TAXATION

ATO focus on small business tax returns

The ATO has said it will be focusing on small business tax returns for the 2021-22 income year.

ATO warning on asset wash sales

ATO has warned taxpayers not to engage in asset wash sales to artificially increase their losses and reduce gains.

Claiming legal professional privilege: protocol finalised

ATO has released its legal professional privilege protocol which contains the recommended approach for identifying communications covered by LPP.

Cryptocurrency not a foreign currency: government to legislate

Treasurer has announced that the government will legislate to ensure that cryptocurrencies continue to be excluded from foreign currency tax arrangements.

Car expenses: cents per km rates

ATO has registered a determination which sets the rate of work-related car expense deductions for the 2022-23 year.

PAYG withholding schedules for 2022-23

An instrument has been registered that makes available all withholding schedules for the 2022-23 income year.

Div 7A ruling and PS LA withdrawn

Following the release of Draft TD 2022/D1 setting out ATO's proposed new approach to Div 7A and UPEs, TR 2010/3 and PS LA 2010/4 have both been withdrawn.

Reasonable travel and overtime meal allowance amounts

ATO has released its annual ruling setting out the amounts it treats as reasonable for the 2022-23 in relation to employee claims for travel and meal expenses.

Effective life of depreciating assets from 1 July 2022

Commissioner's annual ruling on the effective life of depreciating assets have been released and include new effective life determinations for certain assets.

Foreign-incorporated companies: transitional compliance approach

ATO has again extended the transitional compliance approach for foreign incorporated companies.

NSW 2022-23 Budget

NSW Treasurer Matt Kean has handed down the 2022-23 NSW Budget projecting a deficit of $11.3bn for 2022-23.

Qld 2022-23 Budget

Queensland Treasurer Cameron Dick has handed down the 2022-23 Qld Budget with revenue measures including extending the payroll tax deduction phase out.

Tax agent banned for Code of Conduct breach

TPB has issued a media release highlighting the case of a Queensland tax agent who has been deregistered.

STP Phase 2 is ready

ATO has issued a release to highlight to employers that single touch payroll (STP) phase 2 is now available.

FINANCIAL SERVICES

Quality of advice review: 131 submissions received

The quality of advice has received 131 submissions in response to its issues paper on how the regulatory framework could be improved.

Former financial adviser fined for breaching ASIC banning order

A former Queensland financial adviser has been convicted and fined after pleading guilty to charges of breaching an ASIC banning order.

SUPERANNUATION

ATO flags SMSF compliance issues

ATO has published a presentation setting out the ATO's latest compliance focus for SMSFs.

Super fund performance tests: member communications

ASIC has warned super trustees to ensure that they do not mislead members when notifying them that the fund has failed an APRA investment performance test.

APRA supervisory levy determination

Treasury has registered a determination that sets the financial institutions supervisory levies for the 2022-23 financial year.

Super calculators and retirement estimates: relief extended

An instrument has been registered to provide conditional relief from the AFS licensing requirements to super fund trustees who prepare retirement estimates for their members.

Super guarantee amendments: APRA review

APRA has written to RSE licensees of defined benefit funds seeking their input on the impacts of the amendments by the Your Super, Your Choice Act.

REGULATOR NEWS

Corporate collective investment vehicles: ASIC guidance

ASIC has released a range of documents in relation to corporate collective investment vehicles licensing and other requirements.

TAXATION

ATO focus on small business tax returns

In a recent release the ATO said it will be focusing on small business tax returns for 2021-22. In particular, the ATO is concerned about:

- deductions that are private in nature and not related to business income, as well as overclaiming of business expenses (especially for taxpayers running a home-based business);
- omission of business income, for example income from the sharing economy or new business ventures; and
- record keeping - including insufficient or non-existent records that are needed to substantiate claims.

To help small businesses and tax practitioners "nail" their income tax returns, the ATO has released a tax time toolkit which provides guidance on (i) home-based business expenses; (ii) motor vehicle expenses; (iii) travel expenses; (iv) claiming deductions for the cost of digital expenses; (v) using business money and assets for personal use; and (vi) pausing or permanently closing a business.

Aside from the toolkit, the ATO also reminds small businesses to:

- include ALL income - salary and wages of sole traders, income from investments, certain government payments or financial support (see support payments for more guidance), etc;
- claim only what is entitled; and
- be mindful of lodgment deadlines.

ATO warning on asset wash sales

The ATO has warned taxpayers not to engage in "asset wash sales" to artificially increase their losses and reduce gains. The ATO said its sophisticated data analytics can identify wash sales through access to data from share registries and crypto asset exchanges. When the ATO identifies this behaviour, the capital loss is rejected.

Assistant Commissioner Tim Loh said a wash sale is different from normal buying and selling of assets because it is undertaken for the artificial purpose of generating a tax benefit for the current financial year. The taxpayer disposes of and reacquires the asset "after a short period of time" for the deliberate purpose of realising a capital gains loss and obtaining a tax benefit. Ruling TR 2008/1 contains the ATO's views on wash sales and the potential application of Pt IVA.

Claiming legal professional privilege: protocol finalised

The ATO has released its Legal Professional Privilege ("LPP") protocol which contains the ATO's recommended approach for identifying communications covered by LPP and making LPP claims to the ATO.

The Protocol has been developed to assist taxpayers and their advisors when making LPP claims in response to requests for information the ATO makes under its formal information gathering powers. It does this by explaining the ATO's recommended approach for claiming LPP and providing with information on what can be expected in different situations. It is voluntary to follow the recommended approach.

The Protocol provides a three-step process for making LPP claims.

Step 1: identify the service or engagement giving rise to the communication and assess each communication.

Step 2: explain (particularise) the LPP claims on or before the due date specified in the formal notice seeking information and/or documents.

Step 3: advise the ATO of the process used for making LPP claims, framed around key questions.

Cryptocurrency not a foreign currency: government to legislate

The Treasurer has announced that the Government will legislate to ensure that cryptocurrencies continue to be excluded from foreign currency tax arrangements. This will ensure that the current treatment is unchanged and that cryptocurrency will not be regarded as a foreign currency. As a result, CGT will continue to apply to crypto assets that are held as investments.

The announcement is stated as being made to provide "certainty and clarity at a time of volatility for cryptocurrencies". It is made in the context of El Salvador and The

Central African Republic recognising Bitcoin and other cryptocurrencies as legal tender during the 2021-22 income year. The legislation will be backdated to 1 July 2021.

Car expenses: cents per km rates

The ATO has registered the Income Tax Assessment - Cents per Kilometre Deduction Rate for Car Expenses Determination 2022. The determination sets the rate of work-related car expense deductions at 78 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: 1 July 2022.

PAYG withholding schedules for 2022-23

The Taxation Administration Act Withholding Schedules 2022 has been registered. The instrument makes available all withholding schedules for the 2022-23 income year.

There are some 15 tables in all. It is worth noting that the instrument only updates two schedules, ie 13 are unchanged from 2021-22. The two that are changed are as follows:

- Schedule 8 – Statement of formulas for calculating study and training support loans components; and
- Schedule 15 – Tax table for working holiday makers.

The instrument repeals and replaces legislative instrument Taxation Administration Act Withholding Schedules 2021 - F2021L00779, registered on 18 June 2021, and Taxation Administration Act Withholding Schedule - Working Holiday Makers - F2016L01964, registered on 15 December 2016.

Date of effect: 1 July 2022.

Div 7A ruling and PS LA withdrawn

Following the February 2022 release of Draft TD 2022/D1, setting out the ATO's proposed new approach to Div 7A and unpaid present entitlements (UPEs), the ATO has now withdrawn TR 2010/3, its previous ruling on the matter.

The withdrawn Ruling treated a UPE that was not called for by a corporate beneficiary as a Div 7A loan unless the funds were held on sub-trust for the beneficiary's sole benefit. Practice Statement PS LA 2010/4, also withdrawn, outlined three safe harbour investment options to prevent a Div 7A loan arising: Option one: invest the funds on an interest-only seven-year loan at the Div 7A benchmark interest rate; Option two: invest the funds on an interest-only 10-year loan at a prescribed interest rate; or Option three: invest the funds in a specific income-producing asset or investment.

A key component of the ATO's revised approach (which will apply to present entitlements created after 30 June 2022) is that a Div 7A loan can arise if a sub-trust fund is on commercial terms, with a return paid to the fund (ie Options one and two will no longer be acceptable).

The ATO confirmed that taxpayers can continue to rely on the withdrawn documents in respect of trust entitlements conferred before 1 July 2022, even if the sub-trust or a further complying loan is put in place after 30 June 2022.

Date of effect of withdrawal: 1 July 2022.

Reasonable travel and overtime meal allowance amounts

The ATO has released its annual ruling setting out the amounts it treats as reasonable for 2022-23 in relation to employee claims for:

- overtime meal expenses - the reasonable amount is $33.25;
- domestic travel expenses. Reasonable amounts are provided for 3 salary levels for: (i) short-stay accommodation in commercial establishments; (ii) meals (breakfast, lunch and dinner); and (iii) deductible expenses incidental to travel;
- meal expenses for employee truck drivers in receipt of a travel allowance and required to sleep (take their major rest break) away from home - the

reasonable amounts are $26.80 (for breakfast), $30.60 (for lunch) and $52.75 (for dinner);
- overseas travel expenses. Reasonable amounts are provided for 3 salary levels for: (i) meals (breakfast, lunch and dinner); and (ii) deductible expenses incidental to travel.

Date of effect: 1 July 2022.

Effective life of depreciating assets from 1 July 2022

The Commissioner's annual ruling on the effective life of depreciating assets has been released. TR 2022/1 includes new effective life determinations for assets used in clothing manufacturing, wooden furniture and upholstered seat manufacturing, salt manufacturing and refining, and casino operations.

TR 2022/1 replaces TR 2021/3, which applied in 2021-22 and has now been withdrawn.

Date of effect: 1 July 2022.

Foreign-incorporated companies: transitional compliance approach

The ATO has again extended - this time until 31 December 2022 - the transitional compliance approach set out in PCG 2018/9 for companies that determined they were non-residents on the basis of withdrawn TR 2004/15 but qualify as residents under TR 2018/5 due to their central management and control being in Australia.

This is the third extension and is confined to companies that are "impacted in their efforts to change their governance arrangements". The ATO says it will continue to "monitor impacts" and will, if needed, provide further updates.

NSW 2022-23 Budget

The NSW Treasurer Matt Kean has handed down the 2022-23 NSW Budget projecting a deficit of $11.3bn for 2022-23, with a return to a small surplus by 2024-25.

The Budget has proposed to introduce a First Home Buyer Property Tax Option whereby first home buyers purchasing a property up to $1.5 million will be provided with an option to pay an annual property tax instead of the existing upfront transfer duty.

Annual owner-occupier property tax rates will be set at $400 plus 0.3% of the property's unimproved land value in 2022-23. First home buyers will be allowed to change the status of property from owner-occupied to residential investment property where the annual tax rate will be set at $1,500 plus 1.1% of the property's unimproved value. Properties will not be locked into the property tax for subsequent purchases. Transfer duty will apply to a subsequent purchase, unless the purchaser is a first home buyer who opts into the property tax. Non-first home buyers will not be given the choice to opt into the property tax. Further details are available on the NSW Government website.

Date of effect

From 16 January 2023, eligible first home buyers will be able to opt in and not pay transfer duty. For contracts exchanged in the period between the enactment of legislation and 15 January 2023, eligible first home buyers will be able to apply to opt in and receive a refund of transfer duty paid from 16 January 2023. The property tax will apply from the date of settlement.

Other Budget measures

Other measures announced in the 2022-23 Budget include:

- ***Shared equity scheme*** - $780.4m will be provided for a two-year trial of a shared equity scheme for up to 6,000 eligible single parents, older singles and first home buyers who are teachers, nurses and police.
- ***Land tax early payment discount reduction*** - the land tax early payment discount will be lowered from 1.5% to 0.5% from 1 January 2023.
- ***Foreign investor surcharge land tax*** - will be increased from 2% to 4% per annum from the 2023 land tax year.
- ***Payroll tax exemptions and Future Economy Fund subprogram*** - will offer grant payments and payroll tax exemptions to encourage businesses of future industries to establish or expand in NSW.
- ***Land tax and transfer duty compliance*** - $60m for additional compliance measures, including system upgrades and improved data management at Revenue NSW, expected to increase land tax revenue by $368m and transfer duty revenue by $200m over four years to 2025-26.

- ***Betting taxes*** - tax rates to be aligned with the Point of Consumption tax at 15%.

QLd 2022-23 Budget

The Qld Budget 2022-23 has been handed down by Treasurer Cameron Dick and announced the following revenue measures:

- ***Coal royalty rates*** - the current 10-year freeze on coal royalty rates will end on 30 June 2022 and the Qld Government will introduce three additional royalty rate tiers to the coal royalty structure, for coal sold, disposed of or used on or after 1 July 2022: (i) 20% on that part of the average price per tonne of A$175-A$225; 30% on average price of A$225-A$300; and (iii) 40% on average price of A$300 plus.
- ***Payroll tax mental health levy*** - a 0.25% mental health levy will be introduced for businesses with annual taxable Australian wages of over $10m from 1 January 2023. Businesses with annual wages over $100m will pay an additional 0.5% levy.
- ***Payroll tax deduction phase out extended*** - for payroll tax liabilities arising on or after 1 January 2023, the payroll tax deduction will be extended from the current ceiling of $6.5m in annual Australian taxable wages up to $10.4m. This reflects an increase in the phase out rate of the deduction from $1 for every $4 to a rate of $1 for every $7 of taxable wages above the $1.3m threshold. The government will also extend the 50% payroll tax rebate on the exempt wages of apprentices and trainees until 30 June 2023.
- ***Foreign acquirer duty exemption for retirement visa holders*** - subclass 405 and 410 visa holders will be exempt from additional foreign acquirer duty for purchases of their principal place of residence on or after 1 January 2023.
- ***Racing industry*** - a 5% racing levy will be introduced from 1 December 2022 for the betting tax and making bonus bets (or free bets) taxable.

Tax agent banned for Code of Conduct breach

The TPB has issued a media release highlighting the case of a Queensland tax agent (and her associated company) who has been de-registered after allegedly committing a "string of serious breaches" against the TPB's Code of Professional Conduct.

The tax agent allegedly provided "wrong tax advice" and over-claimed tax deductions without appropriate evidence, which resulted in ATO audits and adjustments that affected many of her clients. The tax agent also allegedly failed to comply with her own tax obligations, especially in dealing with GST and PAYG withholding.

STP Phase 2 is ready

The ATO issued a release to highlight to employers that Single Touch Payroll (STP) Phase two is now available. STP Phase two is an expansion of data collection introduced in the 2019-20 Budget which began on 1 January 2022.

The ATO has been writing to employers about STP Phase two availability. As of 14 June 2022 over 144,000 employers are reporting STP Phase two information for over 1.7 million individuals.

The ATO said that to ensure a smooth transition, employers setting up STP Phase two for the first time will need to:

- check when their payroll product will be ready for STP Phase two reporting. Many products are ready now, with more becoming available over the coming months;
- review pay codes - pay codes will need to be set up for amounts which now need to be itemised separately such as bonuses, commissions, Director's fees, and overtime;
- review allowances as they will be reported differently;
- understand changes to salary sacrifice reporting;
- check if they have all the relevant information stored in their payroll system; and
- seek assistance from their tax or BAS professional or payroll provider if required.

FINANCIAL SERVICES

Quality of advice review: 131 submissions received

The Quality of Advice Review has received 131 submissions in response to its Issues Paper on how the regulatory framework could be improved to better enable high quality, accessible and affordable financial advice for retail clients. The submissions will be considered by the independent Reviewer, Michelle Levy, with a report to Government due by 16 December 2022.

A submission by the Joint Associations Working Group (JAWG), comprising 12 representatives of the financial services industry and financial advice professional associations, has called for clarity on what is needed to satisfy the best interests duty. Among other things, the JAWG recommended the development of a profession-wide position on the tax deductibility of initial and ongoing advice fees.

The SMSF Association, which is a member of the JAWG, called for financial advisers to be granted access to a client's ATO superannuation reports (eg total super balances and transfer balance caps). While this ATO information is available to an individual's registered tax agent, the Association said it is not directly available to financial advisers who are authorised to provide superannuation advice. The Association also noted that a "perfect storm of multiple factors" has significantly impacted the limited licensing regime for accountants to provide certain SMSF advice.

The IPA has made and been part of three submissions to the Quality of Advice Review. For more details please click here.

Former financial adviser fined for breaching ASIC banning order

A former Queensland financial adviser has been convicted and fined $1,500 after pleading guilty to three charges of breaching an ASIC banning order. ASIC said the former adviser was banned in 2017 from providing financial services for seven years for allegedly failing to act in the best interests of his clients when advising them to establish a self-managed superannuation fund (SMSF) to purchase properties.

SUPERANNUATION

ATO flags SMSF compliance issues

The ATO has published a presentation by Paul Delahunty at the SMSF Professionals Day on 31 May 2022 setting out the ATO's latest compliance focus for SMSFs.

The ATO said it is very concerned about the growth in the number of SMSFs failing to lodge their first annual return, with this rate now sitting at 26% for 2020 (up from 3% in 2013). The ATO has identified 34,000 funds who had never lodged their first return, and a further 60,000 lapsed lodgers who have one or more outstanding returns. Mr Delahunty said non-lodgment is particularly concerning where there has been a rollover into these SMSFs, as this is a strong indicator of illegal early release of benefits.

While over 97% of lodging SMSFs had no reportable contraventions, for the 2021 financial year, Auditor Contravention Reports (ACRs) were received for over 13,800 funds involving 40,000 contraventions (up 10%). The two most common contraventions relate to purported loans to members and trustees not separating their personal and business affairs from their SMSF. With SMSF investments in cryptocurrency expected to increase, Mr Delahunty reminded SMSF trustees of their regulatory and income tax obligations in relation to cryptocurrency.

Super fund performance tests: member communications

ASIC has warned super trustees to ensure that they do not mislead members when notifying them that the fund has failed an APRA investment performance test. This warning follows the release of ASIC's report (REP 729) which reviewed trustee communications by the 12 trustees that failed the MySuper performance test in 2021.

The ASIC review found that the trustees whose products failed the annual APRA test generally complied with the legal obligations to notify their members of the failed test and to disclose it on their website. However, ASIC expressed concern about some communication strategies that published the MySuper product's failure of the test on a webpage less likely to be visited by persons interested in the product.

APRA supervisory levy determination

Treasury has registered the Australian Prudential Regulation Authority Supervisory Levies Determination 2022. This determination sets the financial institutions supervisory levies for the 2022-23 financial year.

Under the superannuation supervisory levy, the restricted component of the 2022-23 levy will be calculated at 0.00459% of assets held by the entity, subject to a minimum of $10,000 and a maximum of $800,000 for superannuation funds other than small APRA funds (SAFs) or pooled superannuation trusts. The unrestricted component of the 2022-23 levy will be calculated at 0.002989% of assets held by the entity. SAFs will be levied a flat amount of $590 per fund (unchanged).

Date of effect: 1 July 2022.

Super calculators and retirement estimates: relief extended

ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603, has been registered to provide conditional relief from the AFS licensing requirements to superannuation fund trustees who prepare retirement estimates for their members, and for providers of superannuation calculators. The ASIC relief applies until 30 June 2027 and has extended the relief previously provided until 31 December 2022 by the ASIC Corporations (Repeal and Transitional - Relief for Providers of Retirement Estimates) Instrument 2022/204.

The Instrument defines the assumptions for superannuation calculators to qualify for the exemption, including the assumed retirement age and assumed drawdown period for a retirement phase income stream. The exemption for providers of retirement estimates only applies in prescribed circumstances set out in the Instrument. For example, the member must have been a member of the superannuation entity for the year ending on the date of the estimate, and the member must have an account balance of $6,000 of more and not be receiving a transition to retirement income stream.

The ASIC Corporations (Amendment) Instrument 2022/604, has also been registered and amends the ASIC Corporations (Generic Calculators) Instrument 2016/207 to remove relief for superannuation or retirement calculators in that Instrument from 1 January 2023 and makes other minor machinery changes.

Super guarantee amendments: APRA review

APRA has written to registrable superannuation entity (RSE) licensees of defined benefit funds seeking their input on the impacts of the amendments to the *Superannuation Guarantee (Administration) Act 1992* (SGAA) by the *Treasury Laws Amendment (Your Superannuation, Your Choice) Act 2020*. That amending legislation requires APRA to conduct a review to identify any unintended consequences for defined benefit (DB) schemes.

Under the amendments, employers who make contributions for employees under workplace determinations or enterprise agreements made on or after 1 January 2021 must provide those employees with choice of fund. The SGAA was amended to clarify the limited circumstances where employers would not have an increased individual super guarantee shortfall for failing to provide choice of fund to certain members of a DB scheme.

APRA is seeking input on the overall impact on DB schemes from the changes and how they have affected the operation, profitability, funding and viability of DB schemes, including any impact on the vested benefits index (VBI). APRA wants to know if any DB schemes have closed to new members or been wound up since 30 June 2020? APRA is also seeking details about any information provided to members about the amendments.

REGULATOR NEWS

Corporate collective investment vehicles: ASIC guidance

ASIC has released a range of documents in relation to corporate collective investment vehicles (CCIVs) licensing and other requirements that come into effect on 1 July 2022.

- Report 728: Response to submissions on CP 360 Corporate collective investment vehicles: Preparing forthe commencement of the new regime (REP 728) - this report highlights the key issues that arose out of the submissions received on CP360 and includes ASIC's responses to those issues. Key issues related to AFS licence or variation applications for corporate directors, insurance arrangements for corporate directors, and financial resource requirements for licensees that are corporate directors and responsible entities.
- Information Sheet 272: How to register a corporate collective investment vehicle and sub-fund (INFO 272) - provides guidance on (i) CCIV initial sub-fund registration requirements; (ii) the application process, including how ASIC will assess applications for CCIVs and initial sub-funds; (iii) CCIV Constitution and compliance plan requirements; and (iv) the application process for registering further sub-funds. It also provides guidance to entities about becoming a corporate director as well as registering and operating the CCIV and sub-funds.

Other key regulatory guides have also been updated for the commencement of the CCIV regime.