PwC's Monthly Tax Update

Keeping you up to date on the latest Australian and international tax developments

May 2024

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Corporate Tax Update

Changes coming to Top 1,000 Combined Assurance Review program

The Australian Taxation Office (ATO) is planning to revise its Top 1,000 combined assurance review (CAR) program such that it will:

- recalibrate the metrics used to determine whether an economic group is in scope. The ATO has seen a high growth in the number of businesses exceeding the $250 million turnover, such that the population was far greater than 1,000. This will mean that the recalibrated Top 1,000 program will cover the largest 1,000 entities from approximately 850 economic groups (generally those having Total Business Income over $350 million at their latest lodgment although other factors will also be relevant, such as industry and whether there are any significant transactions or risks). Entities outside of the largest 1,000 entities will be considered by other risk treatment approaches, including the Medium and Emerging Strategy, and may be selected for a specific review of identified tax issues and risks.
- differentiate the assurance approach. This will mean taxpayers will be divided into two categories with different assurance approaches - significant taxpayers (Total Business Income over $1 billion) and general pool taxpayers covering the remainder. The ATO will also adopt a differentiated approach for GST where it already has a level of assurance for a taxpayer through an earlier review.

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Employment Taxes Update

2024-25 FBT rates

The Australian Taxation Office (ATO) has released details of the various fringe benefits tax (FBT) rates and thresholds for the FBT year commencing 1 April 2024.

In particular, the ATO has published the following tax determinations which relate to the 2024-25 FBT year:

- TD 2024/2 which sets out the amounts the Commissioner of Taxation considers reasonable for food and drink expenses incurred by employees receiving a living-away-from-home allowance (LAFHA) fringe benefit, and
- TD 2024/1 which provides the rates to be applied on a cents per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car.

Other relevant FBT rates and thresholds applicable from 1 April 2024 (for the 2024–25 FBT year) can be found on the ATO's website, including:

- FBT gross up rates;
- the benchmark interest rate relevant to valuing a loan or a car fringe benefit; and
- the FBT record keeping exemption threshold.

The car parking threshold for the 2024-25 FBT year is yet to be advised.

The ATO has additionally updated its Electric Cars Exemption page which is inclusive of the new 4.20 cents per kilometre EV home charging rate.

AAT rejects employer's exceptional circumstances claim for late superannuation guarantee statements

The Administrative Appeals Tribunal (AAT) considered in the matter of Delbake Pty Ltd and Commissioner of Taxation [2024] AATA 449 the application of penalties that the Commissioner for Taxation imposed on an employer who failed to provide information to the Commissioner about their superannuation guarantee (SG) shortfall.

The employer lodged SG statements for the period 1 July 2015 to 30 June 2016 in response to the Commissioner raising initial concerns about its SG obligations. In December 2021, the Commissioner issued an "early engagement review letter" to the employer to check if they had complied with their superannuation obligations. The employer responded that the period 1 July 2015 to 30 June 2018 had been subject to an "SGC audit in 2019" and that "SGC statements have previously been prepared and lodged with the ATO". In February 2022, the Commissioner notified the employer that there would be another audit in relation to their SG compliance for the period and requested specific information. The employer provided various documents to the Commissioner. The Commissioner then issued amended assessments in respect of the employer's Superannuation Guarantee Charge (SGC) for the quarters 30 September 2015 to 31 December 2020. In July 2022, the audit was completed, and the Commissioner imposed Part 7 penalties, including 100% of the SGC for the shortfall period.

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The employer objected to the penalties imposed for the shortfall period on the basis of "exceptional circumstances". When the Commissioner disallowed the objection, the employer sought review. Before the AAT, the employer relied upon a number of factors as constituting exceptional circumstances, including the illness of their previous accountant, the financial impact of the pandemic, lack of notice of the Commissioner's audit, legislation closing the amnesty period, and the fact that late payments were made in five out of seven of the relevant quarters.

However, the AAT found that none of the circumstances that the employer relied on could be accepted as preventing them from lodging SG statements or providing information to the Commissioner about their SG shortfall before February 2022. The fact that the employer provided the information to the Commissioner in April and May 2022 demonstrated that they would have been able to provide that same information earlier if they had made the effort to do so. As a result, the AAT affirmed the Commissioner's decision in relation to the period 30 September 2015 to 31 March 2018 and remitted the decision for periods post-31 March 2018 for recalculation.

Global Tax and Trade Update

Exposure draft legislation released for Pillar Two in Australia

The Treasury has released draft legislation for the implementation of the Organisation for Economic Co-operation and Development (OECD's) Pillar Two minimum tax regime in Australia. The measures included in the exposure draft legislation and rules will:

- impose top-up tax under the Income Inclusion Rule (IIR) and a Domestic Minimum Tax (DMT) from fiscal years commencing on or after 1 January 2024;
- impose top-up tax under the Undertaxed Profits Rule (UTPR) from fiscal years commencing on or after 1 January 2025;
- implement the framework for the imposition of top-up tax consistent with the OECD's Global Anti-Base Erosion (GloBE) Model Rules, Commentary, Agreed Administrative Guidance and Safe Harbour Rules; and
- introduce consequential provisions necessary for the administration of top-up tax.

In addition to the above, Treasury also released a consultation paper seeking feedback on interactions with Australia's hybrid mismatch rules, foreign hybrid entity rules, foreign income tax offsets and controlled foreign company rules.

Submissions on the exposure draft primary legislation and consultation paper closed 16 April 2024, while submissions on the exposure draft subordinate legislation close 16 May 2024. For further information, refer to our Tax Alert.

ATO's thin capitalisation public advice and guidance

The Australian Taxation Office (ATO) is proposing to provide guidance setting out the Commissioner's views on, and approach to, key aspects of the new thin capitalisation and debt deduction creation rules.

In its latest update to its advice under development page, the ATO has highlighted some of the key issues raised in its consultation so far, including:

- issues relating to the application of the third-party debt test;
- the interaction between the transfer pricing rules and the thin capitalisation rules;
- the application of the general anti-avoidance rules and the specific schemes provision in the debt deduction creation rules to certain restructures.

Following the completion of this consultation, the ATO will continue to engage with stakeholders on the development of specific public advice and guidance products. Consultation on potential guidance topics, prioritisation and form closed 30 April 2024.

Discussion paper on thin capitalisation regime for foreign banks

The ATO has released a technical discussion paper regarding the attribution of risk weighted assets (RWA) to Australian branches of foreign banks for thin capitalisation purposes. The paper is about the safe harbour formula used to work out the minimum capital amount of inward investing entities (ADIs).

The primary objective of the discussion paper is to assist in developing an ATO view in relation to the attribution of the RWA, which will provide taxpayers with clear expectations as to the acceptable approach for the purposes of the thin capitalisation provisions. It also sets out the expected supporting documentation that will be accepted by the ATO for Justified Trust reviews in respect of thin capitalisation positions.

The final date for comments is 31 May 2024.

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Auditor-General publishes report on ATO's related party debt management

The Auditor-General has released a report that assesses the effectiveness of the ATO's management of transfer pricing for related party debt.

The audit found that the ATO was largely effective at managing taxpayers' use of transfer pricing for related party debt.

The Auditor-General made the following four recommendations:

- The ATO conduct further analysis to determine and monitor why taxpayers may not lodge Country-by-Country local file reporting.
- The ATO take action to determine the number of completed Tax Assurance Reports considered sufficient to gain assurance that Top 100 taxpayers are appropriately using transfer pricing for related party debt and determine how to gain sufficient assurance over the Top 1,000 population through the use of Combined Assurance Reviews and gap analysis, while also formalising how gap analysis should be conducted.
- The ATO take action to ensure all taxpayers with related party debt that do not apply Practical Compliance Guideline PCG 2017/4 are reviewed in accordance with the ATO's goals.
- The ATO make training in related party financing mandatory for new case officers where related party financing is likely to be relevant to their role and develop and maintain a register to ensure all staff are trained consistently and remain up to date in developments around transfer pricing for related party debt.

The ATO agreed with the first two recommendations, agreed in principle to recommendation three, and agreed in principle to the last recommendation in respect of training for new case officers and agreed with the recommendation regarding maintaining a register.

Sovereign entity and super funds for foreign residents – tax exemptions

The ATO has released updated application forms for sovereign entities and superannuation funds for foreign residents (SFFRs) to apply for a private ruling that relate to the:

- tax exemption for sovereign entities under Division 880 of the *Income Tax Assessment Act 1997*. and
- the withholding tax exemption for SFFFRs under paragraph 128B(3)(jb) of the *Income Tax Assessment Act 1936*.

Synthesised texts of Australian double taxation agreements

As part of the ATO's wider project to prepare synthesised texts for the majority of Australia's tax treaties modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)*, the ATO has published synthesised texts of the double tax agreements Australia has with the following jurisdictions:

- Romania
- Thailand.

Tariff relief extended for Ukraine

The Australian Government will extend the tariff relief provided to Ukraine. Specifically, the current customs duty exemption will be extended for two years until 3 July 2026 for goods that are produced and manufactured in Ukraine.

The measure will see tariffs of up to 5 per cent reduced to zero on Ukrainian goods.

Indirect Tax Update

Draft Determination on supplies of food of a kind marketed as a prepared meal

The Australian Taxation Office (ATO) has released for comment GST 2024/D1, which outlines the Commissioner of Taxation's view on the meaning of 'food of a kind marketed as a prepared meal' which would be regarded as being food that is not goods and services tax (GST) free under paragraph 38-3(1)(c) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The determination considers the key concepts as referred to in the Federal Court decision in *Simplot Australia Pty Limited v Commissioner of Taxation [2023] FCA 1115*.

The draft determination outlines that in determining whether a product is food of a kind marketed as a prepared meal, the question is not whether the product itself is marketed as a prepared meal, but whether the product is a member of a class or genus of foods that are marketed as prepared meals. Accordingly, the Commissioner's view is that a product will be food of a kind marketed as a prepared meal if it is the kind of food that, as a matter of common sense and common experience, is marketed as a prepared meal. This is determined objectively by considering the attributes of the food, including quantity, composition and presentation.

Ultimately, whether a product is food of a kind marketed as a prepared meal cannot be determined by viewing individual attributes in isolation or without context. The test is how the product as a whole is perceived, informed by common sense and common experience, and an overall consideration of its attributes.

Once finalised, the Determination will apply before and after its date of issue, although the ATO notes that it will act in accordance with PS LA 2011/27 *Determining whether the ATO's views of the law should be applied prospectively only* and Law Administration Practice Statement PS LA 2012/2 (GA) *GST classification of food and beverage items*.

Once the Determination is finalised, the following updates to existing ATO public advice and guidance will also be made:

- an addendum to the GST Industry Issue GSTII FL1 Detailed Food List (DFL)
- withdrawal of Goods and Services Tax Industry Issue Food Industry Partnership Prepared food (Issue 5 Prepared Food).

Comments on the draft Determination closed 26 April 2024.

Car dealer partially succeeds in decreasing LCT adjustment

In GHTZ and Commissioner of Taxation (Taxation) [2024] AATA 453, the Administrative Appeals Tribunal (AAT) considered, among other matters, whether a taxpayer was entitled to a decreasing Luxury Car Tax (LCT) adjustment under section 15-30 of the *A New Tax System (Luxury Car Tax) Act 1999*, finding partly in favour of the taxpayer.

The corporate taxpayer was a licenced motor dealer, with both a wholesale and a retail licence. The individual who controlled the taxpayer decided to trade luxury cars as well as other cars he traded. At no stage were the luxury cars sold to end-users; they were always sold to other dealers, and the persons who bought from the taxpayer were all licenced dealers.

The case concerned 17 luxury cars that were traded, 13 of which were new and purchased by the taxpayer from distributors of the overseas manufacturers of the cars (known as marque dealers). The remaining four cars were used and purchased from vendors who were not distributors of luxury cars for overseas manufacturers.

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Under section 5-10 of the *A New Tax System (Luxury Car Tax)* Act 1999, a taxable supply of a luxury car may not arise where the recipient "quotes for the supply". In this case, one dealer refused to accept the taxpayer's quote. The AAT found that entitlement to quote depends on the intention of the recipient at the time of supply or importation of the luxury car. Quoting for a person entitled to quote will prevent a supply being a taxable supply and quoting for an importation will prevent the importation being a taxable importation. There was no change of intended use and no change of actual use of the cars after the supply to the taxpayer by the marque dealers as between the actual use and the intended use at the time of the supply.

The AAT found that the taxpayer had no entitlement to a decreasing adjustment for the second-hand cars, because of the proper construction of section 15-30 of the LCT Act in its context, i.e. there was no change of use in relation to the second-hand cards. They were bought for resale and neither the taxpayer's intention nor use of those cars changed at any time.

Furthermore, the AAT rejected the Commissioner's claims that the taxpayer was an agent or trustee for any other person and that its transactions of purchase and sale were shams and found that the anti-avoidance provisions in Division 165 of the GST Act did not arise due to the absence of a GST benefit, i.e. it had no entitlement to a decreasing adjustment.

ATO guidance on RITC claims on complex IT outsourcing agreements

The ATO has issued guidance outlining its expectations to assist taxpayers with reduced input tax credit (RITC) claims on complex information technology (IT) outsourcing agreements acquired partly or wholly in making of input taxed supplies.

The guidance highlights the types of questions the ATO will ask when reviewing RITC claims in relation to acquisitions made under a complex IT outsourcing agreement, to ensure compliance with the ATO's view in Goods and Services Tax Ruling GSTR 2004/1 Goods and services tax: reduced credit acquisitions. It is intended to provide practical guidance to assist taxpayers in reviewing their arrangements and determine their entitlements in accordance with:

- GSTR 2004/1 – which sets out the application of table item 2 (see paragraphs 73 to 190 of the Ruling)
- Goods and Services Tax Ruling GSTR 2002/2 *Goods and Services Tax: GST treatment of financial supplies and related supplies and acquisitions* – which sets out the GST treatment of financial supplies and related supplies and acquisitions, and
- Goods and Services Tax Ruling GSTR 2006/3 *Goods and services tax: determining the extent of creditable purpose for providers of financial supplies* – which sets out the ATO's view in determining the extent of creditable purpose for providers of financial supplies.

Personal Tax Update

Medicare levy exemption for eligible lump sum payments in arrears

The Treasury is seeking comments on draft law to give effect to a 2023-24 Federal Budget measure to exempt eligible lump sum payments in arrears from the Medicare Levy with effect from 1 July 2024.

The measure is designed to ensure low-income taxpayers do not pay higher amounts of the Medicare levy as a result of receiving an eligible lump sum payment, such as for compensation for underpaid wages.

To qualify for the proposed relief, taxpayers must:

- be eligible for a reduction in the Medicare levy in the two most recent years, or income year, to which the lump sum accrues;
- satisfy the eligibility requirements of the existing lump sum payment in arrears tax offset, including that a lump sum accounts for at least ten per cent of the taxpayer's income in the year of receipt.

Comments closed 23 April 2024.

Updated guidance on liability of a legal personal representative of a deceased person

The Australian Taxation Office (ATO) has updated Practical Compliance Guideline PCG 2018/4 *Income tax – liability of a legal personal representative of a deceased person*. This Guideline is intended to enable certain legal personal representatives of less complex estates to finalise those estates before the expiration of the relevant review period without concern that they may have to fund an outstanding tax-related liability of the deceased person from their own assets.

Among other changes made to the PCG, the safe harbour as to when a deceased person's estate is considered less complex (in paragraph nine) has been updated by making the following key changes, among others:

- increasing the total market value of the assets of the deceased person's estate to $10 million (previously $5 million) at the date of death, and
- expanding the assets of the deceased person's estate to include cash investments and any other personal assets, including home contents.

The updated PCG also includes additional examples, to provide greater certainty to legal personal representatives of the deceased in distributing estate assets.

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State Tax Update

State and Territory 2024-25 Budget dates

In addition to the Federal Budget (scheduled for Tuesday 14 May 2024), all States and Territories have now confirmed dates for their 2024-25 State and Territory Budgets, as follows:

- **Victoria**: Tuesday 7 May 2024
- **Western Australia**: Thursday 9 May 2024
- **Northern Territory**: Tuesday 14 May 2024
- **Tasmania**: Thursday 30 May 2024
- **South Australia**: Thursday 6 June 2024
- **Queensland**: Tuesday 11 June 2024
- **New South Wales**: Tuesday 18 June 2024
- **Australian Capital Territory**: Tuesday 25 June 2024

New South Wales: Foreign citizens and surcharge purchaser duty and surcharge land tax

Following the enactment of the *Treasury Laws Amendment (Foreign Investment) Act 2024* that ensures that certain taxes, such as foreign investment fees and similar state and territory property taxes, prevail in the event of any inconsistency with any double tax agreement, Revenue New South Wales (NSW) has indicated that citizens of New Zealand, Finland, Germany, India, Japan, Norway, South Africa and Switzerland may now need to pay surcharge purchaser duty if they enter into an agreement to acquire residential property in NSW on or after 8 April 2024. Surcharge land tax may also be payable on future land tax assessments for residential land they own in NSW.

Revenue NSW will provide further information as it becomes available.

NSW: Resident for income tax purposes liable to surcharge land tax

In Guimaraes v Chief Commissioner of State Revenue [2024] NSWCATAD 95, the New South Wales Civil and Administrative Tribunal found the taxpayer liable to surcharge land tax for the relevant years in respect of a property she jointly owned and resided in with her family.

The taxpayer was born in Brazil. In the relevant years, the taxpayer was in Australia on a temporary bridging visa and was married to an Australian citizen. She was a resident of Australia for income tax purposes.

The Tribunal found that since the taxpayer had actually been in Australia during 200 or more days in the period of 12 months immediately preceding that time (the 200-day test) and the individual's continued presence in Australia was not subject to any limitation as to time imposed by law (the no-limitation test). The taxpayer's continued presence in Australia was authorised by the bridging visas she held at the relevant taxing dates and such a visa has been found in other judicial decisions to be held by a person whose continued presence in Australia is 'subject to any limitation as to time imposed by law'.

In addition, no exemption was available as she was the holder of a temporary, rather than a permanent, visa at midnight on each of the relevant taxing dates and was not a permanent resident at either point in time. Accordingly, the taxpayer was liable to surcharge land tax, although her liability was reduced to take account of the taxpayer's joint ownership of the property with her husband, who was an Australian citizen and so not subject to the surcharge.

As part of its decision, the Tribunal commented about the taxpayer's reliance on matters such as the income tax definition of residency. The Tribunal commented that such reliance was misplaced with the only relevant statutory provisions being those in the *Land Tax Act 1956 (NSW)* and *Land Tax Management Act 1956 (NSW)*, and those imported from the *Duties Act 1997 (NSW)*.

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NSW: Land tax primary production exemption applied

In the matter of Dwayne Taylor FT Pty Limited as trustee for Dwayne Taylor Family Trust and DA and P Taylor v Chief Commissioner of State Revenue [2024] NSWCATAD 80, the Civil and Administrative Tribunal of New South Wales found that the NSW land tax exemption for primary production applied to land on which horses were kept.

Section 10AA(3)(b) of the *Land Tax Management Act 1956 (NSW)* exempts rural land from land tax if it was used for the dominant purpose of maintaining animals for the purpose of selling them or their natural increase or bodily produce. It was not in dispute that the land was rural land. The Chief Commissioner contended that horses were maintained on the land not for one purpose, but for three - sale (if any), dressage and training.

The Tribunal found that based on the evidence, the dominant use of the land was the maintenance of horses for the purpose of selling them or their bodily produce. It was not satisfied that the horses were being maintained solely for the purposes of training them or of training their riders. Accordingly, the exemption applied, and the decision of the Chief Commission set aside.

Victoria: Foreign surcharge duty exemption unavailable

In Marchio v Commissioner of State Revenue (Review and Regulation) [2024] VCAT 257, the Victorian Civil and Administrative Tribunal confirmed the Commissioner's reassessment to foreign purchaser additional duty on the taxpayers' acquisition of a property.

In March 2018, the taxpayers (a married couple) were registered as joint proprietors of their first home. It was not in dispute that one of the taxpayers was a 'foreign purchaser' as per section 3 of the *Duties Act 2000 (Vic)*, as she was not then an Australian citizen or permanent resident.

The taxpayers argued that the lawyer who advised them on the property acquisition had failed to alert them of any actual or potential risk related to foreign purchaser additional duty. They also pointed to section 69AJ of the Duties Act, which was introduced with effect from 14 June 2018 to allow for an exemption from foreign purchaser duty in circumstances where a home is acquired by a couple, only one of whom is an Australian citizen or permanent resident (the partner exemption).

The Tribunal accepted that the decision to impose foreign purchaser additional duty was correct, notwithstanding that it appeared the taxpayers only missed out on the partner exemption because they settled the property purchase around six weeks before the exemption came into effect. However, the Tribunal noted that the Commissioner had made a concession, consistent with prior cases, that interest ought to be remitted in full. The reassessment was therefore varied to remit the interest charged.

Tasmania: Stamp duty changes

The re-elected Tasmanian Government has announced that its 'Stamping Out Stamp Duty Plan' will be retrospective to 18 February 2024, subject to the passage of legislation.

Under this policy the stamp duty thresholds for first home buyers will be amended such that eligible taxpayers will not pay stamp duty for existing houses, units and apartments valued up to $750,000 (a doubling of the current 50 per cent discount and an increase in the value threshold). Once legislated, the reforms are expected to remain in place until 30 June 2026, after which they will be subject to review.

Superannuation Update

Draft amendments to the transfer balance credit provisions for successor fund transfers

The Federal Treasury is seeking comments on draft legislative amendments to the transfer balance credit provisions for individuals with a capped defined benefit income stream. The amendments are proposed to ensure members are not adversely impacted by a successor fund transfer between superannuation funds.

Currently, a member's transfer balance may be unintentionally impacted due to the original income stream being treated as ceasing and a new one beginning. This means a new valuation of the capped defined benefit income stream is required, which can result in a higher value for transfer balance purposes and lead to adverse outcomes for some members.

The draft legislation amends the transfer balance credit provisions, so that the credit and debit arising due to a successor fund transfer for individuals with a capped defined benefit income stream are equal. This would ensure the amounts cancel each other out and the member's transfer balance account is not impacted by the successor fund transfer.

The amendments are proposed to apply retrospectively to transfer balance credits that arose in relation to successor fund transfers that occurred on or after 1 July 2017. However, the amendments will not have retrospective application where members could be made worse off such as for holders of life expectancy and market-linked pensions.

Comments closed 24 April 2024.

Commissioner's discretion unavailable to reallocate concessional contributions

In Mackie and Commissioner of Taxation (Taxation) [2024] AATA 619, the Administrative Appeals Tribunal (AAT) has dismissed a taxpayer's appeal, affirming the Commissioner's decision not to exercise the discretion in section 291-465 of the *Income Tax Assessment Act 1997* to disregard or allocate the taxpayer's concessional superannuation contributions to another year.

The taxpayer intended to make concessional superannuation contributions for the 2018 and 2019 years and made payments on 30 June 2018 and 30 June 2019 respectively using a clearing house. However, the taxpayer's fund did not receive the money until the following tax year in each case. This had the cumulative effect that the taxpayer had made assessable excess concessional contributions of $20,000 in 2019-20, and so was subject to an excess concessional contribution charge.

The AAT found that the contributions were made in each case on the date they were received by the fund and credited to the relevant account. It also found that no special circumstances applied to the taxpayer's case to justify the exercise of the Commissioner's discretion.

A matter that strongly counted against the taxpayer was that it was reasonably foreseeable when the contribution was made that he would have an excess concessional contribution for the relevant year having regard to the fact that he had complete control over when and how much would be made by way of concessional contributions. He also had access to his superannuation statements that would permit him, objectively, to keep track of his concessional contributions.

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No special circumstances for employer's excess concessional contributions

In Oldenburger and Commissioner of Taxation (Taxation) [2024] AATA 635, the AAT again considered the application of section 291-465 of the ITAA 1997 in the context of employer-paid excess concessional contributions and found for the Commissioner, refusing to exercise the Commissioner's discretion to reallocate the excess concessional contributions to another year.

In the 2020-21 financial year, the taxpayer's employer made 15 months' worth of contributions (comprising superannuation guarantee contributions and personal salary sacrifice contributions) to the taxpayer's superannuation fund, which resulted in excess concessional contributions.

While the Tribunal accepted that the taxpayer did not have total control over when his employer deposited concessional contributions into his super fund, the Tribunal agreed with the Commissioner that the taxpayer had the ability to monitor his super fund account and to request that his employer cease making further salary sacrifice payments into his account. In this instance the taxpayer did not do this.

While the Tribunal accepted that the effect of the circumstances on the taxpayer were unfortunate, that was insufficient to render the imposition of the excess contributions tax as unjust, unreasonable, or inappropriate to constitute special circumstances.

Legislative Update

Federal Parliament will next sit on 14 May 2024, which is also the date of the 2024-25 Federal Budget.

No tax or superannuation related Bills have been introduced or completed their passage since our last edition of the Monthly Tax Update.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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Other News Update

Proposed changes to Payment Times Reporting scheme

The Treasury has released for comment draft law in relation to the Payment Times Reporting scheme that will implement the Government's response to the recommendations from the Statutory Review of the Scheme.

The proposed reforms will:

- reduce regulatory burdens for reporting entities with obligations under the Payment Times Reporting Act 2020;
- introduce additional incentives for large businesses to improve payment times to small businesses;
- streamline processes and remove inefficiencies in the current version of the Act.

Although a range of amendments are proposed, one key change is the entities that are in scope. A reporting entity will now be one that has annual consolidated revenue (worked out in accordance with the accounting standards) of greater than $100 million (rather than one based on income according to tax concepts) and either carry on business in Australia, be incorporated in Australia, or have their central management and control or shareholder voting power in Australia. Generally, such entities will be required to report twice annually based on the entity's financial year (rather than an income year for tax purposes).

The changes, once implemented, will generally apply for reporting periods commencing on or after 1 July 2024.

Comments closed 29 April 2024.

Draft law on proposed build-to-rent tax concessions

Following announcements made in the 2023-24 Federal Budget, Treasury is consulting on draft law designed to encourage investment and construction in the build-to-rent (BTR) sector by:

- increasing the capital works deduction rate from 2.5 per cent to 4 per cent; and
- reducing the final withholding tax rate on fund payments from eligible managed investment trust (MIT) investments from 30 per cent to 15 per cent.

To access one or both concessions the BTR development must meet the following eligibility criteria:

- the development's construction commenced after 7:30PM (AEST) on 9 May 2023
- the development consists of 50 or more residential dwellings made available for rent to the general public
- all dwellings in the development (and common areas that are part of the BTR development) continue to be owned together by a single entity, at any one time, for at least 15 years (although the BTR development can be sold to another single entity during the period and remain eligible for the concessions)
- dwellings in the BTR development must be offered for lease terms of at least three years (although a tenant can request a shorter period); and
- at least 10 per cent of the dwellings are available as affordable tenancies throughout the 15-year period.

If an active BTR development ceases to be an active BTR development during the compliance period, a new BTR development misuse tax will apply to approximately neutralise the tax benefits obtained both through the reduced MIT withholding rates, and the accelerated capital works deduction. The BTR misuse tax rate is 1.5 per cent and is applied to the sum of the BTR capital works deduction amount and ten times the BTR withholding amount.

As part of this consultation, which closed on 22 April 2024, the government was interested to hear views on whether a minimum portion of dwellings should be offered as affordable tenancies, and the length of time dwellings must be retained under single ownership before being able to be sold, noting that some states and territories apply a 15-year period in relation to certain BTR concessions.

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ATO focus on related party transactions for Next 5,000 Private Groups

The Australian Taxation Office (ATO) has advised that taxpayers within the Next 5,000 private groups tax performance program take care to report and fulfil their record-keeping requirements for 'related party transactions' of goods and services, with or without financial payment. Specifically, the ATO recommends that complete and accurate records of these transactions are kept ensuring they:

- properly capture business income and expenditure (including tax invoices where appropriate) throughout the year and are correctly reported in their group's tax returns and Business Activity Statement (BAS), and
- can evidence related party pricing arrangements (e.g., loan, lease and service arrangements).

ATO's differentiated approach for passive investors under Top 500 program

As part of the ATO's Top 500 review program, the ATO has developed guidance to help private groups who undertake passive investment understand the material tax issues they must manage. Engagements between the ATO and Top 500 private groups whose income from regular activities is derived mainly from passive investment activity (greater than 90 per cent) will be simplified under the differentiated approach.

Changes to trust tax returns

As first announced at the March 2022 Federal Budget, the ATO now has plans to change the annual tax return forms to simplify reporting for trustees, beneficiaries and their tax agents.

The changes, which will begin on 1 July 2024 and affect lodgments for the 2023-24 income year onwards, include:

- modifying the labels in the statement of distribution to improve the reporting of beneficiary details including new capital gains tax (CGT) labels
- introducing a new schedule (Trust Income Schedule) that all trust beneficiary types who receive trust income will need to lodge with their tax return; and
- adding new data validations to the trust tax return form.

ATO welcomes report on best practice principles for notifying people about debts

The ATO has welcomed a report released by the Commonwealth Ombudsman / ACT Ombudsman / Inspector-General of Taxation and Taxation Ombudsman (IGTO), 'How to tell people they owe the government money'.

The ATO agreed with the following five principles outlined in the report:

- being accountable
- explaining actions
- providing information
- being accessible
- learn and improve.

For active debts, the ATO has reconfirmed that it explains the debt to the taxpayer, where it comes from, provides payment options while continuously improving the ATO's practices. Where a debt is considered uneconomical to pursue, the ATO may put it 'on hold'. It is important that taxpayers know the ATO does not actively seek payment of debts that are on hold and taxpayers do not need to take any action. However, the ATO is legally obligated to use credits or refunds to reduce the amount of the debts on hold. For debts placed on hold since 2017, this will typically happen when a taxpayer lodges their tax return.

For debts placed on hold prior to 2017, the ATO has paused all action whilst a review is undertaken. The ATO will not use taxpayer credits or refunds to reduce these debts. No decision has yet been made regarding the outcome of this review.

Taxation of PPPs for social infrastructure projects

The ATO has issued non-binding guidance setting out its position on how the income tax and goods and services tax (GST) laws apply to social infrastructure Public Private Partnerships (PPPs) in respect of a 'standard form' securitised licence structure and a few variations on the 'standard form' structure. The guidance also explains the tax treatment and implications for PPP consortium members.

Business deductions and records

In Beta Leigh Pty Ltd and Commissioner of Taxation (Taxation) [2024] AATA 596, the Administrative Appeals Tribunal found that a corporate taxpayer was entitled to deductions for 'property maintenance expenses' despite having less-than-ideal records. However, its claim for deductions for other matters subject to review failed.

The taxpayer operated a property development business, while a partnership (which had the same owners and directors/partners) operated a building and construction business. Trading between the taxpayer and the partnership was done on a cash basis and as one entity had funds it was shared or repaid to the other. Likewise, the partnership did not keep detailed records or timesheets for the partnership input into the taxpayer, nor were costing sheets used when the partnership would use its equipment to do site preparation, landscaping or maintenance. These were seen as an input by the partnership into the taxpayer and funds were recovered.

While the Tribunal found against the taxpayer in most other aspects under consideration in this appeal, the Tribunal accepted that the expenses paid by the taxpayer relating to 'property maintenance services' were for services provided by the partnership and were not reimbursement of amounts incurred by the partnership on behalf of the taxpayer.

For the Tribunal, it was sufficient to observe that the uncontested evidence was that the payments to the partnership by the taxpayer were treated as income of the partnership, which was consistent with the Tribunal's conclusion that they were in return for services rendered by the partnership to the taxpayer. The Tribunal saw no impediment in principle to the company being entitled to deductions for the progress claims it paid to the partnership.

However, in accepting the taxpayer was entitled to those deductions, the Tribunal observed that it regarded this as a borderline mater in which the evidence was far from ideal but, on balance, sufficient to tip the scales 'ever so slightly' in favour of the taxpayer.

In relation to other matters in dispute, the taxpayer failed to prove its taxable income was not understated due to errors in its trading stock calculations. In respect of the "management fees" said to have been incurred there was no evidence relating the payments to any particular activities carried out or even to what income years the activities were carried out. Even making full allowance for the informality attending small business affairs, it was to be expected that some contemporaneous record would be created and maintained, as required by corporations and taxation laws, to record the purpose of the payments. Without such evidence, the Tribunal was unable to be satisfied these payments are of the necessary character and were not paid at least in part for another purpose.

In relation to a claim for prior year tax losses, without significant substantiation, the taxpayer's calculation of the asserted carried forward loss could not be accepted and as such the Tribunal found that the taxpayer was not entitled to the tax loss claimed.

Editorial

PwC's Monthly Tax Update is produced by the PwC's Financial Advisory Marketing and Communications team, with technical oversight provided by PwC's Tax Markets & Knowledge team.

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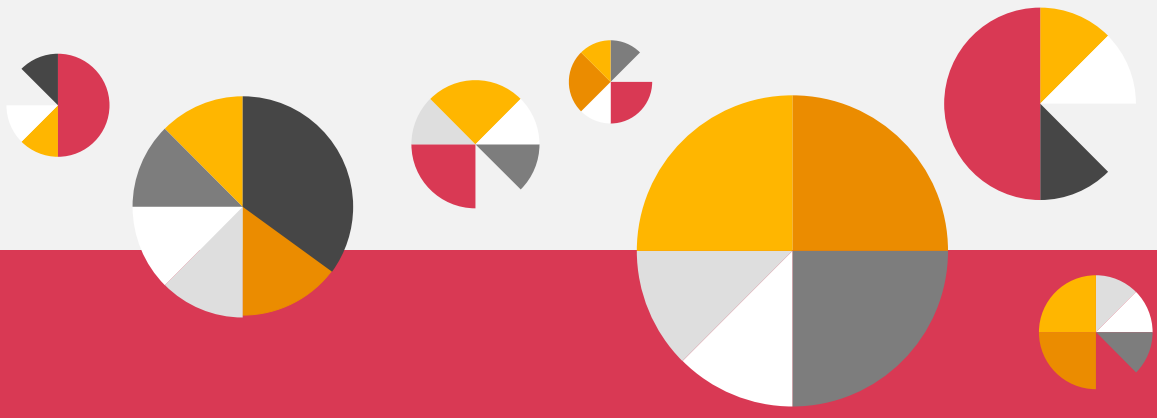

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