

## **TAXATION**

### **ATO to visit Vic, Qld and NT businesses in black economy crackdown**

The ATO has announced that it will be visiting a number of small businesses across the country as part of a nationwide crackdown on the black economy.

### **Company and trust losses: ATO guidance on similar business test**

The ATO has issued Law Companion Ruling LCR 2019/1 that explains the recently enacted similar business test.

### **ATO effective life review for assets in supermarket and grocery stores**

The ATO has advised that it is starting a review of the assets used in the supermarket and grocery stores industry with a view to making new effective life determinations.

### **Instant asset write-off increased and extended – ATO update**

Following the enactment of changes announced in the 2019 Federal Budget, the instant asset write-off has been increased and extended.

### **Private ruling requests re carrying on a business: info the ATO needs**

The ATO has updated the information on its website about the information it usually asks for to process a private ruling request on whether a business is being carried on.

### **ATO review of funeral, crematorium, cemetery services assets**

The ATO has advised that it is starting a review of the assets used in the funeral, crematorium and cemetery services industries.

### **Trustee obligations on ATO radar: TFN reports**

The ATO says it is currently reviewing adherence to certain trustee obligations including the lodgment of TFN reports for TFN withholding for closely held trusts.

## **Deductibility of penalty interest payments - TR 2019/2**

The ATO has issued Ruling TR 2019/2 on the deductibility of penalty interest. It is a rewrite of Ruling TR 93/7, which has been withdrawn.

## **2019 Budget measures outstanding**

In its 2019 Federal Budget on 2 April 2019, the Government announced a number of changes that are yet to be legislated and/or implemented.

## **Private health insurance rebate percentages from 1 April 2019**

The private health insurance rebate percentages effective from 1 April 2019 have been released by the Dept of Health.

## **Employee share option: Commissioner to exercise discretion**

ATO has issued CR 2019/33 regarding the Commissioner's discretion to reduce the minimum holding period in relation to options acquired in an employee share option plan.

## **Amalgamated loan treated as Div 7A deemed dividend**

An amalgamated loan by a private company to a shareholder was treated as a deemed dividend under Div 7A: *VCJN and FCT*.

## **Taxpayer a resident as no permanent place of abode overseas**

The AAT has held that a taxpayer who was in a state of transition between living in Australia and overseas was still a resident for tax purposes: *Handsley and FCT*.

## **Queensland businessman jailed for tax fraud**

The ATO has advised that a 56-year-old Brisbane businessman was sentenced in the Brisbane District Court to 4 years and 6 months jail for tax fraud.

## **Forestry MIS: W.A. Blue Gum Project – Product Ruling PR 2019/2**

The ATO has issued PR 2019/2 that states the project is a forestry managed investment scheme and that the growers are carrying on an enterprise for GST purposes.

## **FINANCIAL SERVICES**

### **FASEA announces requirements to assess foreign financial advisers**

The Financial Adviser Standards and Ethics Authority has released its online Foreign Qualifications Assessment Service form.

### **Financial intermediary business: money lending definition examined**

The ATO has issued ***Taxation Determination TD 2019/8***, that examines one aspect of the definition of "financial intermediary business" in s 317(1) ITAA 1936.

## **SUPERANNUATION**

### **SMSF Association calls for policy stability**

The SMSF Association has called on the re-elected Coalition Government to ensure policy stability for the superannuation sector over the next 3 years.

### **Super focus back on Coalition's outstanding measures**

With the Coalition Government re-elected, Peter Burgess of SuperConcepts says the focus now returns to the super measures that lapsed with the calling of the election.

## **REGULATOR NEWS**

### **APRA's report on industry self-assessments into governance, culture**

APRA has released a report analysing the self-assessments by 36 of the largest banks, insurers and super licensees in response to the prudential inquiry into CBA.

### **APRA issued directions to companies within the IOOF group**

APRA has announced that it has issued directions to companies within the IOOF group, using for the first time the broader directions powers under the SIS Act.

## **TAXATION**

### **ATO to visit Vic, Qld and NT businesses in black economy crackdown**

The ATO has announced that it will be visiting a number of small businesses across the country as part of a nationwide crackdown on the black economy. The ATO said it is on the look-out for dishonest and criminal activity that the Black Economy Taskforce estimates is costing the community as much as \$50 billion each year. It said it is particularly concerned about businesses in these locations who are not registered for PAYG withholding or GST.

From late May to early June, the ATO said that it will be visiting the following number of businesses and locations:

- [Victoria](#): up to 700 small businesses in Dandenong and up to 500 businesses in Richmond;
- Queensland: up to 400 small businesses in Maroochydore; and
- Northern Territory: up to 200 small businesses in Katherine, Batchelor, Bees Creek, Adelaide River and Pine Creek.

### **Company and trust losses: ATO guidance on similar business test**

The ATO has issued *Law Companion Ruling [LCR 2019/1](#)* that explains the recently enacted similar business test. This test is an alternative to the same business test and is available to companies and listed widely held trusts seeking to deduct losses and bad debts incurred from 1 July 2015. The operation of the same business test remains unchanged; however, the two tests are now collectively called the "business continuity test".

The similar business test is satisfied if the company or trust carries on a business throughout the test period, and this business is "similar" to the former business carried on immediately before the test time. The ruling notes that "similar" in this context does not mean similar "kind" or "type". Rather, the focus is on the identity of a business, as well as continuity of business activities and use of assets to generate assessable income.

## **ATO effective life review for assets in supermarket and grocery stores**

The ATO has [advised](#) that it is starting a review of the assets used in the supermarket and grocery stores industry (ANZSIC code 41100) with a view to making new effective life determinations.

The ATO expects to complete its review of these assets within 12 months, with new effective life determinations applying from 1 July 2020. Draft effective lives will be issued for public comment well before final decisions are made, the ATO said.

## **Instant asset write-off increased and extended – ATO update**

Following the enactment of changes announced in the 2019 Federal Budget, the instant asset write-off, that applies to new or second-hand assets, has been increased and extended. The ATO [says](#) that businesses with a turnover from \$10 million to less than \$50 million are now eligible for the instant asset write-off. This applies to assets purchased and first used or installed ready for use up to \$30,000 each from 7.30pm (AEDT) on 2 April 2019 to 30 June 2020.

Businesses may purchase and claim a deduction for multiple assets each under the \$30,000 threshold. For example, in the same financial year a business may purchase a new van worth \$22,000 and then purchase new equipment at a cost of \$14,000. The business can claim both of these as each of the assets are under the \$30,000 threshold. For assets over \$30,000, the general depreciation rules apply. Small businesses (turnover up to \$10 million) are also eligible for the instant asset write-off of \$30,000 for assets purchased from 7.30pm (AEDT) 2 April 2019 to 30 June 2020. For purchases prior to this date, different thresholds apply for small businesses.

## **Private ruling requests re carrying on a business: info the ATO needs**

The ATO has [updated](#) the information on its website about the list of documents and information it usually asks for to process a private ruling request on whether a business is being carried on.

The supporting information the ATO says it needs for a private ruling or objection about whether a taxpayer is carrying on a business includes details about the taxpayer's activity, the taxpayer's plans for the activity and about the taxpayer.

## **ATO review of funeral, crematorium, cemetery services assets**

The ATO has [advised](#) that it is starting a review of the assets used in the funeral, crematorium and cemetery services industries with a view to making new effective life determinations. It is anticipated that the review will cover human and animal segments of the industry, namely: funeral services; crematorium services; and cemetery services. Other segments of the industry may or may not be reviewed, the ATO said.

The ATO expects to complete its review of these assets within 12 months, with new effective life determinations applying from 1 July 2019. Draft effective lives will be issued for public comment well before final decisions are made, the ATO said.

## **Trustee obligations on ATO radar: TFN reports**

The ATO says it is [currently reviewing](#) adherence to certain trustee obligations including the lodgment of TFN reports for TFN withholding for closely held trusts. Beneficiaries are required to quote their TFN to trustees to avoid having tax withheld from payments or unpaid present entitlements. Where TFNs are quoted, trustees are required to provide the ATO with a TFN report for each beneficiary. The ATO says trustees must lodge a TFN report for a quarter in which a beneficiary quotes their TFN to them.

The TFN withholding rules require trustees to withhold amounts from distributions made to beneficiaries where they have not quoted their TFN to the trustee. In these cases, the trustee must: withhold tax at the rate of 47% from the distribution; pay this tax to the ATO; and report in an annual report details of all withheld amounts. Failure by a trustee to withhold tax from a distribution may result in the trustee becoming liable for a failure to withhold penalty, the amount being equal to the amount that they failed to withhold.

## **Deductibility of penalty interest payments – TR 2019/2**

The ATO has issued Ruling [TR 2019/2](#) on the deductibility of penalty interest. It is a rewrite of Ruling TR 93/7, which has been withdrawn. "Penalty interest" refers to an amount payable by a borrower in consideration for the lender agreeing to an early repayment of a loan.

The ATO view is that penalty interest may be deductible under one of the following provisions of the ITAA 1997: s 8-1 if the borrowings are used for gaining or

producing assessable income or in a business carried on for that purpose and the taxpayer incurs the penalty interest in order to be rid of a recurring interest liability (that would itself have been deductible if incurred); s 25-30 (expenses of discharging a mortgage); s 25-90 (certain debt deductions relating to foreign NANE income); or s 40-880 (business related costs). Date of effect: before and after its date of issue.

## 2019 Budget measures outstanding

In its 2019 Federal Budget on 2 April 2019, the Government announced a number of changes that are yet to be legislated and/or implemented. The measures in question include the following:

Personal taxation: [Personal tax cuts](#): immediate major low-mid tax offset increase, other rate changes from 2022 to result in only 3 rates by 2024-25.

Business taxation: Proposed Div 7A amendments – start date deferred 12 months; tax exemption for North Queensland floods grants; and tax exemption for primary producers affected by Queensland storms.

Superannuation: Super contributions work test exemption extended to age 66; and spouse contributions age limit increased.

GST and indirect taxes: Increased Luxury Car Tax refunds for farmers and tourism operators.

## Private health insurance rebate percentages from 1 April 2019

The Private Health Insurance Rebates effective from 1 April 2019 to 31 March 2020 have been [released](#) by the Department of Health. The Private Health Insurance Rebates effective from 1 April 2019 to 31 March 2020 are:

| Private Health Insurance Rebate percentages from 1.4.2019 - 31.3.2020 |           |         |         |        |
|---|-----------|---------|---------|--------|
| Age   | Base Tier | Tier 1  | Tier 2  | Tier 3 |
| Under 65  | 25.059%   | 16.706% | 8.352%  | 0%     |
| 65 - 69   | 29.236%   | 20.883% | 12.529% | 0%     |
| 70+   | 33.413%   | 25.059% | 16.706% | 0%     |



These are the income ranges:

- Base Tier: Singles – \$90,000 or less; Families – \$180,000 or less
- Tier 1: Singles – \$90,001-\$105,000; Families – \$180,000-\$210,000
- Tier 2: Singles – \$105,001-\$140,000; Families – \$210,001-\$280,000
- Tier 3: Singles – \$140,001 or more; Families – \$280,001 or more.

### **Employee share option: Commissioner to exercise discretion**

The ATO has issued [Class Ruling CR 2019/33](#) (Property Exchange Australia Limited – Employee Share Option Plan – Commissioner's discretion to reduce the minimum holding period in relation to options acquired). It provides that the Commissioner will exercise the discretion (under s 83A-45(5)(a) ITAA 1997) to reduce the minimum holding period for any options that qualify for concessional treatment under s 83A-33 (start ups).

The minimum holding period is reduced to the period starting when the options were acquired and ending when the share purchase agreement was completed. Date of effect: 1 July 2018 to 30 June 2019.

### **Amalgamated loan treated as Div 7A deemed dividend**

An amalgamated loan by a private company to a shareholder was treated as a deemed dividend under Div 7A, as his failure to make the required minimum yearly payment was not outside his control: [VCJN and FCT](#) [2019] AATA 968, AAT, File No 2017/5858, Boyle DP, 23 May 2019. The taxpayer was the sole director and shareholder of 2 property development companies. On 30 June 2010 Company A made a loan to the taxpayer of almost \$1.049m, increasing his liability to the company to almost \$1.679m. However, the financial position of both companies was severely distressed because of the downturn in the property market following the GFC. By 2015 both had been placed in liquidation. By the end of 2013-14, only \$672,486 of the loan made in the 2009-10 income year (an amalgamated loan) remained outstanding. However, the taxpayer made no further repayments after 30 June 2014.

Because the taxpayer failed to pay the minimum amount for 2014-15, a dividend was deemed to be paid by Company A to the taxpayer at the end of that year, pursuant to s 109E of the ITAA 1936. The amount of the deemed dividend was limited to the company's distributable surplus for the year (\$149,698). The AAT decided that the discretion under s 109Q to disregard the deemed dividend should not be exercised,



as the failure to make the minimum yearly payment was not because of circumstances beyond the taxpayer's control. He chose to expose himself to the consequences of predictable financial circumstances (having to make minimum yearly payments), in the knowledge that the GFC had impacted on the business of both companies. Further, taking into account the taxpayer's assets, including his superannuation fund and a property in Greece, the taxpayer had sufficient financial capacity to make the minimum yearly repayment but had chosen not to. He would also not suffer undue financial hardship if he was treated as having received a dividend on which he had to pay tax.

### **Taxpayer a resident as no permanent place of abode overseas**

The AAT has held that a taxpayer who was in a state of transition between living in Australia and overseas was still a resident for tax purposes, as he was domiciled in Australia and had not established a permanent place of abode overseas: [Handsley and FCT](#) [2019] AATA 917, AAT, File no: 2016/4930, O'Loughlin DP, 17 May 2019. The taxpayer was an Australian citizen who, in the 2012-13 income year, worked at various overseas locations as an aircraft mechanic. His accommodation (hotels or furnished apartments) was provided by the agency that contracted him. At the time, he was making plans to live in the Philippines with his new partner. He spent a total of 50 days in Australia in 2012-13, mostly visiting his children and parents. He had a bank account and preserved superannuation entitlements in Australia, but no other assets, and did not have any place in Australia that he could call his own.

The AAT firstly decided that the taxpayer was not a resident according to the ordinary meaning of that term as he "had done enough to break his residence ties with Australia". Maintaining a bank account in Australia was simply a convenience (eg to pay school fees and child maintenance), while his superannuation entitlements were a relic of the past. However, the AAT went on to decide that the taxpayer was a resident of Australia in 2012-13 as he was still domiciled here and had not established a permanent place of abode outside Australia. An intention to secure for himself and his partner a permanent dwelling outside Australia (in the Philippines) and live there was not sufficient.

### **Queensland businessman jailed for tax fraud**

The [ATO has advised](#) that a 56-year-old Brisbane businessman was sentenced in the Brisbane District Court to 4 years and 6 months jail for tax fraud, after being convicted of obtaining \$596,736 for GST fraud and personal income tax return fraud.

Between January 2012 and March 2015, as the director of a company trustee of a Family Trust, the man lodged thirty-nine monthly Business Activity Statements via his registered AUSKey resulting in the wrongful payment of \$480,680 in tax refunds into his own bank account. No attempt was made to repay the monies incorrectly received and the company was placed in voluntary liquidation on 17 June 2015.

In addition, the man had declared a nil income for the 2009 to 2011 financial years in his personal income tax returns. As a director of the company and beneficiary of the Family Trust, the ATO audit showed the total assessable income should have been \$387,136 with the tax payable of \$116,056. ATO Assistant Commissioner Peter Vujanic said that "contrary to popular belief, tax crime is not victimless. By deliberately defrauding the tax and super system including claiming a refund you're not entitled to, you are stealing from the whole community and disadvantaging Australians who do the right thing."

### **Forestry MIS: W.A. Blue Gum Project – Product Ruling PR 2019/2**

The ATO has issued [Product Ruling PR 2019/2](#) (W.A. Blue Gum Project 2019). The ruling states that the project is a forestry managed investment scheme under Div 394 of the ITAA 1997, that the growers are carrying on an enterprise for GST purposes and that growers who stay in the project until its completion are carrying on a primary production business.

PR 2019/2 applies from 22 May 2019 to 30 June 2029.

## **FINANCIAL SERVICES**

### **FASEA announces requirements to assess foreign financial advisers**

The Financial Adviser Standards and Ethics Authority (FASEA) has [released](#) its online Foreign Qualifications Assessment Service form. The form enables persons with qualifications obtained overseas to apply to FASEA for approval of their foreign qualification.

When applying to FASEA, a person needs to provide an assessment of the qualification by a Department of Education and Training (DET) approved body as well as a certified copy of an academic transcript of the qualifications. FASEA will assess the foreign qualification for equivalence to degrees or qualifications already

approved by FASEA. It may specify courses for the new entrant or existing adviser to complete in addition to their foreign qualification.

### **Financial intermediary business: money lending definition examined**

The ATO has issued ***Taxation Determination*** [\*TD 2019/8\*](#), that examines one aspect of the definition of "financial intermediary business" in s 317(1) ITAA 1936. "Financial intermediary business" is defined as a banking business or "a business whose income is principally derived from the lending of money". This definition is relevant to the CFC and CGT rules. Where a foreign company qualifies as an Australian financial institution subsidiary whose sole or principal business is financial intermediary business, certain categories of income are excluded in calculating its attributable income, while certain assets are treated as active foreign business assets.

The ATO view is that the income from lending money limb is concerned with the character of the business being conducted. It contemplates a commercial or profit-making operation that involves scale, repetition and continuity of money lending. This requires a qualitative analysis of how the business earns its income, the ATO says. Date of effect: before and after its date of issue.

## **SUPERANNUATION**

### **SMSF Association calls for policy stability**

The SMSF Association has [called on](#) the re-elected Coalition Government to ensure policy stability for the superannuation sector over the next 3 years. SMSF Association CEO, John Maroney, said SMSF members need a period of policy continuity so they can focus on managing their financial needs, rather than being constantly forced to consider significant changes to their retirement plans.

The SMSF Association said it will urge all political parties to focus on legislating the Objective of Superannuation so that any future changes can be assessed according to its underpinning principles. The Association said it will work with all sides of politics to continue improving the super system, particularly regarding the simplicity of superannuation legislation.

## **Super focus back on Coalition's outstanding measures**

With the Coalition Government re-elected, Peter Burgess of SuperConcepts says the focus now returns to the measures which the Government had previously introduced into Parliament but lapsed with the calling of the election on 11 April. Mr Burgess expects that many of these measures will be re-introduced into Parliament, possibly as early as next month.

Back on the table are the measures announced in the 2019-20 Federal Budget to enable older Australians to contribute to super, as well as the measures announced in the 2018 Budget, [Mr Burgess said](#). This includes:

- the proposed Super Guarantee (SG) opt-out rules for high income earners with multiple employers;
- expansion of the non-arm's length income (NALI) provisions to capture related-party schemes involving non-arm's length expenses not incurred; and
- member's share of the outstanding balance of certain LRBAs to be included in the member's total superannuation balance (TSB).

## **REGULATOR NEWS**

### **APRA's report on industry self-assessments into governance, culture**

APRA has [released](#) a report analysing the self-assessments undertaken by 36 of the country's largest banks, insurers and superannuation licensees in response to the Final Report of the Prudential Inquiry into Commonwealth Bank of Australia (CBA). Following the CBA's Final Report that had found that continued financial success dulled the bank's senses, especially with regard to the management of non-financial risks, APRA wrote to the institutions' boards last June asking them to examine whether the weaknesses uncovered by the CBA Prudential Inquiry also existed in their own companies. APRA's report said that it is clear that the weaknesses identified in the Final Report of the Prudential Inquiry are not unique to CBA.

A number of common themes have emerged from the self-assessments, including: non-financial risk management requires improvement; accountabilities are not always clear, cascaded and effectively enforced; acknowledged weaknesses are well-known and some have been long-standing; and risk culture is not well

understood, and therefore may not be reinforcing the desired behaviours. APRA Deputy Chair John Lonsdale said that "APRA will shortly write to the boards of all participating institutions providing tailored observations on their self-assessments. Boards should expect increased supervisory scrutiny of their institutions as they implement remediation actions. Also, in a number of cases, the weaknesses identified in the self-assessment were sufficiently material that APRA is considering stronger supervisory responses, including the application of an operational risk capital overlay."

### **APRA issued directions to companies within the IOOF group**

APRA has [announced](#) that it has issued directions to companies within the IOOF group, using for the first time the broader directions powers under the SIS Act that were granted by the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2019, enacted in April 2019.

APRA also said that it had imposed additional conditions on the licences or registration of IOOF-owned subsidiaries, IOOF Investment Management Limited, Australian Executor Trustees Limited and IOOF Ltd in December 2018, after launching disqualification proceedings against five IOOF directors and executives.