TAXATION

PAYG withholding variation for occasional donations

ATO has issued a draft instrument that proposes to vary the amount a payer is required to withhold under the PAYG system for certain payees.

Depreciating assets: composite items

ATO has issued a draft ruling setting out its preliminary views on how to determine whether a composite item is itself a depreciating asset.

Applying for a Lodgment Deferral

A reminder that from 1 October 2023 the only way to request a lodgment deferral will be through online services for agents, reports and forms menu.

ATO - Key insights from large and multinational business programs

The ATO have advised that they ‘continue to provide transparency with the latest release of findings reports. These reports contain insights and observations from public and multinational business assurance programs and information provided by these taxpayers’.

Tax Practitioners Board (TPB) - Operation Protego – ethical questions for tax practitioners

The Tax Practitioners Board (TPB) have released an article that ‘provides an update on the Australian Taxation Office’s (ATO) work to address GST frauds, known as Operation Protego’. The TPB ‘also provide guidance for tax practitioners in addressing these issues’.

FINANCIAL SERVICES

Financial advice registration requirement extended

ASIC has registered an instrument that puts in place further interim measures to delay the requirement for relevant providers to be registered with ASIC.

Information package for FAR regime published

ASIC and APRA have released an information package to support the financial services industry implement the Financial Accountability Regime (FAR).

SUPERANNUATION

Changes for targeted super tax breaks: exposure drafts

Treasury has issued two draft Bills which proposes to enact changes to super tax concessions announced in the 2023-24 Budget.

REGULATOR NEWS

ASIC News

Updates from ASIC in the past week including media releases, news, articles and speeches.

TAXATION

PAYG withholding variation for occasional donations

The ATO has issued the exposure draft to the Taxation Administration (Withholding Variation for Occasional Payroll Donations to Deductible Gift Recipients) Legislative Instrument 2023. The draft instrument proposes to vary the amount a payer is required to withhold under the pay as you go (PAYG) system for payees who make payroll donations to a deductible gift recipient under an occasional giving arrangement. The requirement to withhold payment to a payee under Subdiv 12-B in Sched 1 to the TAA applies where:

all or part of the withholding payment has been made, or will be made, as a donation to a deductible gift recipient under an occasional giving arrangement; and

the payee of the withholding payment has not advised the payer that they do not want a variation of the amount withheld.

Where the amount calculated using the method statement proposed in the draft instrument is zero or negative, the amount that the payer must withhold from the payment is varied to nil.

Once finalised, the instrument replaces the Taxation Administration Act 1953 - Pay as you go withholding - Occasional payroll donations to deductible gift recipients No. 4.

Date of effect: The day following registration on the Register.

Comments are due by 31 October 2023.

Depreciating assets: composite items

The ATO has issued Draft Ruling TR 2023/D2, setting out its preliminary views on how to determine whether a composite item is itself a depreciating asset or whether the component parts are separate depreciating assets. It replaces the previous draft ruling on this topic, TR

2017/D1, which has now been withdrawn. The ATO decided to issue a new draft due to the passage of time since TR 2017/D1 was released in January 2017. Draft TR 2023/D2 includes new content and some clarifications in response to feedback received.

Draft TR 2023/D2 sets out a series of "guiding principles" to assist in identifying the relevant depreciating asset. These include whether the item has a separate identifiable function, whether it performs a discrete function, the degree of physical or functional integration of the components, and whether multiple components are purchased as a system to function together as a whole. Other issues considered include whether a modification or alteration to an existing depreciating asset can itself be a depreciating asset, intangible depreciating assets and jointly held tangible assets.

The Draft contains 14 examples, covering items such as a desktop computer package, a mainframe computer, a local area network, a car GPS, rail transport infrastructure, a solar power system and photographic lighting equipment.

Proposed date of effect: retrospective.

Comments on the draft are due by 3 November 2023.

Applying for a Lodgment Deferral

The ATO has provided a number of resources to assist, including 'How to apply for lodgment deferrals and what happens next which covers:

- Before you apply;
- How to apply?
- After you apply

There are also instructions on the ATO website on 'How to request' a deferral (single or multiple deferrals)

ATO - Key insights from large and multinational business programs

The ATO have stated that 'the reports support the integrity of the tax system by providing transparency to the community on how the ATO assures large and multinational businesses pay the right amount of tax'.
More information can also be obtained in the ATO published 'Findings report – Top 100 income tax and GST assurance programs'.

Tax Practitioners Board (TPB) - Operation Protego – ethical questions for tax practitioners

The TPB have stated in the article 'Any tax practitioner found to be engaging in, promoting or applying this scheme may risk their registration and could face sanctions being applied. Ultimately it is your responsibility to exercise appropriate due diligence and ensure you follow your obligations under the Code of Professional Conduct in the Tax Agent Services Act 2009 (TASA), specifically in this situation:

- Code item 1 – you must act honestly and with integrity.
- Code item 4 – you must act lawfully in the best interests of your client.
- Code item 7 – you must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.
- Code item 9 – you must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of a client.
- Code item 10 – you must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.
- Code item 11 – you must not knowingly obstruct the proper administration of the taxation laws'.

FINANCIAL SERVICES

Financial advice registration requirement extended

ASIC has registered the ASIC Corporations (Amendment) Instrument 2023/730 (the "Amending Instrument"). The Amending Instrument puts in place further interim measures to delay the requirement (the "Registration Requirement") for "relevant providers" to be registered with ASIC as a precondition for providing personal advice ("Financial Advice") to retail clients about relevant financial products.

By way of background, the requirement for relevant providers to be registered was introduced by the Financial Sector Reform (Hayne Royal Commission Response -- Better Advice) Act 2021 ("Better Advice Act"). The registration provisions, as inserted by the Better Advice Act, staggered commencement dates so that Australian financial services ("AFS") licensees and relevant providers could continue providing Financial Advice without being registered up to 1 January 2023. Subsequent steps were taken by the Government to delay the Registration Requirement to 1 October 2023.

The Amending Instrument provides for a further delay to the Registration Requirement to 1 February 2024 in order to allow:

- Parliament to further consider the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 ("TLAB 1"), which gives ASIC the power to use assisted decision-making systems when processing registration applications and facilitate multiple registration of relevant providers;
- ASIC to implement TLAB 1 if TLAB 1 is enacted;
- industry to understand its rights and obligations concerning the Registration Requirement; and

- AFS licensees to register their relevant providers with ASIC prior to the Registration Requirement commencing.

Information package for FAR regime published

In a joint media release, ASIC and APRA have released an information package to support the financial services industry to implement the Financial Accountability Regime ("FAR").

The FAR replaces the Banking Executive Accountability Regime ("BEAR"), which was solely administered by APRA. In addition to authorised deposit-taking institutions ("ADIs"), the FAR, will apply to insurance companies, superannuation trustees and licensed non-operating holding companies. Additionally, the FAR introduces conduct-focused prescribed responsibilities, and will be jointly administered by APRA and ASIC.

The information package published comprises:

the Joint Administration Agreement between APRA and ASIC setting out the framework within which the regulators will work together to administer the FAR; and

a joint information paper providing guidance for ADIs on transitioning from the BEAR to the FAR, supported by the ADI accountability statement guidance and template.

Industry engagement details is said to follow shortly.

The FAR will come into force for the banking industry on 15 March 2024 and for the superannuation and insurance industries on 15 March 2025.

SUPERANNUATION

Changes for targeted super tax breaks: exposure drafts

Treasury has issued two draft bills, the Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023 (the "Bill") and the Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023 (the "Imposition Bill"). The exposure drafts proposes to enact changes to superannuation tax concessions announced in the 2023-24 Budget in relation to better targeted tax concessions.

The Bill proposes to insert the new Div 296 in the ITAA 1997 which, together with the Imposition Bill, imposes a tax at a rate of 15% for superannuation earnings corresponding to the percentage of an individual's superannuation balance that exceeds $3 million for an income year for certain superannuation interests that are captured by the Bill. Div 296 tax will only be applied for the part of earnings corresponding to the percentage of an individual's total superannuation balance ("TSB") that is greater than $3 million, bringing the headline concessional tax rate up to an overall 30%. It will be levied directly on individuals and imposed separately to personal income tax and superannuation fund tax.

The Bill also amends several Acts to include provisions relating to the calculation of earnings, withdrawals and contributions, modifications for earnings of certain constitutionally protected interests, debt deferral provisions for defined benefit interests in the pre-end benefit phase, and changes to the definition of TSB.

Date of effect: The policy commences on 1 July 2025 and applies from the 2025-26 income year onwards.

Submission are due by 18 October 2023.

REGULATOR NEWS

ASIC news

ASIC has released the following updates in its Newsroom section:

- 06 October 2023 - MEDIA RELEASE 23-271MR Dean George Scook charged with stealing
- 05 October 2023 - MEDIA RELEASE 23-270MR Shine Justice improves disclosure of unbilled disbursements and disbursements funding interest following ASIC review
- 05 October 2023 - MEDIA RELEASE 23-269MR ASIC bans former insurance adviser for three years
- 04 October 2023 - MEDIA RELEASE 23-268MR Federal Court orders Provide Capital to produce documents
- 04 October 2023 - MEDIA RELEASE 23-267MR ASIC appeals Federal Court findings relating to representations made by ACBF Funeral Plans
- 03 October 2023 - MEDIA RELEASE 23-266MR ASIC sues Cigno Australia, BSF Solutions and their directors alleging unlicensed credit activity
- 03 October 2023 - MEDIA RELEASE 23-265MR APRA and ASIC commence joint administration of the new Financial Accountability Regime