COVID-19 during the 2021-22 income year. The exemption will only apply where the landlord has "acted in good faith" and there is documentation reflecting arm's length terms.

Date of effect: Where the SMSF satisfies the eligibility conditions during 2021-22, the asset is not an in-house asset in the 2021-22 income year when the rent was deferred, nor any future income years.

REGULATOR NEWS

Total super assets $3.5 trillion at December 2021

APRA has released its Quarterly Superannuation Performance publication for the December 2021 quarter reporting total super assets of $3.473 trillion at the end of the December 2021 quarter (up 14% for the year). Total assets in MySuper were up 18.2% to $950bn, while self-managed super fund (SMSF) assets were up 12.8% to $877bn at 31 December 2021.

For the year ending December 2021, contributions totalled $139bn (up 15.5%), while benefit payments totalled $82bn (down 27.2%) as payments returned to historically average levels after the closure of the Early Release Scheme. APRA said the large increase in contributions is likely a consequence of member reactions to COVID-19 related measures, such as increases in lockdown savings and stronger engagement with financial advice.

Cyber security guidance for ASIC-regulated entities

The Australian Cyber Security Centre (ACSC) has urged ASIC-regulated entities to adopt an enhanced cyber security position. While the ACSC is not aware of any specific threats, ASIC-regulated entities are advised to improve their cyber security resilience by reviewing detection, mitigation, and response measures.

ASIC reminded licensees of regulated entities that they are obliged to report breaches to ASIC or other government agencies. Disclosure to the market or in financial reports may also be necessary. Further details are available on the ACSC website.