

## **TAXATION**

### **State contribution was share capital**

The Federal Court has held that an amount credited to a Capital Distribution account by the State of Queensland, in the context of the sale of its coal and freight network, was an amount of share capital.

### **Prison dog handler's deductions**

A prison dog handler has been allowed a deduction for a variety of expenses, including gym memberships and for work-related clothing and items for his dogs.

### **Taxpayers used companies to fund living expenses**

The AAT has upheld default assessments, agreeing with the ATO that the taxpayers used business bank accounts and credit cards to fund their living expenses and lifestyle.

### **HELP repayment thresholds and rates for 2022-23**

The repayment incomes and repayment rates for the Higher Education Loan Program (HELP) have been updated for the 2022-23 income year.

### **Cars exhibited in car museum not held only as trading stock**

The Federal Court has held that cars on display in a car museum that were also for sale were held both as exhibits and trading stock. As a result, the taxpayer was liable to pay luxury car tax (LCT) and its input tax credits were mostly limited to 1/11th of the car limit.

### **GST payable on sale of subdivided lots**

An SMSF that sold subdivided residential lots was required to be registered for GST and thus liable to pay GST on the sale of those lots.

### **ATO guidance on notional GST dispute resolution**

The ATO has issued guidance dealing with its dispute resolution process for notional GST matters.

## **Business Basics Grant Program - Opening 4 May**

The Queensland Department of Employment, Small Business and Training have announced the next round of the Business Basics Grants program, opening Wednesday 4 May.

## **FINANCIAL SERVICES**

### **APRA policy roadmap for crypto-assets**

APRA has set out its initial risk management expectations and a policy roadmap for all regulated entities that engage in activities associated with crypto-assets.

### **Cryptocurrency "de-banking": Terms of Reference released**

Treasury has released the terms of reference covering its request for advice from the Council of Financial Regulators (CFR) on potential policy responses to address the issue of de-banking for financial technology firms, digital currency exchanges, and remittance providers.

### **Pension Loans Scheme Bill now law**

Legislation to implement the 2021-22 Budget measure to make the Government's Pension Loans Scheme more flexible by is now law.

## **SUPERANNUATION**

### **SMSF Association calls for NALE exemption for general expenses**

The SMSF Association has called for amendments to the non-arm's length expense provisions to ensure that penalties only apply to expenditure shortfall amounts, rather than to some or all of the income of the super fund.

## **REGULATOR NEWS**

### **Super funds and derivatives: APRA prudential standard**

APRA has registered a determination to implement a new version of Prudential Standard CPS 226 Margining and risk mitigation for non-centrally cleared derivatives.

### **ASIC suspends AFS licence of superannuation advice company**

ASIC has suspended the AFS licence of Dixon Advisory & Superannuation Services Pty Limited.

### **Foreign investor penalised for purchasing properties without FIRB permission**

The ATO published an article highlighting a Federal Court case in which the Court imposed \$250,000 in penalties on a foreign investor for purchasing multiple properties in outer Melbourne without receiving permission from the Foreign Investment Review Board.

### **Tax accountant sentenced to 3 years jail for tax fraud**

The ATO has reported that a former tax accountant was recently sentenced to 3 years' jail for tax fraud. The accountant's tax practitioner registration was also terminated.

### **Doctor sentenced for failing to lodge tax returns and BAS**

The ATO has reported that a WA doctor has been sentenced to 7 months' jail and placed on a good behaviour bond for failing to comply with court orders to lodge 18 outstanding income tax returns and BAS.

## **TAXATION**

### **State contribution was share capital**

The Federal Court has held that an amount credited to a Capital Distribution account by the State of Queensland, in the context of the sale of its coal and freight network, was an amount of share capital: [Aurizon Holdings Limited v FCT \[2022\] FCA 368](#).

The State of Queensland credited nearly \$4.4 billion to a "Capital Distribution" account, to reflect a contribution to Aurizon (then QR National Ltd) made by the State in November 2010 (State Contribution). The State Contribution was to transfer an asset to Aurizon, namely the debt owed to the State by a subsidiary of Aurizon.

The State Contribution was made in the context of the public float and ASX listing of Queensland's coal and freight network (under the name "QR National") and the sell down of the State's interest in that business via an IPO. The State Treasurer issued a direction under legislation enacted to facilitate the IPO, directing that the State Contribution was a "contribution by the State of Queensland to be adjusted against the contributed equity of [Aurizon]". At the time of the direction, the contributed equity of Aurizon was comprised of 100 fully paid shares held by 2 Ministers of the State of Queensland.

The Federal Court agreed with Aurizon that the State Contribution was "an amount of share capital" and that the Capital Distribution account was a share capital account in terms of s 975-300(1) of the ITAA 1997. The Court said that, assessed objectively, the State Contribution was not a gift but was intended to be an equity contribution by the sole shareholders (the 2 Ministers).

### **Prison dog handler's deductions**

A prison dog handler has been allowed a deduction for a variety of expenses, including gym memberships and for work-related clothing and items for his dogs, but not for other expenses, including car and home office expenses: [London and FCT \[2022\] AATA 644](#).

The taxpayer was employed as a dog handler in the "Special Operations Unit" of the South Australian Department of Correctional Services. He was responsible for training and maintaining 2 dogs, which including feeding, exercising and grooming them at his home.

The taxpayer was required to be available to assist in emergencies, such as a prison disturbance or the escape of a prisoner. Although emergencies rarely arose, he had to be prepared for the possibility of an emergency at any time.

The AAT allowed the following expenses as deductions:

- gym memberships - the AAT was satisfied that the taxpayer's work required him to maintain a high level of fitness, referring to Ruling TR 95/113 which allows a deduction for fitness expenses incurred by police officers, including members of special emergency squads and police officers who work regularly with police dogs and train them, who can demonstrate that their job demands a high level of physical fitness;
- a uniform belt, a waterproof "tactical" jacket and waterproof boots that were only used for work;
- a dog-training video and a USB Wi-Fi used to download the video to his computer while on a training course;
- a dog bed, a "dog mister" watering system and dog treats; and
- work-vehicle car-wash - the vehicle was used only for work and could not be used for private purposes.

The expenses not allowed as deductions included: car expenses for trips between home and work and home and the gyms; expenses related to a certificate course in correctional practice; other clothing and supplements (vitamins, protein shakes and the like).

## **Taxpayers used companies to fund living expenses**

The AAT has upheld default assessments, agreeing with the ATO that the taxpayers used business bank accounts and credit cards to fund their living expenses and lifestyle: [McPartland and FCT \[2022\] AATA 686](#).

The taxpayers were the directors and shareholders of 2 companies which were set up to import and sell motorcycles, although one of the companies hardly traded. Following an audit, the ATO issued default assessments to the taxpayers for the 2015 to 2017 income years assessing them on employment income and directors' fees totalling almost \$468,000.

The taxpayers, however, contended that:

- their income consisted entirely of Centrelink payments relating to a disability support pension; and
- they had funded the companies through director loans totalling \$653,000 and that bank withdrawals were repayments of the loans and not taxable income.

The AAT decided that the taxpayers had failed to prove that the assessments were excessive, finding among other things that: (i) the taxpayers had used business bank accounts and credit cards to fund their personal living expenses and lifestyle; (ii) no

director loans were in place; and (iii) the taxpayers' personal expenses, which included overseas travel, exceeded their income from Centrelink.

## HELP repayment thresholds and rates for 2022-23

The Government has [updated](#) the repayment incomes and repayment rates for the Higher Education Loan Program (HELP) for the 2022-23 income year.

HELP repayment income	Repayment rate (% of HELP repayment income)
Below \$48,361	Nil
\$48,361 - \$55,836	1.0%
\$55,837 - \$59,186	2.0%
\$59,187 - \$62,738	2.5%
\$62,739 - \$66,502	3.0%
\$66,503 - \$70,492	3.5%
\$70,493 - \$74,722	4.0%
\$74,723 - \$79,206	4.5%
\$79,207 - \$83,958	5.0%
\$83,959 - \$88,996	5.5%
\$88,997 - \$94,336	6.0%
\$94,337 - \$99,996	6.5%
\$99,997 - \$105,996	7.0%
\$105,997 - \$112,355	7.5%
\$112,356 - \$119,097	8.0%
\$119,098 - \$126,243	8.5%
\$126,244 - \$133,818	9.0%
\$133,819 - \$141,847	9.5%
\$141,848 and above	10.0%

## **Cars exhibited in car museum not held only as trading stock**

The Federal Court has held that cars on display in a car museum that were also for sale were held both as exhibits and trading stock. As a result, the taxpayer was liable to pay luxury car tax (LCT) and its input tax credits were mostly limited to 1/11th of the car limit: [Automotive Invest Pty Limited v FCT \(Gosford Classic Car Museum\) \[2022\] FCA 281](#).

The taxpayer owned and operated the "Gosford Classic Car Museum", which opened in May 2016. Within a year or so of opening, the Museum had attracted at least 100,000 visitors and the number of cars on display had increased from over 300 to over 400. The Museum promoted itself as a tourist attraction, providing links on its website to facilitate travel bookings and to hotel websites. From around October 2016, however, the Museum's website recorded that many of the cars were for sale.

The central issue was whether the taxpayer used the cars for a purpose other than holding them as trading stock. If so, the taxpayer had "increasing luxury car tax adjustments" for LCT purposes and the input tax credits it could claim would generally be limited to 1/11th of the car limit (pursuant to s 69-10 of the GST Act).

The Court considered that the taxpayer operated a museum which was a successful tourist attraction and that the overwhelming majority of visitors would not be interested in buying a car. On that basis, it concluded that the cars were not only held as trading stock, but were also used as exhibits in a commercially operated museum.

Although the Court found in favour of the ATO, the latter accepted that the limit in s 69-10 did not apply in relation to those acquisitions that were treated as creditable acquisitions under s 66-5 even though they were not taxable supplies (for example, where a second-hand vehicle is acquired from a supplier not carrying on an enterprise).

## **GST payable on sale of subdivided lots**

An SMSF that sold subdivided residential lots was required to be registered for GST and thus liable to pay GST on the sale of those lots: [Ian Mark Collins & Mienneke Mianno Collins ATF The Collins Retirement Fund and FCT \[2022\] AATA 628](#).

Mr and Mrs C resided and conducted their nursery business on 25 acres of land they acquired in 1986. In 1992 they acquired an adjoining 35-acre lot. They later sold the nursery business and leased both lots to the purchaser of the business. In August 2014, they transferred both lots to a company they controlled (Flora Pacific), which



held them as bare trustee for their super fund (the taxpayer). The taxpayer was registered for GST and paid GST on the rental receipts.

In early 2016, Flora Pacific obtained a DA from the local authority to subdivide both lots into 11 community title rural residential lots and one community association lot. The taxpayer caused construction works to be undertaken and between late June and mid-November 2017 sold 10 of the residential lots for \$1m each. In the meantime, in October 2016, the taxpayer's GST registration was cancelled at its request.

The AAT has held that the taxpayer was liable for GST on the sales of the residential lots because it was required to be registered for GST when the sales occurred. The AAT rejected the taxpayer's contention that, in calculating whether its turnover met the GST registration turnover threshold, the sales were to be disregarded under s 188-25 because:

- the sales were the mere realisation of a capital asset - over \$4.5m was spent to achieve the subdivision; or
- each sale was made solely as a consequence of the taxpayer either ceasing to carry on an enterprise or substantially and permanently reducing the size or scale of an enterprise - in the AAT's words, the sale of land "is the central objective of a land development enterprise" and the taxpayer's approach would mean land developers could escape GST.

## ATO guidance on notional GST dispute resolution

The ATO has issued [guidance](#) dealing with its dispute resolution process for notional GST matters arising under the Commonwealth-State GST framework.

Under the Intergovernmental Agreement on Federal Financial Arrangements the Commonwealth, States, Territories and local governments and their statutory corporations and authorities operate as if they were subject to the GST legislation, resulting in what the guidance terms a "notional GST" liability (which, in the case of the States and Territories, is in addition to their "legal GST" liability).

The guidance applies if there is a dispute involving an ATO decision in relation to notional GST (as this is not able to be reviewed by the AAT or the courts as the decision is not in respect of a legal GST liability).

The document outlines:

- the process for a government entity to dispute a position the Commissioner has taken on a notional GST matter; and



- summaries of the legal issues and principles which have arisen from notional GST external reviews.

## Business Basics Grant Program - Opening 4 May

The Queensland Department of Employment, Small Business and Training have announced the next round of the **Business Basics Grants** program. This program will **open at 9am on Wednesday, 4 May 2022**. The round will close when sufficient applications have been received for competitive assessment.

These grants offer a **single up-front fixed grant payment of \$5,000** (ex-GST) to eligible new or emerging businesses to improve their operations - such as upgrading websites, improving skills or adopting best practice.

Given the popularity of previous rounds of these grants, we encourage you to share this information in advance with your small business members and clients so they can [check their eligibility](#) and prepare their documentation ready for the grant opening on 4 May. Further information, including guidelines and how to apply, is available [here](#).

The [small business grants schedule](#) for other grants that will be released in 2022 has also been updated.

## FINANCIAL SERVICES

### APRA policy roadmap for crypto-assets

APRA has set out its initial [risk management expectations and a policy roadmap](#) for all regulated entities that engage in activities associated with crypto-assets.

APRA said it expects that all entities will adopt a prudent approach if they are undertaking activities associated with crypto-assets, and ensure that any risks are well understood and well managed. APRA plans to progress new and revised requirements for the operational risk management of crypto-assets.

A draft prudential standard will be released in mid-2022.

## Cryptocurrency "de-banking": Terms of Reference released

Treasury has released the [terms of reference](#) covering its request for advice from the Council of Financial Regulators (CFR) on potential policy responses to address the issue of de-banking for financial technology firms, digital currency exchanges, and remittance providers.

This is part of a 3-pronged review of the Australian Payment System involving cryptocurrency and digital wallets. The CFR has been asked to provide advice to the Government by the end of June 2022.

## Pension Loans Scheme Bill now law

The [Social Services and Other Legislation Amendment \(Pension Loans Scheme Enhancements\) Bill 2021](#) implemented the 2021-22 Budget measure to make the Government's Pension Loans Scheme (PLS) more flexible by:

- allowing PLS participants to access up to 2 lump sum advances in any 12-month period, up to a total value of 50% of the maximum annual rate of the Age Pension;
- introducing a No Negative Equity Guarantee so borrowers will not have to repay more than the market value of their property.

The Bill has been passed by Parliament and received assent as Act No 28 of 2022 on 1 April 2022.

## SUPERANNUATION

### SMSF Association calls for NALE exemption for general expenses

The SMSF Association has [called](#) for amendments to the non-arm's length expense (NALE) provisions to ensure that penalties only apply to expenditure shortfall amounts, rather than to some or all of the income of the super fund.

Speaking at the SMSF Association National Conference, the Association's Deputy CEO/Director of Policy & Education, Peter Burgess, welcomed the Government's proposal to amend the NALE rules in s 295-550 of the ITAA 1997. To ensure that the NALE rules are fit for purpose, the Association has called for amendments to s 295-550 to exempt general expenses, and ensure penalties only apply to expenditure shortfall amounts.

According to the Association, it is the linking of NALE to some or all of the fund's income, and then applying 45% tax to that income, that could give rise to inappropriate and poorly targeted outcomes. The "penalty" could instead be treating the shortfall amount as a taxable contribution or dealing with it through the contributions regime. So, the solution may well lie in the amendments the ATO is currently proposing for contributions in Taxation Ruling TR 2010/1, which is now expected to be released in the second half of 2022.

## **REGULATOR NEWS**

### **Super funds and derivatives: APRA prudential standard**

APRA has registered the [Banking, Insurance, Life Insurance and Superannuation \(prudential standard\) determination No 1 of 2022](#) to implement a new version of Prudential Standard CPS 226 Margining and risk mitigation for non-centrally cleared derivatives.

APRA has determined under s 34C(1) of the SIS Act that Prudential Standard CPS 226 applies to all registrable superannuation entity (RSE) licensees. It requires an entity that actively transacts in non-centrally cleared derivatives to exchange collateral as appropriate to those transactions to manage the risk of counterparty default, and to have policies and procedures to manage its risks in undertaking the derivatives activity.

### **ASIC suspends AFS licence of superannuation advice company**

ASIC has [reported](#) that it has suspended the AFS licence of Dixon Advisory & Superannuation Services Pty Limited (Dixon Advisory). The suspension follows the appointment of joint administrators to Dixon Advisory on 19 January 2022. The administrators have informed ASIC that most Dixon Advisory clients have transitioned to alternate financial services providers of their choice.

Importantly, ASIC said the terms of the suspension:

- allow Dixon Advisory's AFS licence to continue to operate until 9 May 2022 so that existing clients who have not yet transitioned to an alternate provider can continue to access financial services;
- require the maintenance of dispute resolution arrangements including Australian Financial Complaints Authority (AFCA) membership until 8 April 2023; and

- require the maintenance of compensation arrangements that comply with s 912B of the Corporations Act 2001 until 8 April 2023.

Dixon Advisory clients seeking information about the administration process can contact the Administrators on email: [au\\_dass\\_queries@pwc.com](mailto:au_dass_queries@pwc.com) and can access PwC's Insolvency Cases page [here](#).

## **Foreign investor penalised for purchasing properties without FIRB permission**

The ATO published an [article](#) highlighting the Federal Court case of *FCT v Balasubramaniyan* [2022] FCA 374 where the Court imposed \$250,000 in penalties on a foreign investor for purchasing multiple properties in outer Melbourne without receiving permission from the Foreign Investment Review Board.

It represents the first penalty decision under the Foreign Acquisitions and Takeover Act 1975 (FATA). The ATO first detected the breach using its extensive data sources as part of a multi-faceted compliance approach. In July 2020, the ATO filed proceedings in relation to 6 breaches of the FATA by the foreign investor. The individual purchased 4 properties without permission and simultaneously owned 2 established properties at once, in contravention of the FATA.

## **Tax accountant sentenced to 3 years jail for tax fraud**

The ATO has [reported](#) that a former tax accountant was recently sentenced to 3 years' jail for tax fraud. The accountant's tax practitioner registration was also terminated.

The ATO commenced an audit when the accountant allegedly failed to lodge his BAS between 2012 and 2014. The audit turned up almost \$200,000 in outstanding debt and penalties. When the accountant failed to pay the amount owing, the ATO applied to the Supreme Court to have his company wound up - during which the accountant allegedly lodged 66 false BAS revisions, over a 2-day period, which not only eliminated the debt but created a purported credit of \$144,538.

## **Doctor sentenced for failing to lodge tax returns and BAS**

The ATO has [reported](#) that a Western Australia doctor has been sentenced to 7 months' jail and placed on a good behaviour bond for failing to comply with court orders to lodge 18 outstanding income tax returns and BAS.

In February 2020, the doctor was convicted at the Perth Magistrates Court and fined \$50,000 for failing to provide the ATO with the outstanding income tax returns and BAS. The doctor was also ordered to make the outstanding lodgments within 2 months. However, he failed to lodge, and was prosecuted once more.

The ATO said the doctor will be released from jail after 2 months, upon entering into a \$10,000 recognisance to be of good behaviour for the remainder of his sentence. As part of the good behaviour bond, he will need to lodge each of the outstanding tax returns and BAS.