



TAX ON THE COUCH TOPICS

HOT TOPICS – MONTH-BY-MONTH

January/February 2016 Hot Topic

Exempt fringe benefits

March 2016 Hot Topic

The CGT implications of death

April 2016 Hot Topic

New withholding tax regime for purchasers of taxable Australian property

May 2016 Hot Topic

Meal Entertainment, FBT and changes to salary packaged benefits from 1 April 2016

June 2016 Hot Topic

Budget 2016

July 2016 Hot Topic

New 5% tax discount for income earned from unincorporated small businesses

August 2016 Hot Topic

Small business entities

September 2016 Hot Topic

CGT and earnout rights

October 2016 Hot Topic

ATO assault on professional practices and income splitting

November 2016 Hot Topic

Proposed reforms to non-concessional superannuation contributions from 1 July 2017

December 2016 Hot Topic

Limited Recourse Borrowing Arrangements

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

January/February 2016 Special Update

Profit from the sale of land

March 2016 ATO Topic

Research & Development (R & D)

April 2016 Special Update

Removal of the accountants' exemption

May 2016

Extended Hot Topic this month (No ATO Topic/Special Update)

June 2016 Special Update

SMSFs and collectables

July 2016 Special Update

Superannuation advice post-30 June 2016

August 2016

Tax avoidance schemes

September 2016 Special Update

Private Binding Rulings

October 2016 Special Update

'Beating' the income test rules by salary packaging rental and investment expenses

November 2016 Special Update

Immediate deduction for small business start-up expenditure

December 2016 Special Update

Main Residence Exemption: Temporary Absence Rule and Market Value Rule

ALL TOPICS COVERED

JANUARY/FEBRUARY 2016

Monthly Legislative Update

- Bills recently passed, including the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Act 2015* and the *Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2015*
- New Bills, including the *Tax and Superannuation Laws Amendment (2015 Measures No. 6) Bill 2015* (changing the CGT treatment of earnout rights, and imposing withholding obligations on the purchasers of Australian land), and the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015* (which excludes certain superannuation funds from the public trading trust rules)

Monthly Rulings Update

- TR 2015/3 – Income Tax: Matters relating to strata title bodies constituted under strata title legislation
- TR 2015/4 – CGT small business concessions: Unpaid present entitlements and the maximum net asset value test
- TD 2015/20 – Is a release by a private company of its unpaid present entitlement a ‘payment’ within the meaning of Division 7A?
- ATO ID 2015/27 – SMSFs and non-arm’s length income: Related party non-commercial limited recourse borrowing arrangement to acquire listed shares
- ATO ID 2015/28 – SMSFs and non-arm’s length income: Related party non-commercial limited recourse borrowing arrangement to acquire real property

Monthly Case Update

- Small business CGT concessions still available despite existence of Dividend Access Share – *Commissioner of Taxation v Devuba Pty Ltd* [2015] FCAFC 168
- Pre-1998 loan by a family trust not automatically “statute-barred” and should be included as an asset for the purposes of the maximum net asset value test – *Breakwell v Commissioner of Taxation* [2015] FCA 1471
- Capital loss not available as AAT not satisfied that the transactions said to have resulted in the capital loss existed – *Priestley and Commissioner of Taxation (Taxation)* [2015] AATA 893
- Employer not able to deduct amount from wages for laptops, as they were not provided as remuneration for services, so were not “salary packaging arrangements” – *Australian Education Union v State of Victoria (Department of Education and Early Childhood Development)* [2015] FCA 1196
- ATO’s use of documents said to be subject to legal professional privilege did not constitute “conscious maladministration” – *Commissioner of Taxation v Donoghue* [2015] FCAFC 183
- Confirmation that franking credits were not income capable of being distributed by a trust (and that, even if they were, they could not be distributed separately from the franked dividends themselves) – *Thomas v Commissioner of Taxation* [2015] FCA 1339

Other Developments

- The Government’s National Innovation and Science Agenda
- Mid-Year Economic and Fiscal Outlook 2015-16

Hot Topic

- Exempt fringe benefits

Special Update

- Profit from the sale of land

MARCH 2016

Monthly Legislative Update

- *Tax Laws Amendment (Small Business Restructure Rollover) Bill 2016*
- *Exposure Draft - Miscellaneous Amendments to Taxation and Superannuation Law 2016*
- *Tax and Superannuation Laws Amendment (2016 Measures No.1) Bill 2016* – the 'Netflix tax'

Monthly Rulings Update

- GSTD 2016/1: Employer not entitled to ITC for payment on behalf of superannuation fund
- Update to ATO public rulings program

Monthly Case Update

- Work related expenses and home office claims denied based on lack of evidence creditability and suspect nature of claims made in the taxpayer's 2011 and 2012 income tax returns – *Ogden and Commissioner of Taxation (Taxation) [2016] AATA 32*
- Lack of evidence leads to denial of work-related expenses, self-education and home office claims – *Bhatti and Commission of Taxation (Taxation) [2016] AATA 24*
- Taxpayer not released from their tax debts on the grounds of serious hardship, primarily because of their lack of lodgment and payment compliance history and the overall value of their asset ownership - *Lau and the Commissioner of Taxation (Taxation) [2016] AATA 46*

Other Developments

- Dealing with new clients with overdue returns
- Google hit with tax bill
- Insurance assets ATO data matching
- Trust compliance with anti-avoidance rules

Hot Topic

- The CGT implications of death

ATO Hot Topic

- Research and Development

APRIL 2016

Monthly Legislative Update

- Status of key tax-related announcements

Monthly Rulings Update

- Proposed Income Tax Ruling - The meaning of the phrase 'alteration, extension or improvement' as it appears in Division 43 of the Income Tax Assessment Act 1997 (QC 47982)
- Capital allowances: draft effective life recommendations for certain determinations in Table B of Taxation Ruling TR 2015/2 (QC 48050)
- LCG 2015/D1 – Law Companion Guidelines: purpose, nature and role in ATO's public advice and guidance

Monthly Case Update

- The AAT held that the market value of shares the taxpayer sold in a private company was not his proportion of the sale price, but a discounted amount, because he was a non-controlling shareholder. As a result, the taxpayer passed the maximum net asset value test for access to the CGT small business concessions – *Miley and Commissioner of Taxation [2016] AATA 73*
- The AAT held that no special circumstances existed in respect of excess non-concessional contributions made in 2010/11 after the taxpayer inadvertently triggered the "bring forward rule" in 2009/10 – *Brady and Commissioner of Taxation [2016] AATA 97*
- The AAT upheld superannuation guarantee (SG) charge assessments issued to an employer after finding that he had failed to pay the minimum SG contributions on behalf of several employees, including his former de facto partner, to a complying fund – *Payne and Commissioner of Taxation [2016] AATA 104*
- A financial services company was ordered to comply with a determination directing it to compensate an investor for inappropriate advice in relation to an SMSF property investment – *Financial Ombudsman Services Ltd v Utopia Financial Services Pty Ltd [2016] WASC 55*

Other Developments

- Latest rates and thresholds
- Latest ATO data matching activities
- ATO "busts" a few myths about employee/contractor arrangements
- ATO reminder for SMSFs with investments in collectables or personal use assets

Hot Topic

- New withholding tax regime for purchasers of taxable Australian property

Special Update

- Removal of the accountants' exemption

MAY 2016

Monthly Legislative Update

- Parliament being prorogued, legislation lapsing as of 15 April 2016
- Tax and Superannuation Laws Amendment (2016 Measures No.2) Bill 2016; Commissioner's remedial power; changes regarding primary producers and averaging
- Tax Laws Amendment (Tax Incentives for Innovation) Bill 2016
- Superannuation Legislation Amendment (Choice of Fund) Bill 2016; allowing employees governed by an enterprise bargaining agreement superannuation fund choice

Monthly Rulings Update

- PCG 2016/D1 – purpose and nature in ATO public advice of Practice Compliance Guidelines
- LCG 2016/D2 – small business restructure roll over: consequences of a roll over
- LCG 2016/D3 – small business restructure roll over: genuine restructure of an ongoing business
- PCG 2016/5 – arm's length terms for LRBAs established by SMSFs
- FBT rates and thresholds for the 2017 FBT year: TDs 2016/1 – TD 2016/5
- TR 2016/D1 – Deductibility of expenditure on a commercial website

Monthly Case Update

- The Full Federal Court rejected a taxpayer's attempt to overturn default assessments issued by the Commissioner. The taxpayer attempted to rely upon an expert report prepared for the ATO to argue the Commissioner's assessments were excessive. The taxpayer failed in their burden to establish what their income actually was – *Rigoli and Commissioner of Taxation* [2016] FCAFC 38
- The High Court in a 3:2 majority decision, has confirmed that under the terms of a trust deed, the trustee had the power to validly "advance" and "apply" trust capital or income by creating a debt in favour of a beneficiary, emanating from an Asset Revaluation Reserve - *Fischer v Nemeske Pty Ltd* [2016] HCA 11
- The NSW Supreme Court has made an order of rectification in relation to a contract for the sale of land to reflect the common intention of the parties to the contract. The contract stated the purchase price was GST-inclusive, but the Court accepted it should be GST-exclusive. Strong reliance was placed on evidence from the auctioneer that at the commencement of the auction a statement was read aloud confirming all bids and the knock-down price were GST-exclusive – *SAMM Property Holdings Pty Ltd v Shaye Properties Pty Ltd* [2016] NSWSC 362
- The Federal Court found in favour of two taxpayers, finding that they were carrying on a genuine business of chartering super yachts. Accordingly, the exemption found in S.26-47(3)(b) of the *ITAA 1997* prevented the Commissioner from denying the taxpayer deductions where there was an excess of expenses over the income generated from the boat chartering activities - *Lee Group Charters Pty Ltd v Commissioner of Taxation* [2016] FCA 322

Other Developments

- ATO looking at trust distributions to SMSFs
- Car expenses, cents per kilometre reimbursements: Special arrangements for 2016 FBT year

Hot Topic

- Meal Entertainment, FBT and changes to salary packaged benefits from 1 April 2016

JUNE 2016

Monthly Legislative Update

- New legislation that has received royal assent, including:
 - *Tax and Superannuation Laws Amendment (2016 Measures No.1) Act 2016* (which contains the 'Netflix tax', among other measures); and
 - *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016*, and related Acts (which, among other measures, excludes certain superannuation funds and exempt entities from the application of the 20% tracing rule for public trading trusts); and
- New legislative instruments, including:
 - *Excluded Classes of Transactions and Entities for Third Party Reports on Shares and Units Determination 2016*; and
 - *Tax Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Regulation 2016*
- Proposed changes to extend the amount of time that existing financial advisers will have to reach degree-equivalent status and to pass the new exam requirement for all advisers

Monthly Rulings Update

- TA 2016/5 – Purported tax-exempt non-profit 'foundations' used to evade or avoid taxation obligations
- TA 2016/6 – Diverting personal services income to self-managed superannuation funds

Monthly Case Update

- The parents of a 22 year old child were not 'death benefit dependants' of their son – *TBCL and Commissioner of Taxation (Taxation) [2016] AATA 264*
- A practice of accountants was not negligent in lodging a tax return which resulted in the taxpayer being assessed to pay GST, income tax and penalties in respect of a transfer of land – *Davan Developments Pty Ltd v HLB Mann Judd (SE Qld) Pty Ltd [2016] QCA 90*
- Federal Court allows ATO to pursue a foreign bank to obtain evidence regarding a resident taxpayer, but would not order that the taxpayer had to provide a consent (or other documents, including a power of attorney) in order for the bank to release documents that may incriminate the directors of the taxpayer – *Commissioner of Taxation v Rawson Finances Pty Ltd (No 2) [2016] FCA 402*

Other Developments

- Weeks to go until SuperStream deadline for small business
- Discussion paper: GST Treatment of Digital Currency
- Government seeking submissions: Encouraging venture capital investment in FinTech
- Release of the Retirement Income Streams Review

Hot Topic

- Budget 2016

Special Update

- SMSFs and collectables

JULY 2016

Monthly Legislative Update

- Key enacted measures due to start on 1 July 2016 (the 2017 income year)
- Treasury Consultation Paper – OECD proposals for mandatory disclosure of tax information

Monthly Rulings Update

- PCG 2016/1 – Practical Compliance Guidelines: purpose, nature and role in ATO's public advice and guidance
- LCG 2015/1 – Law Companion Guidelines: purpose, nature and role in ATO's public advice and guidance
(ATO's deadline for reviewing non-arm's length LRBAs extended to 31 January 2017 - refer to PCG 2016/5 for details of LRBAs with terms consistent with an arm's length dealing)
- LCG 2016/1 – GST and carrying on an enterprise in the indirect tax zone (Australia)

Monthly Case Update

- The AAT held that the owner of a hotel made a taxable supply of commercial residential premises through its agent (which operated the hotel) – *Paul J Castan & Son Pty Ltd ATF Castan Investments Unit Trust v Commissioner of Taxation* [2016] AATA 298
- ASIC has commenced proceedings against a Melbourne-based licensee for alleged breaches of the 'best interests duty' introduced under the Future of Financial Advice reforms, and is seeking declarations of breaches and financial penalties. This is the first civil penalty action ASIC has taken against a licensee for such breaches – *Australian Securities and Investments Commission v NSG Services Pty Ltd*
- The Federal Court has held that a taxpayer was not liable to pay CGT on the sale of part of its shares in a mining company. In doing so, the Court accepted the taxpayer's method of valuation of the shares, with the effect that the shares were not 'taxable Australia property'. – *Commissioner of Taxation v AP Energy Investments Pty Ltd* [2016] FCA 577
- The Victorian County Court has held that a director was liable for penalties for unpaid PAYG withholding (as set out in a director penalty notice), and did not accept that he had satisfied the defences to such penalties under S.269-35 of Schedule 1 of the Taxation Administration Act 1953 – *Deputy Commissioner of Taxation v David John Holton* [2016] VCC 516

Other Developments

- ATO: Preparing for tax time
- Roadmap of change for tax professionals

Hot Topic

- New 5% tax discount for income earned from unincorporated small businesses

Special Update

- Superannuation advice post-30 June 2016

AUGUST 2016

Monthly Legislative Update

- Key legislative measures in Bill form that lapsed when parliament was prorogued
- Summary of 2016 Budget night announcements

Monthly Rulings Update

- LCG 2016/5 – Foreign resident capital gains withholding regime: the Commissioner's variation power
- LCG 2016/6 – Foreign resident capital gains withholding regime: amount payable to the Commissioner
- LCG 2016/7 – Foreign resident capital gains withholding regime: options
- TD 2016/10 - What is the Indicator Lending Rate applicable to capital protected borrowings under subsection 247-20(5) of the Income Tax Assessment Act 1997 and subsection 247-80(4) of the Income Tax (Transitional Provisions) Act 1997?
- TD 2016/11 - What is the benchmark interest rate applicable for the year of income that commenced on 1 July 2016 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?
- TD 2016/12 - Capital gains: what is the improvement threshold for the 2016-17 income year under section 108-85 of the Income Tax Assessment Act 1997?
- TD 2016/13 - What are the reasonable travel and overtime meal allowance expense amounts for the 2016-17 income year?
- TR 2016/1 - Income tax: effective life of depreciating assets (applicable from 1 July 2016)

Monthly Case Update

- The AAT held that the owner of 10 residential properties was not disposing of an active asset and was not carrying on a business – *The Executors of the Estate of the late Peter Fowler v Commissioner of Taxation* [2016] AATA 416
- The Full Federal Court, in two related cases has confirmed that a tax law partnership was a not a 'corporate limited partnership'; that certain 'Z' class shares were 'debt' interests; and that certain loans were deemed dividends – *D Marks Partnership by its General Partner Quintaste Pty Ltd v Commissioner of Taxation* [2016] FCAFC 86 and *NR Allsopp Holdings Pty Ltd as General Partner of Q Uniform Partnership v Commissioner of Taxation* [2016] FCAFC 87
- The AAT has held that a taxpayer was to be assessed on capital account on a commercial property sold soon after the completion of construction – *FLZY v Commissioner of Taxation* [2016] AATA 348
- The AAT has held that a tax agent's registration should not be cancelled despite the tax agent delaying the processing of clients' refunds – *SRBP v Tax Practitioners Board* [2016] AATA 456

Other Developments

- Withdrawal of IDs covered by 2016 Rental Properties Guide
- SuperStream deadline extended to 28 October 2016 for small employers
- SMSFs early engagement and voluntary disclosure service
- Treasurer's letter to SMSF Owners' Alliance

Hot Topic

- Small business entities

ATO Hot Topic

- Tax avoidance schemes

SEPTEMBER 2016

Monthly Parliamentary Update

- Discussion of Treasury and Finance Ministers in the 45th Parliament
- Discussion of the result of the July 2nd 2016 federal election

Monthly Rulings Update

- TD 2016/14 - Is an outgoing incurred by a business taxpayer for a gift provided to a former or current client deductible under section 8-1 of the *Income Tax Assessment Act 1997*?
- TD 2016/15 - Is an employer entitled to a deduction under section 8-1 of the Income Tax Assessment Act 1997 for the annual fee incurred on an airport lounge membership for use by its employees?
- TD 2016/D1 - Is a redemption payment received by a worker under the Return to Work Act 2014 (SA) assessable income of the worker?

Monthly Case Update

- The AAT held that a partnership conducting a labour hire business was liable to an administrative penalty for failure to withhold PAYG amounts on payments made to individuals under labour hire arrangements – *T T Lam and HT Ngo and Commissioner of Taxation (Taxation)* [2016] AATA 552
- The AAT held that an individual taxpayer was not an itinerant worker as this term is used in TR 95/34 as the taxpayer did not have a 'web of workplaces'. Accordingly, not been an itinerant worker the taxpayer was denied deductions of \$5,325 for car expenses and \$32,543 of travel and accommodation expenses – *Hill v Commissioner of Taxation* [2016] AATA 514
- The Federal Court imposed a civil penalty of \$40,000 on an individual, a trustee of their own SMSF, for having borrowed approximately \$350,000 from their fund, in breach of the sole purpose test, the in-house asset rules and the prohibition against lending money to fund members – *Deputy Commissioner of Taxation and Rodriguez* [2016] FCA 860
- The AAT has held that GST is payable by a GST-cash basis taxpayer on a supply made under a barter scheme when it received 'trade dollars' in its trade account and not when these trade dollars were redeemed under the barter scheme from goods or services – *Taxology Pty Ltd and Commissioner of Taxation (Taxation)* [2016] AATA 565

Other Developments

- Exemptions to proposed lifetime \$500,000 non-concessional contributions cap
- ATO warning regarding 'dodgy' work-related expenses by individual taxpayers
- Treasury's Tax White Paper Unit to close

Hot Topic

- CGT and earnout rights

Special Update

- Private Binding Rulings

OCTOBER 2016

Monthly Legislative Update

- *Treasury Laws Amendment (Enterprise Tax Plan) Bill 2016*
- *Budget Savings (Omnibus) Bill 2016*
- *Treasury Laws Amendment (Income Tax Relief) Bill 2016*
- Superannuation exposure drafts
Superannuation (Objective) Bill 2016
Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016
Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016
- *Tax and Superannuation Laws Amendment (2016 Measures No.2) Bill 2016*

Monthly Rulings Update

- **TD 2016/D3** - Income tax: in what circumstances does a contractual right, which is subject to the satisfaction of a condition, become a right to acquire a beneficial interest in a share for the purposes of subsection 83A-340(1) of the Income Tax Assessment Act 1997?

Monthly Case Update

- A taxpayer generally failed to bear the burden of proof to establish that a number of bank deposits were not assessable income to them (as contended by the ATO) before the AAT in *Zhang and Commissioner of Taxation (Taxation)* [2016] AATA 117.
- A taxpayer has been unsuccessful at the AAT when attempting to defend a number of work related expenses claims, including home to work travel claims where he tried to argue that he was required to transport bulky equipment, despite the fact a secure storage facility was provided at the work site in question in *Reany and Commissioner of Taxation (Taxation)* [2016] AATA 672.

Other Developments

- SBITO Update: net small business income and business bank accounts
- AUSKEY update needed for Chrome and Firefox browsers
- Government does a 'backflip' on the \$500K non-concessional cap
- PAYG variation for foreign resident CGT withholding and inherited assets

Hot Topic

- ATO assault on professional practices and income splitting

Special Update

- 'Beating' the income test rules by salary packaging rental and investment expenses

NOVEMBER 2016

Monthly Legislative Update

- Superannuation exposure drafts:
Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016
Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016
Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016
- Working Holiday Maker Reform Bills:
Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016
Treasury Laws Amendment (Working Holiday Maker Reform) Bill
Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016

Monthly Rulings Update

- **TD 2016/16** – Income tax: will the ordinary or statutory income of a self-managed superannuation fund be non-arm's length income under subsection 295-550(1) of the Income Tax Assessment Act 1997 (ITAA 1997) when the parties to a scheme have entered into a limited recourse borrowing arrangement on terms which are not at arm's length?
- **GSTE 2016/D1** – Correcting GST Errors Amendment Determination 2016 (No.1)

Monthly Case Update

- The Full Federal Court found the AAT erred in that it took a “too narrow” a view of what may constitute “special circumstances” when considering whether the circumstances warranted the Commissioner of Taxation exercising his discretion to disregard or reallocate non-concessional contributions for a financial year in *Ward v Commissioner of Taxation* [2016] FCAFA 132.
- The AAT has affirmed the decision of the decision of the Tax Practitioners Board to terminate an individual's registration as a tax agent on the basis that the agent had breached the Code of Conduct by not acting honestly and with integrity towards his former employer in *Kishore and Tax Practitioners Board* [2016] AATA 764.
- The Federal Court has upheld the AAT decision to refuse a taxpayer's application for an extension of time in which to lodge an application for a review an ATO decision to disallow his objection to assessments and amended assessments for the 2000 to 2005 income years in *Benjamin v Commissioner of Taxation* [2016] FCA 1157.

Other Developments

- ATO provides tips on claiming the SBITO
- ATO discussion paper on substantiation exception for reasonable travel
- ATO issues warning to building and construction industry
- ATO: Early engagement for private advice extended to all business types

Hot Topic

- Proposed reforms to non-concessional superannuation contributions from 1 July 2017

Special Update

- Immediate deduction for small business start-up expenditure

DECEMBER 2016

Monthly Legislative Update

- *Superannuation (Objective) Bill 2016*
- *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016*
Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016
- Exposure Draft: *Treasury Laws Amendment (2017 Measures No.1) Bill 2017*

Monthly Rulings Update

- **PCG 2016/10** - Fleet Cars: simplified approach for calculating car fringe benefits
- **PCG 2016/D16** – Fixed Trusts
- **TD 2016/17** – Income tax: in what circumstances does a contractual right, which is subject to the satisfaction of a condition, become a right to acquire a beneficial interest in a share for the purposes of subsection 83A-340(1) of the *Income Tax Assessment Act 1997*?

Monthly Case Update

- In *Blank v Commissioner of Taxation* [2016] HCA 42, the High Court has unanimously upheld the majority decision of the Full Federal Court in *Blank v Commissioner of Taxation* [2015] FCAFC 154. The High Court held that a lump sum, of approximately USD 160million, paid to a taxpayer in instalments under the terms of an incentive profit participation agreement after the cessation of his employment, was income according to ordinary concepts. As such, it was assessable under S.6-5 of the *Income Tax Assessment Act 1997*. The taxpayer's position – rejected by the Court – was that the amount received was capital proceeds from CGT event C2 (Cancellation, surrender and similar endings) to which the CGT 12 month discount applied.
- In *FKYL v Commissioner of Taxation* [2016] AATA 810 the Administrative Appeals Tribunal (AAT) held that four residential properties, developed by an individual taxpayer, were “new residential premises” and therefore they were subject to the GST when sold by the taxpayer. The AAT concluded that none of the four premises had been held solely for making input taxed supplies for at least five years (the so-called 5-year rule). The AAT further held that the margin scheme did not apply as the taxpayer was unable to produce any written agreements with the respective purchasers, showing that there had been an agreement between vendor and purchaser(s) to apply the margin scheme.
- In *Shaw v Deputy Commissioner of Taxation* [2016] QCA 275 the Queensland Court of Appeal allowed an appeal by two company directors against summary judgements from the Queensland Supreme Court in the case of *Deputy Commissioner of Taxation v Shaw* [2016] QSC 68 in relation to unpaid PAYG and penalties imposed by way of Directors' Penalty Notices (DPNs). The matter has now been remitted back to Queensland Supreme Court for another trial.

Other Developments

- ATO: What attracts the ATO's attention for taxpayers that are privately owned and wealthy groups
- PAYG withholding variations

Hot Topic

- Limited Recourse Borrowing Arrangements

Special Update

- Main Residence Exemption: Temporary Absence Rule and Market Value Rule