Coster Galgut
Chartered Accountants

Tax Update – February 2023

What did I miss?

The Government has announced that from 2025-26, the concessional tax rate applied to future earnings for superannuation balances above $3 million will increase to 30%. So much for no change!

From 1 March 2023, your clients will need to keep accurate records of when they work from home to be able to claim the updated 67 cents per hour fixed rate for work from home deductions. The ATO will no longer accept estimates. We look at the practical implications of the latest ATO guidance (also covered in this month's *Your Knowledge* newsletter to keep your client base up to date).

And, a new taxpayer alert looks at schemes involving interposed holding companies.

Coster Galgut Pty Ltd
(03) 9561-1266

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From Government

Future earnings for super balances above $3m taxed at 30% from 2025-26

The Government has announced that from 2025-26, the concessional tax rate applied to future earnings for superannuation balances above $3 million will increase to 30%.

The concessional tax rate on earnings from superannuation in the accumulation phase will remain at 15% up to $3m. From $3m onwards, the rate will increase to 30%. The amendment applies to future earnings; it is not retrospective.

80,000 people are expected to be impacted by the measure.

The announcement doesn't mention any proposed changes to the transfer balance cap and the amount that a member can have in the tax-free retirement phase.

The enabling legislation has not been released. We will bring you more as soon as anything relevant is released – follow us on twitter, facebook and Linkedin for the latest.

More information
Superannuation tax breaks

Legislating the objective of super

Treasury has released a consultation paper that seeks to anchor future policies relating to superannuation to a legislated objective:

The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside Government support, in an equitable and sustainable way.

“Preserve savings” in this context means restricting access to superannuation savings to retirement only.

The consultation paper states: “Beyond a certain level of income, additional Government support through tax concessions is not necessary or appropriate.”

The second component of the consultation references the economic contribution of pension assets.

Compulsory superannuation guarantee (SG) was introduced in 1992 at a rate of 3% rising to 9% by July 2002. Now, Australia’s superannuation pool has grown from around $148 billion in 1992 to over $3.3 trillion. It now represents 139.6% of gross domestic product (GDP) and is projected to grow to around 244% of GDP by 30 June 2061. Australia’s pool of pension assets is now one of the largest in the world, and the fourth largest in the OECD. The report states:

Superannuation is an increasingly important source of capital in our economy and the significant scale of Australia’s superannuation system contributes to the strength of our financial markets through capital deepening. There is a significant opportunity for Australia to leverage greater superannuation investment in areas where there is alignment between the best financial interests of members and national economic priorities, particularly given the long-term investment horizon of superannuation funds.

More information
Legislating the objective of superannuation

From the regulators

FBT exemption for electric cars

The ATO has released a new fact sheet on the FBT exemption for electric cars. While the fact sheet doesn’t necessarily contain any new information, it does clarify and confirm some key points.

For example, the ATO confirms that the exemption can only apply if the employee is provided with a car fringe benefit. This would normally be the case if the employer owns or leases the car and then allows an employee to use it. The exemption cannot apply to other types of fringe benefit such as expense payment fringe benefits (e.g., reimbursing the purchase cost incurred by the employee), or residual fringe benefits (e.g., where the vehicle is not classified as a car).

Only benefits provided to current employees and their associates are eligible for the exemption. That is, even though the FBT system can capture benefits provided to past and future employees, the FBT exemption for electric cars cannot apply to these benefits.

The ATO confirms that ‘car expense benefits’ relating to an exempt electric car can be exempt from FBT too. ‘Car expense benefits’ in respect of the car include:

- Registration and road user charges
- Insurance
- Repairs or maintenance
- Fuel (including electricity to charge and run an electric car).

However, the exemption cannot apply if the employee is provided with a home charging station. This is likely to trigger an FBT liability of the employer.

Even if the FBT exemption applies it is still necessary to calculate the taxable value of the benefit using either the statutory formula method or operating cost method. This is because the amount is taken into account in calculating the reportable fringe benefit amount of the employee which could impact on their ability to access other Government benefits. Employees who use the car for work or business purposes should be encouraged to keep a valid

logbook so that the operating cost method can be used in calculating the reportable fringe benefit amount if this provides a lower figure.

More information
Electric vehicles and fringe benefits tax

Holiday homes in the ATO's sights

The ATO has issued another reminder for clients and practitioners to be careful when dealing with properties that are used as holiday homes and to generate rental income. This has been a target area for the ATO in recent years and it seems like the ATO is still concerned about the deductions being claimed by some taxpayers in relation to properties that are used for mixed purposes.

The ATO indicates that there are a number of holiday home owners who are claiming deductions that are six times higher than the income generated from the property. Clients with large deductions or losses are more likely to be targeted by the ATO for review or audit.

The ATO suggests that practitioners ask the following questions (at least) of clients who have holiday homes that are also used to generate income:

- How many days was the property rented out and was the rent in line with market values?
- Where do you advertise or rent and were any restrictions placed on tenants?
- Have you, your family or friends used the property?

Situations that are more likely to attract the ATO's attention include the following:

- Clients who only make the property available for rent outside peak holiday periods; and
- Clients who claim that the property was genuinely available for rent during peak holiday periods but the property wasn't used privately and wasn't rented during those periods.

More information

Do your clients have a holiday home?
Holiday homes

Paying superannuation death benefits

The ATO has released some guidance on an issue that has been confusing advisers for years – whether a benefit requested by a member before death but paid to the deceased estate or beneficiary after death should be classified as a superannuation death benefit or not.

While the position is not clear cut, the factors that should be considered include the following:

- The terms of the request from the member
- The terms of the trust deed and any other governing rules
- Knowledge at the time the payment is made (including whether they are aware that the member has died)
- The entity that the payment is being paid to
- The circumstances and timing of the payment
- Whether the payment is made because of and in line with the request made by the member.

The ATO provides an example relating to a SMSF which indicates that the fact the trustee knew the member had passed away and was making the payment to the deceased estate (among other factors) should mean the payment is classified as a death benefit.

An example relating to an APRA regulated fund however reaches the opposite conclusion as there was no knowledge of the member passing away and the payment was made to an individual account.

More information
Paying superannuation death benefits

1 July 2023 Transfer balance Increase but no change for contributions

As you will be aware, the transfer balance cap (TBC) will increase by $200,000 on 1 July 2023 from $1.7m to $1.9m.

The TBC is indexed to the consumer price index each December, and in December 2022 inflation soared to 7.8% triggering the increase.

Individuals commencing a retirement income stream from 1 July 2023 will benefit from the higher $1.9m cap.

For any clients considering retirement, either fully or partially, consider deferring until July to take advantage of the extra tax-free $200,000.

For individuals already with pension accounts, their TBC will increase by an indexation amount. The indexation is based on the highest ever balance in the individual's transfer balance account, which is used to calculate a proportional increase in their transfer balance cap. This means those individuals will have a personal TBC between $1.6 million (the previous cap before it was increased to $1.7m) and $1.9m.

For example, if a client started a retirement income stream valued at $1,275,000 on 1 October 2022 and this was the highest point their account reached before 1 July 2023, then their unused cap is $425,000 ($1.7m-$1.275m). This unused cap amount is used to work out your unused cap percentage ($425k/$1.7m=25%). The unused cap percentage is then applied to the indexation increase ($200k*25%=$50k) to create your new TBC of $1,750,000.

A client's personal transfer balance cap, available cap space, and transfer balance account transactions are available to them online through the ATO link in myGov. For tax agents, the information is accessible through the ATO portal.

Superannuation contribution caps are linked to December's average weekly ordinary time earnings (AWOTE) figures. Given average weekly earnings have not accelerated at the same speed as inflation, there is no change to the concessional or non-concessional caps. That is, $27,500 for concessional contributions and $110,00 for non-concessional contributions.

More information
Transfer balance cap indexation

Private ruling application process guide

The ATO has published a guide to help clients and practitioners manage the private ruling process.

The ATO indicates that it aims to provide a ruling within 28 calendar days of receiving all necessary information. If the ATO requests additional information following an initial review of the ruling application then the actual time period involved can be much longer.

There are a number of reasons why the ATO might make contact with the taxpayer or their adviser following the submission of a private ruling application, including providing updates on the expected timeframe for issuing the ruling, explaining any assumptions the ATO may make, whether information has been obtained from third parties, and, if a valuation is required, whether this will be passed to a professional valuer who will charge a fee.

If a private ruling request relates to an earlier assessment that has been issued to the taxpayer this will not automatically be amended by the ATO – the taxpayer will need to separately undertake the amendment process.

If clients disagree with a private ruling received from the ATO, the next step is to consider making an objection to the ruling, or in some cases to an assessment that may have been issued.

The ATO also provides a list of supporting information that will typically be required when the ruling application deals with certain common topics. If taxpayers or advisers provide relevant supporting information with the ruling application this should help in reducing the time it takes for the ATO to process the ruling application.

More information

How we deal with your application – private rulings
Supporting documents

Key dates for FBT 2023

With the end of the FBT year on 31 March 2023 fast approaching, the ATO has reminded taxpayers and their advisers that now is the time to start preparing FBT records and calculations. This includes ensuring that any arrangements for employee contributions to reduce the taxable value of fringe benefits are put in place and collecting employee declarations (if required).

For employers who need to lodge an FBT return for the 2023 FBT year, the return must normally be lodged and any FBT amount due needs to be paid by 22 May 2023. However, the due date is extended to 25 June 2023 if the FBT return is lodged electronically by a tax agent. Clients need to be added to the FBT client list by 21 May to qualify for the extended lodgement and payment date.

The FBT work program on the Knowledge Shop knowledge bank will be released at the beginning or March. We'll send you an alert when it is ready to go!

More information
Get ready for fringe benefits tax time

Rulings, determinations & guidance

Working from home deductions

PCG 2023/1

The ATO has finalised its updated guidance on individuals claiming deductions for additional running expenses incurred while working from home. The final version of the guidance is substantially the same as the draft (PCG 2022/D4).

Following the end of the temporary 'shortcut' method that was introduced in response to changing work patterns relating to COVID-19 on 30 June 2022, individuals will be able to claim deductions for home office expenses using either an actual expenses method or a revised fixed rate method.

The revised fixed rate method provides for a deduction at the rate of 67 cents per hour for energy expenses (electricity and gas), internet expenses, mobile and home phone expenses, and stationery and computer consumables. Other costs, such as depreciation on computers or other running costs not referred to above can be claimed separately.

Taxpayers need to satisfy three basic criteria to use the revised fixed rate method:

- They are performed genuine work or business activities from home
- They personally incur additional running expenses as a result of this work
- They keep and retain relevant records

There are some key points that advisers should be aware of when it comes to utilising the revised fixed rate method:

- Undertaking minimal work-related tasks such as taking phone calls or occasionally checking emails while at home will not qualify as working from home for this purpose.
- There is no requirement to have a separate home office or dedicated work area set aside in the home in order to use the revised fixed rate method.
- While it is not necessary to prove that every kind of running expense has been incurred by the taxpayer, it is necessary to ensure that there is evidence that they have incurred at least some additional running expenses.
- If invoices or bills are in the name of one member of the household but the cost is shared, each member of the household who contributes to the payment of the expense will be taken to have incurred it.
- Paying board to parents etc does not qualify as contributing to running costs.
- Taxpayers require at least one document (such as an invoice, bill or credit card statement) for each of the additional running expenses which they have incurred during the year.
- Taxpayers must have records showing the total number of hours they have worked from home during the income year. The ATO indicates that these can take any form (timesheets, diary, rosters, records of access to employer systems etc). but must be made contemporaneously. A transitional arrangement allows taxpayers to keep a record that is representative of the total hours worked from home from 1 July 2022 to 28 February 2023. A more comprehensive record of the total number of actual hours worked from home is required from 1 March 2023 onwards.

Schemes involving interposed holding companies

TA 2023/1

This taxpayer alert outlines the ATO's concerns with arrangements that purport to allow individuals access to the retained profits of a company by way of a tax-free loan that does not result in a deemed dividend under Division 7A.

The ATO has expressed concern with arrangements that have the following basic features:

- A new holding company is interposed between an existing company and its current shareholder;
- CGT rollover relief is used to undertake the restructure;

- The existing company pays out its retained profits as a franked dividend to the new holding company;
- The funds are then lent to the ultimate shareholder.

In the example provided by the ATO the holding company has no distributable surplus which means that any deemed dividend that might arise under Division 7A is reduced to nil, although it isn't entirely clear how the company would end up with a nil distributable surplus in this situation, we have asked the ATO to clarify this.

The ATO has indicated that if no deemed dividend is recognised under Division 7A then the ATO could potentially seek to apply other integrity rules such as the dividend stripping provisions in Part IVA. If so, this could mean that the loan amount is included in assessable income of the shareholder, the benefit of the franking credits is removed and penalties could be applied.

Legislation

Parliament sits on 6 March 2023 – follow us on twitter, facebook and Linkedin for the latest!

Integrity of corporate transactions

Treasury Laws Amendment (2023 Measures No. 1) Bill 2023

The Government has introduced a Bill to Parliament which contains a number of measures that have been announced previously, including two amendments relating to payments made by certain companies to their shareholders.

First, the Bill seeks to align the tax treatment of off-market share buy-backs undertaken by listed public companies with the tax treatment of on-market share buy-backs by amending the legislation so that no portion of the buy-back price will be treated as a dividend for tax purposes. This also means that franking credits cannot be attached to the buy-back price.

The key point for advisers to remember is that the changes only apply to listed public companies. Buy-backs conducted by private companies could still have a dividend component to the extent that the buy-back is not sourced from the company's share capital account.

Second, the Bill seeks to introduce an integrity measure to prevent certain dividends paid by companies from being franked where they are funded by capital raising. Broadly, the rules would ensure that franking credits cannot be attached to dividends if:

- The dividend is not consistent with an established practice of the entity of paying dividend of that kind on a regular basis;
- There has been an issue of equity interests in the entity or another entity;
- It is reasonable to conclude in the circumstances that the principal effect of the issue of any of the equity interests was to directly or indirectly fund all or part of the dividend; and
- It is reasonable to conclude that any entity that issued or facilitated the issue of any of the equity interests did so for a purpose (other than an incidental purpose) of funding the dividend or part of the dividend.

Alternative FBT documentation options

LI 2023/D3 LI 2023/D4 LI 2023/D5 LI 2023/D6

These draft legislative instruments set out alternative records that can be used instead of an employee declaration so that the employer can access specific FBT concessions. These instruments deal with expense payment fringe benefits provided to employees who use their own vehicle in relation to:

- Overseas employment holiday transport
- Travel to employment interviews or selection tests
- Remote area holiday transport
- Work-related medical examinations, medical screenings, preventative health care, counselling or migrant language training.

In each case the draft legislative instrument explains that alternative records containing certain specific

information can be used in place of an employee declaration. provides for a simple record containing specific information (such as the name of the employee and any family members, date of travel, and the distance and locations of travel).