COSTER GALGUT PTY LTD
ABN 66 005 054 866
CHARTERED ACCOUNTANTS

Tax Update – July 2021

A round up of the important details for the month

Inside

Who thought accounting/advice would be one of the most exciting and dynamic careers when they started their degree? With the continuing lockdowns across the country, the rollout of financial support measures, and the rapid rate of regulatory change, we're in demand more than ever.

This month, COVID-19 lockdowns and the evolving support available to individuals and business, dominate.

Also of interest was the updated guidance from the ATO on the tax treatment of software – as a guide on the website and in TR 2021/D4.

Also, under scrutiny is the sharing economy with the expansion of the taxable payments reporting system from 1 July 2022. From this date, sharing economy platforms will need to report to the ATO.

As always, we're here if you there are any questions you have!

Coster Galgut Pty Ltd
03 9561 1266

From Government

COVID-19 Support for individualsand business

Announcements on COVID-19 support to bothindividuals and business has been evolving quickly.

You can find client guides with the latest information on the member website, see (log infirst to access the links):

- What lockdown support is available?Individuals v5
- NSW - What lockdown support is availableto business? v5
- VIC - What lockdown support is available to business? V3

Individuals - announcements and references

03.06.21	COVID-29 disaster payment announced providing $500 per week for losing 20 hours or more of work, and $325 per week for losing under 20 hours. Liquid assets test applies of $10,000 or more. Media Release - Temporary Australian Government assistance for workers
30.06.21	Legislation enabling COVID-19 Disaster payment receives Royal Asset. Disaster payment applicable on or after day 8 of a COVID-19 lockdown. COVID-19 Disaster Payment (Funding Arrangements) Bill 2021
08.07.21	Disaster payment liquidity test removed Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 3) Regulations 2021 Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 2) Regulations 2021
13.07.21	COVID disaster payment increased to $600 if a person has lost 20 or more hours of work a week or $375 if a person has lost between 8 and less than 20 hours of work a week, from week 4 of a lockdown. NSW Government funds the extension of the COVID disaster payment beyond a Commonwealth hotspot to anyone in NSW who meets the criteria.
	Media release - NSW COVID-19 Support Package
15.07.21	Childcare gap-fee waiver introduced for families in COVID affected areas. From 19 July 2021, childcare services in NSW Local Government Areas subject to stay at home orders able to waive gap-fees for parents keeping their children at home due to current COVID-19 restrictions. The gap fee is the difference between the Child Care Subsidy (CCS) the Government pays to a service and the remaining fee paid by the family. The child-care gap fee waiver is only applicable where the childcare service opts in. Media release - Childcare gap-fee waiver for NSW families in covid-affected areas
15.07.21	Victorian Government funds the extension of the COVID disaster payment beyond a Commonwealth hotspot to anyone in Victoria impacted by COVID-19. Disaster payment to apply from day 1 of the Victorian lockdown. Media release - VIC COVID-19 support package
16.07.21	Regulation enacting COVID disaster payment increase and payment to those outside of hotspots Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 4) Regulations 2021 Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 4) Regulations 2021

23.07.21	Regulation amending COVID disaster payment to apply from day 1 of a lockdown removal of reference to liquid assets test etc Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 5) Regulations 2021
28.07.21	From 2 August 2021, COVID-19 Disaster payment increases to $750 per week for those who have lost 20 hours or more of work, and $450 for those who have lost between 8 and less than 20 hours, or a full day of work. Disaster payment applies from day 1 of a lockdown (where the hotspot triggering the lockdown lasts more than 7 days). Media Release - COVID-19 Disaster Support Payment boosted
29.07.21	The Prime Minister, when questioned by Natalie Barr on *Sunrise* about whether the COVID Disaster Payment is taxable, stated, **"No, it won't and I've made that very clear this morning, back through the system, they won't be taxable."** No formal announcements or guidance is available on this.
30.07.21	Regulation increasing COVID-19 Disaster payment rate and 'top up' payment to people receiving Commonwealth income support payments. Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 7) Regulations 2021

Business - announcements and references

29.06.21	NSW 2021 COVID-19 business grants program announced of between $5,000 and $10,000 with support tiered according to decline in turnover. Two streams ordinally announced for general business and hospitality Optional payroll tax deferrals for payments due in July 2021 Deferral of gaming machine tax Media Release -Major new COVID-19 support package to help tens of thousands of businesses across NSW
13.07.21	'JobSaver' cashflow support announced of between $1,500 and $10,000 per week (up to 40% of NSW payroll) for entities with turnover between $75,000 and $50m who demonstrate a decline in turnover of 30% or more. And, $1,000 for non-employing entities. Media release - NSW COVID-19 Support Package Media release - NSW COVID-19 Support Package
13.07.21	Increase in NSW 2021 COVID-19 business grants program to $7,500 and $15,000 Micro business grants program introduced Payroll tax waivers of 25% for those with a 30% decline in turnover Eviction moratorium and grants of up to $1,500 for landlords Land tax concession for commercial and retail landlords who reduce rent Media Release - COVID-19 fighting fund to protect businesses, Save jobs and support NSW through lockdown

15.07.21	Retail and Other Commercial Leases (COVID-19) Regulation 2021
28.07.21	JobSaver expanded to businesses with an annual turnover of between $75,000 and $250 million and maximum weekly payment increased to between $1,500 and $100,000. Media Release - Major JobSaver boost to expand covid-19 support Media Release - NSW business support package expansion

Reporting the sharing economy

The Government will introduce reporting obligations for sharing economy operators. The reporting provisions will require operators of electronic platforms within the sharing economy (for example such as Uber or AirBnb) to report identification and payment information regarding participating sellers to the ATO for data matching purposes.

The obligations will initially be imposed on ride-sourcing and short-term accommodation providers from 1 July 2022, with other sharing economy participants (such as asset sharing, food delivery, and tasking-based services) required to report from 1 July 2023.

The introduction of these rules is because of the growth of the sharing economy, resulting in a transparency gap because tax reporting systems currently do not adequately capture information about transactions, creating the risk of sellers not paying the right amount of tax.

A previous report on the sharing economy found that without a reporting regime in place, it would be difficult for the ATO to gain information on compliance of sharing economy participants unless targeted audits were used. The report also found that a formal reporting requirement would send a clear signal to sharing economy participants that in most cases payments would be taxable.

The sharing economy reporting regime will be implemented by expanding the application of the taxable payments reporting system (TPRS) to certain transactions undertaken through electronic platforms. The TPRS is currently applicable for businesses operating in the building and construction industry, and to supplies of cleaning, security or surveillance services, and IT services among others.

There are some exceptions to the proposed rules including if the transaction relates to a supply of goods where ownership of the goods permanently changes, where title to real property is transferred, or if the supply is a financial supply. The reporting requirement will also not apply if the transaction occurs within the same tax consolidated group.

More Information

- Implementing a reporting regime for sharing economy platform providers

Amendments to the employee share scheme rules

Treasury has released exposure draft legislation to enact the 2021-22 Budget announcement on reforms to the employee share scheme (ESS) rules.

From a tax perspective, there is really only one change, and it relates to the rules dealing with shares or options which qualify for deferred taxation. At the moment a deferred taxing point is triggered if the employee ceases employment with the company. However, this will be removed so that cessation of employment is no longer a taxing point for shares or options that are subject to deferred taxation. The change is intended to apply to shares or options issued on or after the beginning of the financial year after

the Bill containing the changes received Royal Assent.

The other changes to the rules relate to regulatory requirements. In broad terms the changes will relax the current rules that are contained in the Corporations Act and are intended to make it easier for businesses to create ESS arrangements.

More Information

- Employee share schemes

Inspector-General of Taxation report on undisputed tax debts

This report presents a detailed analysis of uncollected tax debts by the ATO, analysing the data from a number of different perspectives (i.e. such as taxpayer type and size, the total debt compared with total collections etc).

The key findings from the (exceedingly long at 191 pages) report include:

- Approximately 90% of tax liabilities raised are paid by their respective due date, a further 6% paid within 90 days and a further 1% paid within 365 days of the due date. This leaves a remainder of 3% unpaid after a year.
- Total undisputed tax debt reached $34.1 billion at the end of the 2020 year, although this included a significant increase in 2020 due to the impacts of the 2019 bushfires and COVID-19.
- Small businesses account for the largest component of collectable debt (between 63% to 67%), followed by private and wealthy groups (between 18% and 21%) and individuals not in business (approximately 11%).
- Individuals were under-represented, accounting for approximately 11% of collectable debt while comprising almost 70% of the taxpayer population. This is because much of individual taxpayer debt is income tax that is withheld and remitted by other entities (small and large businesses).
- There is a clear and consistent trend of a very small proportion of debt accounts being responsible for a large amount of collectable debt.

The report makes several recommendations for managing and calculating the levels of collectable tax debt, although many of these are reasonably generic – for example having the ATO develop new metrics and report publicly more frequently, including aggregate reporting of large debts to Parliament.

More Information

- Investigation and Exploration of Undisputed Tax Debts in Australia

'Patent Box' discussion paper

Treasury has released a discussion paper on the 2021-22 Budget announcement of the introduction of a 'patent box' for eligible company income associated with new patents in the medical and biotechnology industries.

The patent box rules are intended to apply from 1 July 2022.

'Patent box' is a generic term for regimes that apply concessional tax treatment to profits derived from eligible intellectual property, and these are used in a number of foreign jurisdictions including the UK and Singapore. The aim of the Australian patent box is to encourage companies to base their medical and biotechnology research and development (R&D) operations, and commercialise innovation, in Australia and to retain associated patent profits in Australia.

The discussion paper sets out some of the main features of the proposed amendments, including:

- An effective concessional tax rate of 17% for companies on eligible profits from eligible patented inventions;

- Only inventions claimed in standard patents granted by IP Australia, which were applied for after 11 May 2021 (when the measure was announced) will be eligible; and
- The concessional tax treatment will only apply to company profits from patented inventions in proportion to the amount of associated R&D that was conducted in Australia by the company.

The scope of the application of the new rules (e.g., which industries are covered, what type of patents are eligible, the type of income included etc.,) are yet to be defined, and the discussion paper makes some brief commentary on these and other areas to be clarified. Submissions close on 16 August 2021.

More Information

- Patent Box

Review of the GST rules for low value imported goods

The Assistant Treasurer has announced that the Board of Taxation will undertake a review of the Low Value Imported Goods (LVIG) provisions which deal with the application of GST to low value imported goods.

The rules were introduced from 1 July 2018 to ensure that GST was applied to low value goods using a vendor registration model, which broadly requires non-resident suppliers, online platforms and re-deliverers with an Australian GST turnover of $75,000 or more to register, collect and remit GST to the ATO.

The Board of Taxation will consider the effectiveness of the provisions in efficiently collecting GST. As part of the review the Board of Taxation will provide observations, findings, and appropriate recommendations for improvements and certainty to the ongoing operation of the LVIG regime.

There will also be an assessment of any relevant international developments and experiences regarding the collection of GST and other consumption taxes on LVIG.

The report is due to be completed and provided to the Government in December 2021.

More Information

- Assistant Treasurer media release
- Review of low value imported goods

Review of tax concessions of the Early Stage Venture Capital Limited Partnership (ESVCLP) program

Treasury has released terms of reference for the review of Australia's venture capital tax concessions, to be undertaken by Treasury and Industry Innovation and Science Australia. The review is primarily aimed at examining the operation of the concessions in practice and determining whether they are achieving their intended objectives as set out in the legislation (see Section 118-455 ITAA 1997).

While there is limited information available at this stage, a consultation paper providing means for stakeholders to offer views and provide evidence on the operation of the concessions will be released, presumably shortly. The review will only encompass the existing rules and is not intended to provide any policy comments or recommendations for changes. Only tax issues will be considered as part of this review.

More Information

- Review of venture capital tax concessions

ACNC financial reporting threshold raised

The Government has announced that from 1 July 2022, small charities registered with the Australian Charities and Not-for-profits Commission (ACNC) will have their financial

reporting annual revenue threshold increased from $250,000 to $500,000. The financial reporting threshold for medium-sized charities will also be lifted to $3 million, up from the existing threshold of $1 million.

The changes are being billed as a reduction in compliance obligations and costs for small and medium charities as some entities may no longer be required to produce reviewed financial statements, or (for medium charities) to provide audited financial statements.

Large charities with two or more key management personnel will need to report remuneration paid to responsible persons (directors) and senior executives. Also, from 1 July 2023 all charities will be required to report related party transactions in their annual reporting to the ACNC. This will increase transparency of transactions with related people or organisations that pose a higher risk of conflicts of interest.

More Information

- Cutting red tape for charities

From the ATO

Treating software as trading stock or a depreciating asset

The ATO has issued some timely guidance on identifying the correct tax treatment for transactions involving software. The key issue will often be determining whether software is treated as trading stock or a depreciating asset for tax purposes.

For software developers, the ATO indicates that software produced or developed for sale (for example, by way of transfer of all the rights relating to the copyright in the software) should be treated as trading stock.

Similarly, for software distributors, packaged software (that is, a copy of a software program stored on physical carrying media e.g. CD) that issold in the course of business is classified as trading stock. Any proceeds received from the sale of packaged software is included in assessable income.

However, the ATO indicates that software that is distributed by way of digital download or through cloud computing arrangements is not generally treated as trading stock, as it is not held for the purposes of sale or exchange. When the arrangement involves providing another party with a licence to use the software then it is not itself trading stock. Having said that, the ATO states that if a taxpayer is a software distributor or software developer, any proceeds received from the distribution or licensing of software under such arrangements is still included in assessable income.

When software is not held as trading stock it will generally be classified as a depreciating asset for tax purposes. This is because the definition of depreciating asset includes certain rights relating to copyright, including copyright in software. The transfer or disposal of rights relating to copyright in software that is not trading stock gives rise to a balancing adjustment under the depreciation rules. As a result, it will not generally be possible to apply CGT concessions such as the CGT discount or small business CGT concessions to the sale of software.

More Information

- Trading stock and the treatment of proceeds from the sale of software
- TR 2021/D4 royalties - character of receipts in respect of software

Running a business in Australia or New Zealand

The ATO has provided some brief comparing the operation of the Australian and New Zealand tax systems and the steps required in establishing a business and complying with ongoing tax obligations. There is some broad "point-form" commentary on the registrations which may be required (for example ABN, TFN, GST registration in Australia) and the major differences in how GST and income tax apply in each country.

When dealing with clients who wish to establish a business presence in New Zealand, some of the main points to note are:

- GST in NZ is 15% and registration is required where turnover exceeds NZ$60,000 in any 12-month period. Reporting can be done on a six month, two month or monthly basis depending on turnover.
- Similar to the Australian system, there are a range of exclusions from the GST rules including residential accommodation and many financial supplies. Unlike the Australian system, the NZ system includes the concept of zero rated supplies which refers to sales subject to GST but with a modified GST rate of 0% being applicable.
- With respect to income tax, the NZ system broadly operates in the same fashion as the Australian system with residents taxed on their worldwide income and non-residents taxed on New Zealand-sourced income only. However, the NZ tax year runs from 1 April to 31 March.
- There is generally no CGT in NZ, although recently a tax on residential land has been introduced.
- NZ business taxpayers are required to pay 'provisional tax' (which is similar in nature to PAYG) if they had to pay more than $5,000 in tax at the end of the year from the last return.

If you have clients who are thinking of expanding their business to include NZ operations then this might be a useful guide as a starting point. However, more detailed advice should generally be sought from a NZ tax specialist.

More Information

- Comparing the New Zealand and Australian tax systems

Tenants - rent waivers or deferrals

Some business tenants may have received concessions from their landlords relating to the rent payable during the COVID-19 period which can have an impact on their tax obligations, depending on the type of concession and the period it relates to.

As a starting point, where rent relating to a past period of occupancy has been waived and the tenant has already paid and claimed a deduction for the expense, they are still entitled to the deduction. However, if the amount paid is refunded to the tenant, the refund should be included as assessable income when it is received.

On the other hand, if a tenant has not already paid the rent that has already been incurred and it is waived, the commercial debt forgiveness rules could apply and there might be adjustments to the tenant's carried forward losses, deductible amounts or the cost base of assets.

If the waived rent relates to a future period of occupancy, the tenant simply won't be entitled to a deduction for that amount.

From a GST perspective, where the tenant accounts for GST on an accruals basis and has already claimed a GST credit for rent that is later waived, it is necessary to make an increasing adjustment to pay back the GST credit claimed.

The adjustment is made in the activity statement for the period when the tenant becomes aware of the waiver.

Deferrals of rent are treated a little differently however tenants should still be entitled to a deduction for deferred rent when it is incurred. Rent is generally incurred in the period that the rent relates to or when it is paid – this depends on the terms of the lease agreement. The GST treatment depends on whether the tenant accounts for GST on a cash or accrual basis. Where tenants account for GST on a cash basis, they are only entitled to GST credits after the deferred rent is paid and a tax invoice is received from the landlord setting out the GST amount.

For tenants using an accruals basis, if they have a tax invoice from the landlord they are entitled to a GST credit at that time even if they haven't paid the invoice.

More Information

- Tax obligations for tenants

Landlords who provide rent concessions to tenants

Similar guidance concerning the provision of reductions in rent has been provided by the ATO for landlords.

In respect of rent waivers, for landlords using the cash basis for income tax purposes there should be no tax payable on the waived amount as it is not received. No GST should be payable either.

If a landlord is using an accruals basis then generally they will need to include accrued rent as income for occupancy up to the date of any change to rent receivable. If the rent for that earlier period is waived (for example if a refund is provided to the tenant) then this can give rise to a deduction.

In relation to GST, where the accruals basis is used and GST has already been paid to the ATO, a landlord may be eligible to make a decreasing adjustment to claim back any overpaid GST. There will be overpaid GST on rent where the rental agreement has been adjusted by reducing the amount payable.

For rent deferrals, landlords using the cash basis will only become taxable on the deferred rent at the point it is ultimately received from the tenant. GST would also only become payable at this point.

Where the accruals basis is used, tax on the accrued but deferred rent is payable. If the landlord has included deferred rent in their assessable income but don't eventually receive it from the tenant, they may be entitled to a deduction. The landlord will also need to pay GST on the entire amount payable for each lease period identified in the lease agreement, even if they haven't received the deferred amount yet. A GST decreasing adjustment may be claimed if the landlord subsequently writes off the deferred rent or the deferred rent has been overdue for 12 months or more.

A key point to note is that landlords can still claim deductions for normal expenses incurred in relation to the property if their tenants can't pay their rent under the lease agreement because their income has been affected by COVID-19 and less rental income is received as a result. This includes interest on bank loans even if the bank has deferred the payments – in those circumstances the expense has still been incurred. However, where the tenants and landlords are related to each other it is necessary to take more care and ensure that arrangements are on commercial terms.

More Information

- Tax obligations for landlords

Single touch payroll (STP) – phase 2 reporting

The ATO has released new guidelines to assist businesses in complying with the additional reporting obligations under phase 2 of STP which are due to start on 1 January 2022. Under phase 2, some additional information concerning employees needs to be reported through STP, including information from TFN declarations or withholding declarations. These changes mean in most cases businesses will no longer need to send TFN declarations to the ATO or provide employment separation certificates when employees leave.

At a very high level the additional requirements involve reporting more detailed information concerning the employee's status such as whether they work full-time or part-time, the type of work performed and whether the tax-free threshold applies, and other characteristics of the employee such as residency. More detailed information concerning the type of payments made is also reported, with amounts of each component of payments also notified (i.e. instead of reporting a single gross amount). It will be necessary for advisers and employers (where they complete this directly) to review the additional requirements in some detail as there is a lot of information provided and some finicky reporting methods to be followed – for example it appears a wide range of different codes will need to be used.

More Information

- Single Touch Payroll Phase 2 employer reporting guidelines

Changes to how SMSF rollovers are managed

From 1 October 2021, certain SMSFs expecting or receiving a rollover will need to ensure that they are SuperStream Rollover v3 compliant. Certain release authorities will also be sent to the fund via this method.

These new rules will affect SMSFs receiving rollovers or rolling out member benefits to another fund. The SMSF will also receive release authorities for excess concessional and non-concessional contributions, Division 293 release deferred and non-deferred amounts and releases under the First Home Super Saver (FHSS) Scheme.

In order to be ready for the changes the fund trustee or tax agent should ensure that their Electronic Service Address (ESA) provider is or will be SuperStream Rollover v3 enabled from 1 October 2021.

Division 7A benchmark interest rate

The benchmark interest rate for Division 7A loans for the income year ending 30 June 2022 has now been published on the ATO website. The benchmark interest rate for 2022 is **4.52%** (unchanged from 2021).

More Information

- Division 7A – benchmark interest rate

Record keeping and working from home

The ATO has issued a reminder for tax agents to ensure their clients are keeping appropriate records of the hours they work from home and receipts for all items purchased in relation to their work. This should enable clients to use the method that will provide them with the best tax

outcome when calculating working from home deductions.

More Information

- Keep records when working from home

Checking tax deductions for donations

Practitioners are being encouraged to check whether clients are entitled to claim deductions for donations they make. The ATO has revealed that in 2019 nearly two thirds of the charitable donation claims that were adjusted by the ATO were because the taxpayer could not prove they had made the donation.

There are four key reasons why deductions for donations may be denied:

- The donation is to an organisation that is not endorsed by the ATO as a deductible gift recipient (DGR). You can confirm an organisation's DGR status by checking ABN Lookup.
- Donations may not be tax deductible where the taxpayer receives or expects to receive a monetary or personal benefit or advantage in return. Common examples include raffles, fundraising chocolate sales etc.
- The lack of a receipt. Most organisations will usually issue you with a receipt, but they don't have to. The ATO accepts third-party receipts as evidence of a gift to a DGR if the receipt identifies the DGR and states the fact that the amount is a donation to the DGR. However, if a taxpayer makes one or more donations of $2 or more to fundraising such as bucket collections conducted by an approved organisation for natural disasters, they can claim a tax deduction of up to $10 for the total of those contributions without a receipt.
- The other issue that arises is sometimes people will seek to claim deductions for donations they intend to make in their will, or to claim deductions for workplace giving that has already reduced the amount of tax paid in each pay period.

Practitioners should be especially careful in situations where clients have made gifts to foreign charities or non-profit entities and where amounts have been contributed through online crowdfunding programs. It is important to ensure that the DGR status of the recipient is checked in these cases.

More Information

- Four reasons to check your donations this tax time

Rulings, determinations &IDs

Reasonable travel and overtime meal allowances for the 2022 income year

TD 2021/6 what are the reasonable travel and overtime meal allowance expense amounts for the 2021-22 income year?

The ATO has released its annual determination setting out the Commissioner's reasonable amounts for the purposes of the substantiation exception for the 2022 income year in relation to claims made by employees for:

a) Overtime meal expenses - for food and drink when working overtime;
b) Domestic travel expenses - for accommodation, food and drink, and incidentals when travelling away from home overnight for work; and
c) Overseas travel expenses - for food and drink, and incidentals when travelling overseas for work.

In broad terms, an employee does not need to satisfy the normal strict record keeping rules if they receive a bona fide travel or overtime meal

allowance and the deduction they are claiming does not exceed the ATO's reasonable rates. However, it is important to recognise that appropriate records still need to be met to justify any deductions that are being claimed and deductions can only be claimed for expenses that have actually been incurred.

Expiring Division 7A sub-trust arrangements

PCG 2017/13 Division 7A - unpaid present entitlements under sub-trust arrangements maturing in the 2017, 2018, 2019, 2020 or 2021 income years

When the ATO updated its guidance on the Division 7A treatment of unpaid present entitlements (UPEs) owed to corporate beneficiaries in 2009 it set out guidance on sub-trust loan arrangements that could be used to prevent UPEs from being treated as loans for Division 7A purposes. PS LA 2010/4 makes it clear that the trust must pay the principal of the loan at the end of the sub-trust loan term to meet the requirements. If the trust fails to meet this obligation then the unpaid amount can be treated as a loan for Division 7A purposes and a deemed dividend could potentially arise.

However, the ATO has allowed a concessional approach to apply in some situations where the trust is not able to pay out the remaining loan balance at the end of the initial sub-trust arrangement. The ATO explains that the sub-trust amount can potentially be placed under a 'normal' 7 year complying Division 7A loan agreement in some cases, extending the period over which the amount must be paid by the trust. In these cases, the trust would need to make interest and principal payments each year to prevent a deemed dividend from being triggered.

The ATO has now amended the PCG to extend the concessional approach outlined above that can be applied to expiring 7 year sub-trust arrangements to those ending in the 2021 income year, and has also extended the application to include 10 year sub-trust loans.

Remission of additional super guarantee

PS LA 2021/D1 Remission of additional superannuation guarantee charge

This practice statement sets out the approach that ATO officers should use in determining whether additional superannuation guarantee (SG) charges imposed due to an employer failing to lodge a SG statement by the lodgement due date should be remitted.

Where the SG statement is lodged late, or a default assessment is issued by the ATO, there is an automatic penalty (the 'Part 7 penalty) imposed which is equal to double the SGC payable by the employer for the quarter. The ATO has the discretion to remit the Part 7 penalty, in full or in part. In making this decision, the practice statement indicates that ATO officers must follow a four-step penalty remission process:

- Step 1: Consider remission based on the employer's attempt to comply with their obligations through late payment.
- Step 2: Consider remission based on the employer's attempt to comply with their obligations by lodging an SG statement.
- Step 3: Consider any increase or reduction in penalty based on the employer's compliance history.
- Step 4: Consider any other mitigating facts or circumstances that warrant further remission.

The four-step process provides specified remission percentages based on certain criteria, for example the time of late payments made and

whether the ATO had contacted the employer (for Step 1).

Following the application of Step 4 the ATO officer can also apply their discretion to remit any remaining penalty. In exercising that discretion, the practice statement provides that an employer should only be considered for a penalty relief arrangement where they have a turnover of less than $50 million and they:

- Took voluntary action to comply with their obligation to lodge SG statements;
- Do not have a history of lodging SG statements late;
- Have lodged no more than four SG statements after the lodgement due date in the present case;
- Have no previous SG audits where they were found to have not met their SG obligations; and
- Have not previously been provided with penalty relief.

Penalty relief would not be appropriate where the employer has:

- Been issued with an SGC default assessment;
- Lodged more than four SG statements after the lodgement due date in the present case; or
- Previously been issued with an SG education direction.

It is important to remember that while the ATO has some discretion to remit this particular penalty, the ATO doesn't have the discretion to remit SGC liabilities.

Effective life of depreciating assets

TR 2021/3 Income tax: effective life of depreciating assets (applicable from 1 July 2021)

The Commissioner has released the annual ruling which sets out the effective lives of depreciating assets from 1 July 2021. Taxpayers can choose to use the effective lives set out in the ATO ruling or make their own estimate of the effective life of a depreciating asset.

Extended transitional guidelines for company residency tests

PCG 2018/9 Central management and control test of residency: identifying where a company's central management and control is located

When the ATO updated its guidance on applying the residency tests to companies incorporated overseas it provided a transitional period for companies affected by the new guidelines to change their corporate governance arrangements and ensure that central management and control was exercised outside Australia.

The transitional compliance approach originally expired on 30 June 2019 but was extended to 30 June 2021. However, the ATO recognises that companies may have been restricted in their ability to change governance arrangements as a result of COVID-19 and the Government has announced amendment to clarify the corporate residency test. As a result, the has now extended the transitional period to the earlier of the following:

- 31 December 2021 for an early balancer taxpayer with a 31 December year end
- 30 June 2022 for a taxpayer with a 30 June year end
- The date on which legislation amending the corporate residency test receives Royal Assent.

Non-arm's length income of superannuation funds

LCR 2021/1 Non-arm's length income - expenditure incurred under a non-arm's length arrangement

LCR 2021/1 clarifies the ATO's position on how the non-arm's length income rules apply to a superannuation fund that is not dealing with another party on arm's length and the fund incurs expenditure that is not at arm's length. Where expenses incurred by the fund are not at arm's length and below market rates, any income derived by the relevant asset could be deemed to be non-arm's length income and taxed at the top marginal tax rate. The finalised ruling provides further guidance around expenses that arise in a fund that are not on arm's length terms and have a nexus to all fund income. For example, administration expenses that are below market rates could result in the non-arm's length income rules applying to all the income of the superannuation fund.
The question of whether the non-arm's length income rules apply depends on the capacity in which the trustee undertakes those activities. Essentially, if you or a related entity are providing services to your superannuation fund in a capacity other than as trustee, and you (or the related entity) currently provide that service to the public, an arm's length fee should be charged for this service. Failure to do so could result in non-arm's length income applying to the income derived from the applicable asset the expense relates to.

Legislation

Parliament sits on 3 August 2021.

Extension of tax-free treatment for certain State Government COVID grants

Treasury Laws Amendment (COVID-19 Economic Response) Bill 2021

This Bill extends the concessional tax treatment of payments received by businesses under eligible COVID-19 recovery grant programs administered by State or Territory governments to cover payments received in the 2022 income year. The rules originally only covered payments received in the 2021 income year.

Additional Victorian grants added to the list of tax-free payments

Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No. 1) 2021.

A new legislative instrument has been released which adds some additional Victorian Government grants to the list of COVID-19 related business grants which can be treated as non-assessable non-exempt income if certain conditions can be satisfied by the recipient of the payment.

The new grants included are:

- Alpine Support Program
- Business Costs Assistance Program Round Two
- Impacted Public Events Support Program
- Independent Cinema Support Program
- Licensed Hospitality Venue Fund 2021
- Live Performance Support Program
- Sustainable Event Business Program

A list of the currently eligible payments can also be found on the ATO website here (subject to any further amendments).

Certain payments and grants from other States may end up receiving tax-free treatment, but this requires the relevant State / Territory to

apply to the Minister so that a declaration can be made.

Changes to the Disaster Payment

Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 2) Regulations 2021

Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 3) Regulations 2021

Amendments to the rules relating to the COVID-19 Disaster Payment extend the eligibility for the payment to people who are unable to earn their usual income as a result of being present in another location in Australia at a time that it was subject to a state or territory public health order which restricts the movement of persons for a period of more than seven days because they were previously present in a hotspot area.

Further amendments to the rules relating to the COVID-19 Disaster Payment also mean that the requirement to have liquid assets of less than $10,000 has been removed for recipients who are in their second week of eligibility for the payment. However, it is worth noting that this test doesn't appear to be relevant at all for those in Victoria or South Australia and so that amendment is more relevant to those in NSW.