



TAX ON THE COUCH TOPICS

HOT TOPICS – MONTH-BY-MONTH

January/February 2017 Hot Topic

Reportable Fringe Benefits Amounts and Reportable Employer Superannuation Contributions

March 2017 Hot Topic

Dealing with franchise expenses

April 2017 Hot Topic

Claiming occupancy costs for a home office

May 2017 Hot Topic

Working Holiday Makers

June 2017 Hot Topic

Federal Budget 2017-18

July 2017 Hot Topic

TR 2016/3 - Commercial website expenditure

August 2017 Hot Topic

Single Touch Payroll

September 2017 Hot Topic

Employer Obligations and Family Members

ATO TOPICS/NTAA SPECIAL UPDATES – MONTH-BY-MONTH

January/February 2017 Special Update

(No ATO Topic/Special Update)

March 2017 Special Update

TA 2016/6: Extension of time for voluntary disclosure (Diverting PSI to an SMSF)

April 2017 ATO Hot Topic

Fringe Benefit Tax (FBT) – Common Errors

May 2017 Special Update

Uber and Airbnb

June 2017 No ATO Hot Topic/Special Update

Extended Hot Topic on Federal Budget 2017-18

July 2017 Special Update

(No ATO Topic/Special Update)

August 2017 Special Update

Farm Management Deposits

September 2017 Special Update

Mr Ian Taylor, Chairman, Tax Practitioners Board

ALL TOPICS COVERED

JANUARY/FEBRUARY 2017

Monthly Legislative Update

- Proposed tax changes included in the Federal Government's Mid-Year Economic and Fiscal Outlook (MYEFO) statement
- *Treasury Laws Amendment (2016 Measures No.1) Bill 2016*

Monthly Rulings Update

- TA 2016/12 – Taxpayer Alert: Contrived Trust Arrangements
- TD 2016/D4 – Residency assumption in S.95(1) of the ITAA 1936 and S.855-10 of the ITAA 1997
- TD 2016/D5 – S.99B(1) assessment re capital gain from non-TAP held be foreign trust
- LCG 2016/D8 – Transfer balance cap and TTR reforms: transitional CGT relief
- LCG 2016/D9 – Transfer balance cap
- LCG 2016/D10 – Defined benefit income streams – non-commutable, lifetime pensions
- LCG 2016/11 – Concessional contributions – defined benefit interests
- LCG 2016/D12 - Total superannuation balance
- GSTR 2016/D1 – Making cross-border supplies to Australian consumers
- TR 2016/3 – Deductibility of website expenditure
- PCG 2016/18 – GST and countertrade transactions

Monthly Case Update

- Various companies found to be resident of Australia for tax purposes despite being incorporated overseas and having foreign resident directors due to central management and control being in Australia – *Bywater Investments Limited v Commissioner of Taxation* [2016] HCA 45
- An \$40,000 lump sum payment of workers compensation received in arrears found to be assessable as ordinary income - *Gupta and Commissioner of Taxation* [2016] AATA 914
- No deduction for costs to a disabled employee for having his spouse accompany him on a work-related trip to London, where spouse acted as carer and attended to travel-related needs of taxpayer – but did not assist in performance of actual work-related duties - *WTPG and Commissioner of Taxation* [2016] AATA 971

Other Developments

- Review of the Register of Approved Occupational Clothing and related tax deductions
- Black Economy Taskforce

Hot Topic

- Reportable Fringe Benefits Amounts and Reportable Employer Superannuation Contributions

Special Update

- *No ATO Update/Special Topic this month*

MARCH 2017

Monthly Legislative Update

- ATO administrative treatment for the delay in the increase in the unincorporated small business tax discount
- A general update of Bills before Parliament

Monthly Rulings Update

- TR 2017/D1 – Income tax: composite items and identifying the depreciating asset for the purposes of working out capital allowances
- TD 2017/1 – Income tax: capital gains: can intangible capital improvements made to a pre-CGT asset be a separate asset for the purposes of sub-sections 108-70(2) or (3) of the ITAA 1997.
- TA 2017/1 - Re-characterisation of trading businesses

Monthly Case Update

- A mechanical engineer was denied approximately \$60,000 of work related expenses by AAT. The expenses included motor vehicle expenses, self-education expenses (of approximately \$48,000) and other work expenses. ***Vakiloroaya and Commissioner of Taxation (Taxation) [2017] AATA 95***
- Two family trusts involved in a building and construction business either related parties were not entitled to a deduction or capital loss for \$4.3 million as there was no evidence to support the *bona fides* of the alleged guarantee arrangement. ***Carioti and Commissioner of Taxation (Taxation) [2017] AATA 62***
- Alternative assessments raised against beneficiaries and a trustee of a discretionary trust as a result of ATO audit action have been found by the Federal Court not to be tentative and provisional, and therefore they were valid. ***Whitby Land Company Pty Ltd (Trustee) v Deputy Commissioner of Taxation [2017] FCA 28***
- A taxpayer (an airline maintenance engineer) was denied deductions by the AAT for overtime meal expenses, as he was not paid an allowance under an industrial agreement. ***Kael and Commissioner of Taxation (Taxation) [2017] AATA 38***
- The Federal Court has dismissed a taxpayer's application to set aside a departure prohibition order (i.e., preventing them from leaving Australia) following the issue of amended assessments to him for some \$4.5 million. ***Bakri v Deputy Commissioner of Taxation [2017] FCA 20***

Other Developments

- Inspector General of Taxation ('IGOT') announces his 2017 work program
- APRA's annual super statistics
- Incorrect PAYG instalment variations
- Superannuation guarantee – non-compliance
- ATO ride-sourcing, online selling and credit and debit card data-matching
- Trump and his phenomenal tax plan

Hot Topic

- Dealing with franchise expenses

Special Update

- TA 2016/6: Extension of time for voluntary disclosure (Diverting PSI to an SMSF)

APRIL 2017

Monthly Legislative Update

- Tax and Superannuation Laws Amendment (2016 Measures No.2) Act 2017
- Treasury Laws Amendment (GST Low Value Goods) Bill 2017
- Treasury Laws Amendment (2017 Measures No 1) Bill 2017

Monthly Rulings Update

- Superannuation reform Law Companion Guidelines, including LCG 2016/11 (concessional contributions - defined benefit interests and constitutionally protected funds), LCG 2016/8 (transfer balance cap and transition-to-retirement reforms: transitional CGT relief for superannuation funds), and LCG 2016/9 (transfer balance cap).
- Taxpayer Alerts regarding taxpayers incorrectly claiming the Research and Development Tax Incentive, including TA 2017/4 and TA 2017/5

Monthly Case Update

- Tax agent's deregistration overturned despite breaching the Code of Professional Conduct – **Kishore and TPB [2017] AATA 271**
- A person supplying uberX services is supplying “taxi travel” and must be registered for GST – **Uber B.V. v FCT [2017] FCA 110**
- Company could not claim losses as it could not satisfy either the Continuity of Ownership Test or the Same Business Test – **RGGW and FCT [2017] AATA 238**
- Reseller of gold not entitled to input tax credits – **Eastwin Trade Pty Ltd and Commissioner of Taxation (Taxation) [2017] AATA 14**

Other Developments

- Consultation on application of Division 7A to trusts with UPEs owing to companies
- ATO consultation: Improving small business benchmark useability
- Consultation: Proposed changes to penalties for small business and individuals
- Update on the ATO's Senate Estimates hearing

Hot Topic

- Claiming occupancy costs for a home office

ATO Hot Topic

- Fringe Benefit Tax (FBT) – Common Errors

MAY 2017

Monthly Legislative Update

- Treasury Laws Amendment (2017 Enterprise Incentives No. 1) Bill 2017
- Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017
- Treasury Laws Amendment (Enterprise Tax Plan) Bill 2016

Monthly Rulings Update

- TD 2017/2 – FBT: the record-keeping exemption threshold for the FBT year commencing on 1 April 2017
- TD 2017/3 – FBT: the benchmark interest rate to be used for the FBT year commencing on 1 April 2017
- TD 2017/4 – FBT: cents per kilometre rates for calculating the taxable value of a fringe benefit of a motor vehicle other than a car for the FBT year commencing on 1 April 2017
- TD 2017/5 – FBT: reasonable amounts for food and drink expenses incurred by employees receiving a LAFHA fringe benefit for the FBT year commencing on 1 April 2017
- TD 2017/6 – FBT: indexation factors for valuing non-remote housing for the FBT year commencing on 1 April 2017
- TD 2017/8 - Is the cost of travelling to have a tax return prepared by a 'recognised tax adviser' deductible under section 25-5 of the Income Tax Assessment Act 1997?
- TD 2017/10- Capital gains: Can costs that you incur after a CGT event happens be 'related to' that CGT event for the purpose of working out your incidental costs?

Monthly Case Update

- A bona fide travel allowance does not create an entitlement to deductions up to the “reasonable limit” where expenses up to the limit were not incurred – **Davy and Commissioner of Taxation [2017] AATA 376**
- Share trading losses were disallowed where taxpayer could provide no evidence of alleged trading activities – **Spence and Commissioner of Taxation [2017] AATA 307**
- Employee was found not to be an itinerant worker when working at three different farms – **Walker and Commissioner of Taxation [2017] AATA 324**
- Price paid for an option to purchase an interest in real estate is not itself part of the acquisition cost of the property for the purposes of applying the margin scheme under Division 75 of the GST Act - **The Trustee for the Whitby Trust and Commissioner of Taxation [2017] AATA 343**

Other Developments

- ATO concerns over medical professionals incorrectly treating lump sum sign-on fees as being on capital account.
- ATO concerns over individuals claiming dodgy work-related expenses

Hot Topic

- Working Holiday Makers

Special Update

- Uber and Airbnb

JUNE 2017

Monthly Legislative Update

- Treasury Laws Amendment (Enterprise Tax Plan No. 2) Bill 2017
- Exposure Draft - Treasury Laws Amendment (2017 Measures No.2) Bill 2017

Monthly Rulings Update

- TD 2017/11 – Income tax: who should be assessed to interest on bank accounts?
- LCG 2017/3 – Superannuation reform: Superannuation death benefits and the transfer balance cap
- PCG 2017/5 – Superannuation reform: Commutation requests made before 1 July 2017 to avoid exceeding the \$1.6 million transfer balance cap
- TR 2017/D3 – Income tax: taxation of rights and retail premiums under renounceable rights offers where shares are held on capital account

Monthly Case Update

- An Australian corporate taxpayer was denied large interest deductions under the transfer pricing provisions, where it borrowed at 9% from an overseas subsidiary which had borrowed from the market at 1.2% – **Chevron Australia Holdings Pty Ltd and the Commissioner of Taxation [2017] FCAFC 62**
- A firm of solicitors had to pay approximately \$740,000 compensation to a former client where it had advised on a share buy-back without making the client aware of significant taxation consequences or suggesting the client obtain specialist tax advice – **Ralston and Jurisich [2017] NSWCA 63**
- An accounting firm providing payroll services to an arm's length client was found to be an accessory liable for its involvement in contraventions of the *Fair Work Act 2009* – **Fair Work Ombudsman and Blue Impression Pty Ltd & Ors [2017] FCCA 810**
- An employee stevedore was denied a deduction for home to work travel undertaken in a car where she claimed to be transporting bulky equipment used in her employment. The equipment was not considered to be bulky and in any event there was a safe storage facility available at her employer's location - **Rafferty and Commissioner of Taxation [2017] AATA 636**

Other Developments

- 2018 income year HELP repayment rates and thresholds
- ATO warning regarding social media and tax scams

Hot Topic

- Federal Budget 2017-18

JULY 2017

Monthly Legislative Update

- Treasury Laws Amendment (2017 Measures No.2) Bill 2017
- Treasury Laws Amendment (Medicare Levy and Medicare Surcharge) Bill 2017
- Treasury Laws Amendment (Accelerated Depreciation for Small Business Entities) Bill 2017
- Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Bill 2017

Monthly Rulings Update

- GSTR 2017/1 – Goods and services tax: making cross-border supplies to Australian consumers
- Addendum to TR 93/17 – Income tax: income tax deductions available to superannuation funds
- PCG 2017/D7 – Enterprise Tax Plan: small business over-franking in 2016-17 income year because of tax rate change
- PCG 2017/6 - Superannuation reform: commutation of a death benefit income stream before 1 July 2017

Monthly Case Update

- An SMSF auditor was not liable to pay damages for negligence, despite finding that the auditor had breached his duty of care by failing to take to reasonable and appropriate steps to consider the definitions of cash in Accounting Standard AAS 28 and to determine whether the balance in the SMSF's financial statements was fairly described as "cash" – **Cam & Bear Pty Ltd v McGoldrick [2016] NSWSC 1894**
- An SMSF was denied access to franking credits arising from a dividend washing transaction, which was promoted by some stockbrokers at the time – **David Lynton as trustee for the David Lynton Superannuation Fund and Commissioner of Taxation [2017] AATA 694**
- Part IVA (the general anti-avoidance provisions of the *ITAA 1936*) applied to treat as assessable income in the hands of an individual taxpayer, trust distributions of \$220,398 (the "Practice Trust Amount") and \$275,481 (the "Income Earning Trust Amount") where the amounts in dispute were funnelled through a series of interposed trusts and an associated company with carried forward losses – **Hart and Commissioner of Taxation (No.4) [2017] FCA 572**

Other Developments

- Australian Federal Police uncovers \$135 million PAYG withholding fraud
- ATO expands data matching on ride-sourcing (Uber)
- Inspector General of Taxation announces review of the future of the tax profession

Hot Topic

- TR 2016/3 – Commercial website expenditure

AUGUST 2017

Monthly Legislative Update

Royal Assent given to:

- Treasury Laws Amendment (2017 Measures No.2) Bill 2017
- Treasury Laws Amendment (Medicare Levy and Medicare Surcharge) Bill 2017
- Treasury Laws Amendment (Accelerated Depreciation for Small Business Entities) Bill 2017
- Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Bill 2017
- Treasury Laws Amendment (GST Low Value Goods) Bill 2017

Other Bills before Parliament/Exposure Draft Legislation:

- Treasury Laws Amendment (2017 Enterprise Incentives No. 1) Bill 2017
- Treasury Laws Amendment (Enterprise Tax Plan No.2) Bill 2017
- Exposure Draft Legislation regarding GST and removing the double taxation of digital currency

Monthly Rulings Update

- TD 2017/D3 - Division 7A and S.109T of the Income Tax Assessment Act 1936
- TR 2017/D6 - When are deductions allowed for employees' travel expenses?
- PCG 2017/D12 - Liability of a legal personal representative of a deceased person
- TR 2017/2 - Effective life of depreciating assets (applicable from 1 July 2017)
- TD 2017/17 - Division 7A benchmark for the 2017-18 year: 5.30%
- TD 2017/18 - Car limit under S.40-230 of the ITAA 1997: \$57,581
- TD 2017/19 - Reasonable travel and overtime meal allowance expenses amounts for the 2017-18 income year
- TR 2017/3 - Meaning "at the time the distribution was made" when applying the participation test
- TR 2017/4 - Taxation of rights and retail premiums under renounceable rights offers where shares held on capital account

Monthly Case Update

- An individual taxpayer's amended assessment for the 2013 income year, increasing the taxpayer's assessable income from \$20,800 to \$147,158, was upheld – **Gu and Commissioner of Taxation [2017] AATA 906**
- The Commissioner of Taxation was forced by the Federal Court to reconsider issuing a taxpayer with a Private Binding Ruling where the Commissioner had previously declined to issue a ruling – **Hacon Pty Ltd and Commissioner of Taxation [2017] FCA 659**
- The Federal Court found that an arrangement designed to illegally avoid PAYG withholding obligations for employees of a labour hire business was a sham – **Sunraysia Harvesting Contractors Pty Ltd and Commissioner of Taxation [2017] FCA 694**

Other Developments

- Failure to Lodge penalties to be remitted
- House of Representatives Economics Committee Report into Work Related Expenses
- Commissioner's Address to the National Press Club
- SMSFs, LRBAs and related party borrowings – safe harbour interest rate for the 2018 income year

Hot Topic

- Single Touch Payroll

Special Update

- Farm Management Deposits

SEPTEMBER 2017

Monthly Legislative Update

Other Bills before Parliament/Exposure Draft Legislation:

- Treasury Laws Amendment (Housing Tax Integrity) Bill 2017
- First Home Super Saver Tax Bill 2017
- Treasury Laws Amendment (Reducing Pressure on Housing Affordability) Bill 2017
- Treasury Laws Amendment (Housing Tax Integrity) Bill 2017

Monthly Rulings Update

- LCG 2017/D6 - The business continuity test – carrying on a similar business
- PCG 2017/13 - Unpaid present entitlements under sub-trust arrangements maturing in the 2017 or 2018 income years
- PCG 2017/D11 - Tax treatment of payments for use and exploitation of a professional sportsperson's 'public fame' or 'image'

Monthly Case Update

- The High Court, in a unanimous decision, has ruled that a civil engineer who worked for the United Nations Office of Project Services (“UNOPS”) in the Sudan, was not an “holding an office” under S.6(1)(d)(i) of the International Organisations (Privileges and Immunities) Act 1963. Accordingly, his income was **not** exempt from being taxed in Australia - **Commissioner of Taxation and Jayasinghe [2017] HCA 26**
- The Administrative Appeals Tribunal (‘the Tribunal’) has dismissed a taxpayer’s appeal and upheld the Commissioner’s decision to disallow input tax credits relating to property developments. The taxpayer carried on a property development enterprise – **GH1 Pty Ltd, in Liquidation and FCT [2017] AATA 1100**
- The Federal Court upheld the Commissioner’s amended assessment thus denying a business taxpayer, Academy Cleaning & Security Pty Ltd, (‘Academy’) a deduction of \$420,000 for the purported purchase of 15,000 tonnes of “sequestered carbon” - **Academy Cleaning & Security Pty Ltd v Deputy Commissioner of Taxation [2017] FCA 875**

Other Developments

- New work-related expenses pre-filling message
- Passive/investment companies and the 27.5% SBE corporate tax rate!

Hot Topic

- Employer Obligations and Family Members

Special Update

- Mr Ian Taylor, Chairman, Tax Practitioners Board