

Tax on the Couch



Notes
July 2016

Tax on the Couch – July 2016

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Legislative Update

On 8 May 2016, the Governor-General accepted the Prime Minister's advice to dissolve both Houses of Parliament (meaning all Bills before Parliament at that time lapsed), and call an election for both Houses (a double dissolution) on 2 July 2016.

Parliament had been prorogued and re-called in April 2016, meaning that any Bills before Parliament as of 5pm, 15 April 2016 also lapsed.

These lapsed Bills will need to be reintroduced to the House of Representatives, assuming they remain part of the Federal Government's legislative program.

Bills of interest introduced to Parliament before it was prorogued/dissolved

Fairer Paid Parental Leave Bill 2015

This Bill was introduced to the House of Representatives on 25 June 2015. The Bill aimed to ensure that, from 1 July 2016, parents would no longer be entitled to receive both employer provided primary carer leave payments (or other like payments) and parental leave pay under the Paid Parental Leave scheme. The Bill also proposed to remove (from 1 April 2016) the requirement for employers to act as paymasters with respect to the Paid Parental Leave scheme.

Family Assistance Legislation Amendment (Child Care Measures) Bill (No.2) 2014

This Bill was introduced in the House of Representatives on 25 June 2014. It proposed to amend the *A New Tax System (Family Assistance) Act 1999* to maintain the Child Care Benefit income thresholds at the amounts applicable as at 30 June 2014 for three income years, starting from 1 July 2014, with the first indexation of these amounts recommencing on 1 July 2017.

Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015

This Bill sought to introduce from 1 July 2017 a new means tested Child Care Subsidy to replace the current Child Care Benefit and the Child Care Rebate.

Family Law Amendment (Financial Agreements and Other Measures) Bill 2015

This Bill sought to amend the *Family Law Act 1975* to:

- amend the financial agreement regime to remove existing uncertainties around requirements for entering, interpreting and enforcing agreements, make changes to the coverage of spousal maintenance matters in agreements, provide for a statement of principles to outline their binding nature, and to reinforce the binding nature of the agreements;
- strengthen protections from violence in certain procedural matters;
- strengthen Australia's response to international parental child abduction;
- update the arrest powers of the family court;
- assist the operation of the family law courts; and make
- minor and technical amendments.

Freedom of Information Amendment (New Arrangements) Bill 2014

This Bill was introduced in the House of Representatives on 2 October 2014. It proposed to abolish the Office of the Australian Information Commissioner and streamline the arrangements for privacy and freedom of information functions.

Social Services and Other Legislation Amendment (2014 Budget Measures No.5) Bill 2014

The Bill was introduced into the House of Representatives on 2 October 2014. It proposed to, amongst other things, increase the current qualification age for the Age Pension and the non-veteran pension age, from 67 to 70. Specifically, on 1 July 2025, the qualifying age was proposed to increase from 67 years, by six months every two years, until 1 July 2035 when it would reach 70.

This measure was announced in the 2014/15 Budget.

Social Services Legislation (Budget Repair) Bill 2015

This Bill sought to introduce certain measures in relation to the age pension, including reducing the period from 26 weeks to 6 weeks during which the age pension and certain other pensions with unlimited portability will be paid to recipients while they are outside of Australia. The Bill also proposed to abolish the Pensioner Education Supplement and the Education Entry Payment from 1 January 2016, now deferred to the first 1 January or 1 July to occur on or after the Bill receives Royal Assent. These measures were announced in the 2014/15 Budget.

Social Services Legislation Amendment (Youth Employment) Bill 2015

This Bill proposed to amend the *Social Security Act 1991* to extend and simplify the ordinary waiting period for all working age payments; extend youth allowance (other) to 22 to 24 year olds in lieu of Newstart allowance and sickness allowance; provide for a four-week waiting period for certain persons aged under 25 years applying for youth allowance (other) or special benefit and require these job seekers to complete certain pre-benefit activities.

Superannuation Legislation Amendment (Choice of Fund) Bill 2016

This Bill was introduced to the House of Representatives on 17 March 2016. It sought to amend the *Superannuation Guarantee (Administration) Act 1992* to provide that employees are able to choose their own superannuation fund for their compulsory employer contributions where they are employed under a workplace determination or enterprise agreement made on or after 1 July 2016.

Tax and Superannuation Laws Amendment (2015 Measures No.3) Bill 2015

This Bill proposed to abolish the seafarer's tax offset and to reduce by 1.5%, the rates of the tax offset available under the Research & Development (R&D) tax incentive for the first \$100 million of eligible expenditure. Specifically, the higher (refundable) tax offset was proposed to be reduced from 45% to 43.5%, and the lower (non-refundable) tax offset would be reduced from 40% to 38.5%. This measure was announced in the 2014/15 Budget.

Tax and Superannuation Laws Amendment (2016 Measures No. 2) Bill 2016

This Bill was introduced to the House of Representatives on 17 March 2016. It sought to make the following changes:

- To give the Commissioner of Taxation a remedial power (proposed new Division 370 within Schedule 1 of the *Taxation Administration Act 1953*) which would enable the Commissioner, by way of a disallowable legislative instrument, to make one or more modifications to the existing tax law to ensure that the law can be administered in a way designed to achieve its intended purpose;
- To allow primary producers to access income tax averaging 10 income years after choosing to opt out, instead of that choice being permanent; and
- To provide relief from luxury car tax to certain public institutions (i.e., public museums, galleries and libraries that are registered for the GST and have been endorsed as deductible gift recipients) where a luxury car is acquired for the sole purpose of public display.

Tax Laws Amendment (Tougher Penalties for Country-by-Country Reporting) Bill 2016

This Bill amends the *ITAA 1997* and *Taxation Administration Act 1953* to introduce a penalty regime for significant global entities who fail to meet their country-by-country reporting obligations.

Treasury Legislation Amendment (Repeal Day 2015) Bill 2016

Amongst other things, this Bill sought to amend the superannuation guarantee provisions to, from 1 July 2016:

- align the earnings base for calculating the superannuation guarantee charge (SG) with the earnings base for calculating SG contributions;
- align the nominal interest on unpaid or late SG contributions with the period over which they are actually outstanding; and
- align the penalties imposed under the superannuation guarantee charge regime with the administrative penalties imposed by other legislation.

Note that, on 16 March 2016, the House of Representatives passed the Bill after removing the provisions on the superannuation guarantee charge, but it was prorogued before the Senate could also pass the Bill.

Legislative instruments

Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2016 (No 1)

This instrument amends the Income Tax (Effective Life of Depreciating Assets) Determination 2015 to provide taxpayers in specific industries and for specific assets with effective lives as a basis to calculate the decline in value (depreciation) of an asset for income tax purposes. The instrument provides taxpayers with a choice under the ITAA 1997, when measuring the decline in value (depreciation) of an asset.

Tax Agent Services (Specified BAS Services) Instrument 2016

This instrument's effect is to allow registered BAS agents to provide certain services, that they would otherwise be unable to lawfully provide, without the requirement to be a registered tax agent.

Other legislative developments

Treasury Consultation Paper – OECD proposals for mandatory disclosure of tax information

On 3 May 2016, the Government announced that it will seek community input on the OECD's proposals for Mandatory Disclosure Rules, which require tax advisers and/or taxpayers to make early disclosures of aggressive tax arrangements (often before income tax returns are lodged), to provide tax authorities with timely information on arrangements that have the potential to undermine the integrity of the income tax system.

The purpose of this paper is to seek community views on how Mandatory Disclosure Rules should be framed in the Australian context, having regard to the disclosure rules that are currently available to the Australian Taxation Office. The paper also provides an outline of the OECD's key recommendations, and the Government's preliminary views in relation to those recommendations.

The closing date for submissions is Friday, 15 July 2016.

Key “enacted” measures due to start on 1 July 2016 (the 2017 income year)

Details	Applicable Bill	Date of Assent	Application date
Income Tax			
<p>Small Business Restructure Roll-over relief</p> <p>A new optional roll-over has been introduced to provide greater flexibility for Small Business Entities (SBEs) to change their legal structure.</p> <p>The roll-over allows SBEs to defer gains or losses that would be made from transferring business assets (including CGT assets, depreciating assets, trading stock and revenue assets) from one entity to another as part of a genuine restructure.</p> <p>The new roll-over is in addition to roll-overs currently available where an individual, trustee or partner transfers assets to, or creates assets in, a company in the course of incorporating their business.</p> <p>This measure was announced in the 2015/16 Budget.</p>	<p><i>Tax Laws Amendment (Small Business Restructure Roll-over) Bill 2016</i></p>	<p>Royal Assent on 8 March 2016</p>	<p>1 July 2016</p>
<p>Farm management deposit ('FMD') reforms</p> <p>The Bill amends the tax treatment of FMDs by:</p> <ul style="list-style-type: none"> • increasing the maximum amount that can be held in FMDs to \$800,000; 	<p><i>Taxation and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016</i></p>	<p>Royal Assent on 5 May 2016</p>	<p>From 1 July 2016</p>

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Details	Applicable Bill	Date of Assent	Application date
<ul style="list-style-type: none"> • allowing primary producers experiencing severe drought conditions to withdraw an amount that has been held in an FMD for <i>less than</i> 12 months, without affecting the tax treatment of the FMD in the earlier income year; and • allowing amounts held in an FMD to offset a loan or other debt relating to the FMD owner's primary production business. <p>These measures were announced in the <i>Agricultural Competitiveness White Paper</i> released on 4 July 2015.</p>			
<p>Tax relief for ADF personnel</p> <p>A tax exemption applies to the remuneration of ADF personnel serving on Operations Accordion, Highroad, Manitou, Okra & Palate II</p>	<p><i>Tax & Superannuation Laws Amendment (2016 Measures No. 2) Regulation 2016</i></p>		1 July 2016
<p>Innovation agenda – tax breaks</p> <p>Tax incentives apply for early stage investors in companies engaged in innovation to help stimulate innovation in Australia, including:</p> <ul style="list-style-type: none"> • a 20% non-refundable carry forward tax offset (capped at \$200,000 per year); and • a full CGT exemption if shares are held for between 12 months and 10 years (after that time, there is a step up to market value cost base for the shares). • Extending the current tax concessions under the <i>Early Stage Venture Capital Limited Partnership</i>, and <i>Venture Capital Limited Partnership incentive</i> schemes to improve access to venture capital investment and encourage investment in innovation entities. <p>These measures were announced in December 2015 as part of the government's <i>National Innovation and Science Agenda</i>.</p>	<p><i>Tax Laws Amendment (Tax Incentives for Innovation) Bill 2016</i></p>	<p>Royal Assent on 5 May 2016</p>	<p>From 1 July 2016</p>
<p>A new tax system for certain Managed Investment Trusts ('MITs')</p> <p>A new (optional) tax system for MITs has been introduced whereby the trust is treated as a fixed trust for tax purposes, and can attribute amounts to members on a fair and reasonable basis in accordance with their interests.</p> <p>Benefits of the system to members include amounts retaining their character for tax, double taxation that might otherwise arise is reduced, and the tax treatment of tax-deferred distributions is clarified.</p>	<p><i>Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015 and other related Bills</i></p>	<p>Royal Assent on 5 May 2016</p>	<p>The new MIT system generally applies from 1 July 2016 (unless trustee chooses to apply earlier from 1 July 2015)</p>

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Details	Applicable Bill	Date of Assent	Application date
<p>In addition, amendments in the Bill:</p> <ul style="list-style-type: none"> repeal the public unit trust rules in Division 6B of the ITAA 1936; and exclude superannuation funds and exempt entities that are entitled to a refund of excess franking credits from the application of the 20% tracing rule for public trading trusts in Division 6C of the ITAA 1936. <p>These measures were announced in May 2010 following recommendations made by the Board of Taxation in August 2009.</p>			Repeal of public unit trust rules and changes to 20% tracing rule apply from 1 July 2016
<p>Non-final withholding tax on transactions involving taxable Australian real property</p> <p>Broadly, a 10% non-final withholding tax obligation is imposed on purchasers of certain taxable Australian real property (generally, except property with a market value of \$2m or more), including interests in entities whose majority assets comprise such property, under contracts entered into from 1 July 2016 (unless a clearance certificate is obtained from residents, or a variation is in place).</p> <p>This measure was announced in the 2013/14 Budget and aim to ensure foreign residents meet their CGT liabilities.</p>	<p><i>Tax and Superannuation Laws Amendment (2015 Measures No.6) Bill 2015</i></p>	<p>Royal Assent on 25 February 2016</p>	<p>1 July 2016</p>
<p>Third party reporting</p> <p>A new reporting regime requires third parties to report to the ATO on transfers of real property, shares and units (in unit trusts), payments of government grants, consideration provided for services to government entities, and business transactions made through payment systems.</p> <p>This measure was announced in the 2013/14 Budget.</p>	<p><i>Tax and Superannuation Laws Amendment (2015 Measures No.5) Bill 2015</i></p>	<p>Royal Assent on 30 November 2015</p>	Applies to some transactions that happen on or after 1 July 2016, and others on or after 1 July 2017.
<p>Family Tax Benefit ('FTB') Part A reforms</p> <p>The Bill reduces to six weeks, the period for which FTB Part A and additional payments that rely on FTB eligibility will be paid to recipients who are outside Australia. This will align the portability of FTB Part A with those of FTB Part B and most income support payments.</p> <p>Bill also ceases payment of the additional FTB Part A Large Family Supplement.</p> <p>These measures were announced in the 2015/16 Budget.</p>	<p><i>Social Services Legislation Amendment (Family Measures) Bill 2015</i></p>	<p>Royal Assent on 8 March 2016</p>	<p>1 July 2016</p>
<p>Self-assessment for indirect taxes</p> <p>Self-assessment for indirect taxes came into effect on 1 July 2012. However, taxpayers could notify the ATO of an entitlement to GST credits (within 4-year limit), and claim them later.</p>	<p>From 1 July 2016, taxpayers must claim GST and fuel tax credits within 4 years of the due date for lodgment of the BAS in which the credits are first attributable.</p> <p>If the credits are not claimed within this 4-year period, a taxpayer's entitlement to the credits ceases.</p>		

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Key “unlegislated” measures that were proposed to start on 1 July 2016

Details of announcement / proposal	Applicable Bill / Act	Status (at 14/06/16)	Application date
<p>Changes to residency rules for temporary working holiday makers</p> <p>From 1 July 2016, most people temporarily in Australia for a working holiday will be treated as non-residents for tax purposes, regardless of how long they are here. This means they will not be able to access the tax-free threshold.</p> <p>This measure was announced in the 2015/16 Budget.</p>	N/A	<p>STOP PRESS</p> <p><i>Government press release on 16 March 2016 – further review to be conducted</i></p>	<p>1 July 2016 (proposed) but deferred to 1 January 2017, pending a further review</p>
<p>Primary Producer averaging reforms</p> <p>The Bill proposes to replace the permanent choice to opt out of income tax averaging with a choice which is effective for 10 income years.</p> <p>After the 10-year period, primary producers are effectively treated as new primary producers in applying the basic conditions. The averaging adjustment applies again if all of the following conditions are met:</p> <ul style="list-style-type: none"> • Income tax averaging has not applied to the taxpayer because they permanently opted out 10 or more income years ago; • The taxpayer is carrying on a primary production business for two income years in a row; and • Their basic taxable income in the first year (after the 10 year opt-out period has passed) is less than or equal to their basic taxable income in the later year. <p>This measure was announced as part of the <i>Agricultural Competitiveness White Paper</i> released on 4 July 2015.</p>	<p><i>Tax and Superannuation Laws Amendment (2016 Measures No 2) Bill 2016</i> introduced into the House of Representatives on 17 March 2016</p>	<p>Bill lapsed on 15 April 2016 (when Parliament was prorogued)</p>	<p>1 July 2016 (proposed)</p>
<p>SG charge reforms</p> <p>The earnings base for calculating the SG charge (currently, salary or wages) will be aligned with the earnings base for calculating SG contributions (ordinary time earnings).</p> <p>Furthermore, the interest component on any SG shortfall will be aligned with the period over which the contributions are outstanding. The Bill also removes the additional penalties under the <i>Superannuation Guarantee (Administration) Act 1992</i>, and aligns them with administrative penalties under the <i>TAA 1953</i>.</p> <p>This measure was announced in the <i>2014/15 Mid-Year Economic and Fiscal Outlook</i>.</p>	<p><i>Treasury Legislation Amendment (Repeal Day) Bill 2015</i> introduced into the House of Representatives on 12 November 2015</p>	<p>Bill lapsed on 15 April 2016 (when Parliament was prorogued)</p>	<p>The SG reforms were removed from the Bill on 16 March 2016.</p> <p>They were to have applied from 1 July 2016</p>

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Details of announcement / proposal	Applicable Bill / Act	Status (at 14/06/16)	Application date
<p>Choice of fund reforms</p> <p>The Bill proposes to enable employees under workplace determinations or enterprise agreements made on or after 1 July 2016 to choose their own fund for SG purposes, unless circumstances exempt the employer from allowing employees to make the choice.</p> <p>This measure implements the government's response to a recommendation of the <i>Financial System Inquiry Final Report</i> on choice of fund.</p>	<p><i>Superannuation Legislation Amendment (Choice of Fund) Bill 2016</i> introduced into the House of Representatives on 17 March 2016</p>	<p>Bill lapsed on 15 April 2016 (when Parliament was prorogued)</p>	<p>1 July 2016 (proposed)</p>
<p>Removal of “double dipping” of Paid Parental Leave (‘PPL’)</p> <p>Currently, eligible parents can access both the government's PPL and any employer-funded assistance.</p> <p>Proposed amendments <i>to the Paid Parental Leave Act 2010</i> will remove “double-dipping” such that parents will not be entitled to the PPL if their employer-provided assistance exceeds the PPL payments.</p> <p>This measure was announced in the 2015/16 Budget.</p>	<p><i>Fairer Paid Parental Leave Bill 2015</i> introduced into the House of Representatives on 25 June 2015</p>	<p>Bill lapsed on 15 April 2016 (when Parliament was prorogued)</p>	<p>1 July 2016 (proposed)</p>
<p>Changes to HELP repayment thresholds</p> <p>The minimum income (compulsory) repayment threshold will be reduced from \$53,345 to \$50,638 and a new 2% repayment rate will be introduced.</p> <p>This measure was announced in the 2014/15 Budget.</p>	<p><i>Higher Education and Research Reform Bill 2014</i></p>	<p>The Bill was defeated in the Senate on 17 March 2015.</p> <p>Government is not proceeding with this Bill</p>	<p>1 July 2016 (proposed)</p>

Rulings Update

The following lists the Rulings, Determinations, Practice Statements and Interpretative Decisions (and other related documents) issued by the ATO from 16 May 2016 to 15 June 2016.

Rulings

Class Rulings

CR 2016/29	Fringe benefits tax: employer clients of Community Sector Banking Pty Limited who are subject to the provisions of either section 57A or 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of a B-Entertained MasterCard debit card facility	18 May 2016
CR 2016/30	Income tax: scrip for scrip roll-over - acquisition of Recall Holdings Limited by Iron Mountain Incorporated	18 May 2016
CR 2016/31	Fringe benefits tax: employers who use the mTrax GPS system for car log book records and for odometer records	25 May 2016
CR 2016/32	Fringe benefits tax: employer clients of Australia and New Zealand Banking Group Limited (ANZ) who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 or who are rebatable employers under section 65J of that Act and whose employees make use of the ANZ Entertainment Benefits Card facility.	25 May 2016
CR 2016/33	Income tax: off-market takeover of Sedgman Limited and payment of Interim and Special Dividends	25 May 2016
CR 2016/34	Income tax: PayPal Holdings, Inc. - employee share schemes - separation from eBay	1 June 2016
CR 2016/35	Income tax: eBay Inc. - employee share schemes - separation of PayPal from eBay	1 June 2016
CR 2016/36	Income tax: Queensland Parents and Citizens Associations - exempt from income tax: association established for community service purposes - Goods and Services Tax: GST Concessions	8 June 2016
CR 2016/37	Fringe benefits tax: clients of Plantcom Pty Ltd who use the Fleetgate Platform reports for car log book and odometer records	8 June 2016
CR 2016/38	Income tax: The Gladstone Power Station Early Retirement Scheme 2016	8 June 2016
CR 2016/39	Income tax: Service Stream Limited - return of capital and share consolidation	15 June 2016
CR 2016/40	Income tax: Thales Australia Maritime Early Retirement Scheme	15 June 2016

Class Rulings – Notices

CR 2001/68W	Income tax: SA Rural Education Scholarship	25 May 2016
CR 2002/5W	Income tax: Exempt Income - ACCV Post-Graduate Research Scholarships	25 May 2016
CR 2003/4W	Income tax: University of Canberra - Co-operative Research Centre for Freshwater Ecology Summer Student Scholarships in Freshwater Ecology	25 May 2016
CR 2003/7W	Income tax: Exempt Income - Commonwealth Aged Care Nursing Scholarships	25 May 2016

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CR 2004/36W	Income tax: Department of Education Services WA - Millennium Indigenous Teacher Scholarships	25 May 2016
CR 2004/92W	Income tax: University of Tasmania - Bachelor of Geomatics Professional Experience Scholarship	25 May 2016
CR 2004/94W	Income tax: La Trobe University - Student Industry Based Learning Scholarship	25 May 2016
CR 2005/88W	Income tax: Murdoch University Scholarship for Industry Honours and/or Postgraduate Diploma Programs	25 May 2016
CR 2006/3W	Income tax: Swinburne University - Industry-Based Learning Scholarship	25 May 2016
CR 2006/28W	Income tax: Deakin University - The Faculty of Science and Technology Industry Based Learning Program scholarships	25 May 2016
CR 2009/13W	Income tax: Victorian Public Health Training Scheme Scholarships	25 May 2016
CR 2010/11W	Income tax: James Cook University Business Partnership Program Scholarship	25 May 2016
CR 2010/37W	Income tax: University of Melbourne Master of Veterinary Science (Clinical) and Master of Veterinary Studies scholarship	25 May 2016
CR 2011/62W	Income tax: National Awards for Outstanding Teaching and School Leadership	25 May 2016
CR 2003/36A1 - Addendum	Fringe benefits tax: Employer clients of McMillan Shakespeare Australia Pty Ltd that make use of a Meal Entertainment Payment Card facility	1 June 2016
CR 2007/15A1 - Addendum	Fringe benefits tax: employer clients of Community Sector Banking Pty Ltd who are subject to the provisions of section 57A of the Fringe Benefits Tax Assessment Act 1986 that make use of a CSB Salary Benefit Card Account facility	8 June 2016

Product Rulings

PR 2016/4	Income tax: W.A. Blue Gum Project 2016	18 May 2016
PR 2016/5	Income tax: AgriWealth 2016 Softwood Timber Project	18 May 2016
PR 2016/6	Income tax: PPS Mutual Professionals Choice	1 June 2016
PR 2016/7	Income tax: tax consequences of investing in equities using the Macquarie Geared Equities Investment plus (2013 Product Brochure)	8 June 2016

Taxation Rulings

TR 2016/2	Income tax: taxation of financial arrangements - how section 230-120 of the Income Tax Assessment Act 1997 applies to the taxation of swaps under the accrual/realisation rules in Subdivision 230-B of that Act	25 May 2016
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Taxation Rulings – Notices

TR 2001/2A5 - Addendum	Fringe benefits tax: the operation of the new fringe benefits tax gross-up formula to apply from 1 April 2000	15 June 2016
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Determinations

Taxation Determinations

TD 2016/7	Fringe benefits tax: for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986 what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2016	18 May 2016
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TD 2016/8	Income tax: what is the car limit under section 40-230 of the Income Tax Assessment Act 1997 for the 2016-17 financial year?	8 June 2016
TD 2016/9	Income tax: value of goods taken from stock for private use for the 2015-16 income year	15 June 2016

Taxation Determinations – Notices

TD 2014/D2W - Withdrawal	Income tax: consolidation: under subitem 50(5) of Part 4 of Schedule 3 to the Tax Laws Amendment (2012 Measures No.2) Act 2012, does the original 2002 law only apply to the particulars that form part of a head company's assessment for an income year in respect of a joining entity if the latest notice of assessment for that income year, which relates to subsection 701-55(6) of the original 2002 law in respect of that joining entity, is served on the head company before 12 May 2010?	18 May 2016
TD 2014/D3W - Withdrawal	Income tax: consolidation: does the exception to the pre rules in paragraph 50(3)(a) of Part 4 of Schedule 3 to the Tax Laws Amendment (2012 Measures No.2) Act 2012 apply to an assessment (the assessment for the later income year) in the circumstance described in paragraph 1 of this Taxation Determination?	18 May 2016
TD 2004/8W	Fringe benefits tax: For the purposes of Division 7 of the Fringe Benefits Tax Assessment Act 1986, what amount represents a reasonable food component of a living-away-from-home allowance for expatriate employees for the fringe benefits tax year commencing on 1 April 2004?	18 May 2016
TD 2004/9W	Fringe benefits tax: What are the rates to be applied on a cent per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the fringe benefits tax year commencing on 1 April 2004?	18 May 2016
TD 2004/10W	Fringe benefits tax: What are the indexation factors for valuing non-remote housing for the fringe benefits tax year commencing on 1 April 2004?	18 May 2016
TD 2004/11W	Fringe benefits tax: For the purposes of Section 135C of the Fringe Benefits Tax Assessment Act 1986, what is the exemption threshold for the fringe benefits tax year commencing on 1 April 2004?	18 May 2016
TD 2004/12W	Fringe benefits tax: What is the benchmark interest rate to be used for the fringe benefits tax year commencing on 1 April 2004?	18 May 2016
TD 2004/15W	Income tax: capital gains: what is the improvement threshold for the 2004-2005 income year under section 108-85 of the Income Tax Assessment Act 1997?	18 May 2016
TD 2004/16W	Fringe benefits tax: for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986 what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2004?	18 May 2016
TD 2004/18W	Income tax: what are the thresholds and limits for superannuation amounts in 2004-2005?	18 May 2016
TD 2004/19W	Income tax: what are the reasonable travel and meal allowance expense amounts for 2004-05?	18 May 2016
TD 2004/27W	Income tax: what is the car limit to be used for the 2004-2005 financial year?	18 May 2016

Tax on the Couch – July 2016

TD 2004/28W	Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2004 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?	18 May 2016
TD 2004/38W	Income tax: value of goods taken from stock for private use for the 2004-2005 income year	18 May 2016
TD 2005/8W	Fringe benefits tax: What is the benchmark interest rate to be used for the fringe benefits tax year commencing on 1 April 2005?	18 May 2016
TD 2005/9W	Fringe benefits tax: What are the rates to be applied on a cent per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the fringe benefits tax year commencing on 1 April 2005?	18 May 2016
TD 2005/10W	Fringe benefits tax: For the purposes of section 28 of the Fringe Benefits Tax Assessment Act 1986 what are the indexation factors for valuing non-remote housing for the fringe benefits tax year commencing on 1 April 2005?	18 May 2016
TD 2005/11W	Fringe benefits tax: For the purposes of section 135C of the Fringe Benefits Tax Assessment Act 1986, what is the exemption threshold for the fringe benefits tax year commencing on 1 April 2005?	18 May 2016
TD 2005/12W	Fringe benefits tax: For the purposes of Division 7 of Part III of the Fringe Benefits Tax Assessment Act 1986, what amount represents a reasonable food component of a living-away-from-home allowance for expatriate employees for the fringe benefits tax year commencing on 1 April 2005?	18 May 2016
TD 2005/18W	Fringe benefits tax: for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986 what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2005?	18 May 2016
TD 2005/20W	Income tax: capital gains: what is the improvement threshold for the 2005-06 income year under section 108-85 of the Income Tax Assessment Act 1997?	18 May 2016
TD 2005/21W	Income tax: what are the thresholds and limits for superannuation amounts in 2005-2006?	18 May 2016
TD 2005/30W	Income tax: what is the car limit to be used for the 2005-2006 financial year?	18 May 2016
TD 2005/31W	Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2005 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?	18 May 2016
TD 2005/32W	Income tax: what are the reasonable travel and meal allowance expense amounts for 2005-06?	18 May 2016
TD 2005/36W	Income tax: value of goods taken from stock for private use for the 2005-2006 income year	18 May 2016
TD 2006/13W	Fringe benefits tax: what are the rates to be applied on a cent per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the fringe benefits tax year commencing on 1 April 2006?	18 May 2016
TD 2006/14W	Fringe benefits tax: for the purposes of section 28 of the Fringe Benefits Tax Assessment Act 1986 what are the indexation factors for valuing non-remote housing for the fringe benefits tax year commencing on 1 April 2006?	18 May 2016

Tax on the Couch – July 2016

TD 2006/15W	Fringe benefits tax: for the purposes of section 135C of the Fringe Benefits Tax Assessment Act 1986, what is the exemption threshold for the fringe benefits tax year commencing on 1 April 2006?	18 May 2016
TD 2006/23W	Fringe benefits tax: for the purposes of Division 7 of Part III of the Fringe Benefits Tax Assessment Act 1986, what amount represents a reasonable food component of a living-away-from-home allowance for expatriate employees for the fringe benefits tax year commencing on 1 April 2006?	18 May 2016
TD 2006/24W	Fringe benefits tax: what is the benchmark interest rate to be used for the fringe benefits tax year commencing on 1 April 2006?	18 May 2016
TD 2006/37W	Fringe benefits tax: for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986 what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2006?	18 May 2016
TD 2006/41W	Income tax: capital gains: what is the improvement threshold for the 2006-2007 income year under section 108-85 of the Income Tax Assessment Act 1997?	18 May 2016
TD 2006/42W	Income tax: what are the thresholds and limits for superannuation amounts in 2006-2007?	18 May 2016
TD 2006/43W	Income tax: what are the reasonable travel and meal allowance expense amounts for 2006-2007?	18 May 2016
TD 2006/44W	Income tax: what is the car limit for the 2006-2007 financial year?	18 May 2016
TD 2006/45W	Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2006 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?	18 May 2016
TD 2006/55W	Income tax: value of goods taken from stock for private use for the 2006-2007 income year	18 May 2016
TD 2007/6W	Fringe benefits tax: for the purposes of section 28 of the Fringe Benefits Tax Assessment Act 1986 what are the indexation factors for valuing non-remote housing for the fringe benefits tax year commencing on 1 April 2007?	25 May 2016
TD 2007/7W	Fringe benefits tax: for the purposes of section 135C of the Fringe Benefits Tax Assessment Act 1986, what is the exemption threshold for the fringe benefits tax year commencing on 1 April 2007?	25 May 2016
TD 2007/8W	Fringe benefits tax: what are the rates to be applied on a cent per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the fringe benefits tax year commencing on 1 April 2007?	25 May 2016
TD 2007/9W	Fringe benefits tax: for the purposes of Division 7 of Part III of the Fringe Benefits Tax Assessment Act 1986, what amount represents a reasonable food component of a living-away-from-home allowance for expatriate employees for the fringe benefits tax year commencing on 1 April 2007?	25 May 2016
TD 2007/10W	Fringe benefits tax: what is the benchmark interest rate to be used for the fringe benefits tax year commencing on 1 April 2007?	25 May 2016
TD 2007/17W	Fringe benefits tax: for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986 what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2007?	25 May 2016

Tax on the Couch – July 2016

TD 2007/19W	Income tax: capital gains: what is the improvement threshold for the 2007-08 income year under section 108-85 of the Income Tax Assessment Act 1997?	25 May 2016
TD 2007/21W	Income tax: what are the reasonable travel and meal allowance expense amounts for 2007-2008?	25 May 2016
TD 2007/22W	Income tax: what is the car limit for the 2007-2008 financial year?	25 May 2016
TD 2007/23W	Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2007 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?	25 May 2016
TD 2007/30W	Income tax: value of goods taken from stock for private use for the 2007-2008 income year	25 May 2016
TD 2008/3W	Fringe benefits tax: for the purposes of Division 7 of Part III of the Fringe Benefits Tax Assessment Act 1986, what amount represents a reasonable food component of a living-away-from-home allowance for expatriate employees for the fringe benefits tax year commencing on 1 April 2008?	25 May 2016
TD 2008/4W	Fringe benefits tax: what are the rates to be applied on a cent per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the fringe benefits tax year commencing on 1 April 2008?	25 May 2016
TD 2008/5W	Fringe benefits tax: for the purposes of section 28 of the Fringe Benefits Tax Assessment Act 1986 what are the indexation factors for valuing non-remote housing for the fringe benefits tax year commencing on 1 April 2008?	25 May 2016
TD 2008/6W	Fringe benefits tax: for the purposes of section 135C of the Fringe Benefits Tax Assessment Act 1986, what is the exemption threshold for the fringe benefits tax year commencing on 1 April 2008?	25 May 2016
TD 2008/7W	Fringe benefits tax: what is the benchmark interest rate to be used for the fringe benefits tax year commencing on 1 April 2008?	25 May 2016
TD 2008/12W	Fringe benefits tax: for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986 what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2008?	25 May 2016
TD 2008/13W	Income tax: capital gains: what is the improvement threshold for the 2008-09 income year under section 108-85 of the Income Tax Assessment Act 1997?	25 May 2016
TD 2008/17W	Income tax: what is the car limit for the 2008-2009 financial year?	25 May 2016
TD 2008/18W	Income tax: what are the reasonable travel and overtime meal allowance expense amounts for 2008-2009?	25 May 2016
TD 2008/19W	Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2008 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?	25 May 2016
TD 2008/32W	Income tax: value of goods taken from stock for private use for the 2008-09 income year	25 May 2016
TD 2009/6W	Fringe benefits tax: for the purposes of Division 7 of Part III of the Fringe Benefits Tax Assessment Act 1986, what amount represents a reasonable food component of a living-away-from-home allowance for expatriate employees for the fringe benefits tax year commencing 1 April 2009?	25 May 2016

Tax on the Couch – July 2016

TD 2009/7W	Fringe benefits tax: what are the rates to be applied on a cent per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the fringe benefits tax year commencing on 1 April 2009?	25 May 2016
TD 2009/8W	Fringe benefits tax: for the purposes of section 28 of the Fringe Benefits Tax Assessment Act 1986 what are the indexation factors for valuing non-remote housing for the fringe benefits tax year commencing on 1 April 2009?	25 May 2016
TD 2009/9W	Fringe benefits tax: for the purposes of section 135C of the Fringe Benefits Tax Assessment Act 1986, what is the exemption threshold for the fringe benefits tax year commencing on 1 April 2009?	25 May 2016
TD 2009/10W	Fringe benefits tax: what is the benchmark interest rate to be used for the fringe benefits tax year commencing on 1 April 2009?	25 May 2016
TD 2009/11W	Fringe benefits tax: for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986 what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2009?	25 May 2016
TD 2009/12W	Income tax: capital gains: what is the improvement threshold for the 2009-10 income year under section 108-85 of the Income Tax Assessment Act 1997?	25 May 2016
TD 2009/13W	Income tax: what is the car limit for the 2009-10 financial year?	25 May 2016
TD 2009/15W	Income tax: what are the reasonable travel and overtime meal allowance expense amounts for 2009-10 income year?	25 May 2016
TD 2009/16W	Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2009 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?	25 May 2016
TD 2009/22W	Income tax: value of goods taken from stock for private use for the 2009-10 income year	25 May 2016
TD 2010/13W	Fringe benefits tax: for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986 what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2010?	1 June 2016
TD 2010/16W	Income tax: capital gains: what is the improvement threshold for the 2010-11 income year under section 108-85 of the Income Tax Assessment Act 1997?	1 June 2016
TD 2010/17W	Income tax: what is the car limit for the 2010-11 financial year?	1 June 2016
TD 2010/18W	Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2010 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?	1 June 2016
TD 2010/19W	Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2010-11 income year?	1 June 2016
TD 2010/2W	Fringe benefits tax: for the purposes of section 135C of the Fringe Benefits Tax Assessment Act 1986, what is the exemption threshold for the fringe benefits tax year commencing on 1 April 2010?	1 June 2016
TD 2010/3W	Fringe benefits tax: for the purposes of section 28 of the Fringe Benefits Tax Assessment Act 1986 what are the indexation factors for valuing non-remote housing for the fringe benefits tax year commencing on 1 April 2010?	1 June 2016

TD 2010/4W	Fringe benefits tax: for the purposes of Division 7 of Part III of the Fringe Benefits Tax Assessment Act 1986, what amount represents a reasonable food component of a living-away-from-home allowance for expatriate employees for the fringe benefits tax year commencing on 1 April 2010?	1 June 2016
TD 2010/5W	Fringe benefits tax: what are the rates to be applied on a cent per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the fringe benefits tax year commencing on 1 April 2010?	1 June 2016
TD 2010/6W	Fringe benefits tax: what is the benchmark interest rate to be used for the fringe benefits tax year commencing on 1 April 2010?	1 June 2016

Luxury Car Tax Determinations

LCTD 2016/1	Luxury car tax: what is the luxury car tax threshold and the fuel-efficient car limit for 2016-17 financial year?	18 May 2016
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Legislative Determinations

PAYG Variations and Notices

TPAL 2016/1	Lodgement of income tax returns for the year of income ended 30 June 2016 in accordance with the Income Tax Assessment Act 1936 and the Taxation Administration Act 1953 - Department of Human Services - parents with a child support assessment	17 May 2016
TPAL 2016/2	Lodgement of returns for the year of income ended 30 June 2016 in accordance with the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Taxation Administration Act 1953, the Superannuation Industry (Supervision) Act 1993 and the Income Tax (Transitional Provisions) Act 1997	17 May 2016
Effective Life 2016/1	Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2016 (No. 1)	Signed on 6 June 2016

Excise

EXC 2016/D1	Draft Excise (Volume - recycled waste oil) Determination 2016 (No. 1)	15 June 2016
EXC 2016/D2	Draft Excise (Volume of LPG - Temperature and Pressure Correction) Determination 2016 (No. 2)	15 June 2016
EXC 2016/D3	Draft Excise (Volume of Liquid Fuels - Temperature Correction) Determination 2016 (No. 2)	15 June 2016
EXC 2016/D4	Draft Excise (Mass of CNG) Determination 2016 (No. 2)	15 June 2016
EXC 2016/D5	Draft Fuel Tax (Fuel Blends) Determination 2016 (No. 1)	15 June 2016

ATO Guidelines

LCG 2016/1	GST and carrying on an enterprise in the indirect tax zone (Australia)	26 May 2016
LCG 2015/1	Law Companion Guidelines: purpose, nature and role in ATO's public advice and guidance	3 June 2016

[PCG 2016/1](#) Practical Compliance Guidelines: purpose, nature and role in ATO's public advice and guidance 3 June 2016

Practice Statements

[PS LA 2016/3](#) The cancellation of registrations in the Australian Business Register 10 June 2016

Practice Statements – Notices

[PS LA 2001/8](#) ATO Interpretative Decisions Updated 9 June 2016

ATO Interpretative Decisions

New Interpretative Decisions

[ATO ID 2016/1](#) GST and registration turnover threshold for a body corporate 27 May 2016

Withdrawn Interpretative Decisions

[ATO ID 2002/825 \(Withdrawn\)](#) Deductions and Expenses: Farm Management Deposits and Superannuation Contributions 10 June 2016

[ATO ID 2003/374 \(Withdrawn\)](#) Non Commercial Losses: Real Property Test - Partnership assets 10 June 2016

[ATO ID 2009/26 \(Withdrawn\)](#) Primary Production: farm management deposit - assessable primary production income 10 June 2016

Other developments with Rulings

[ATO's deadline for reviewing non-arm's length LRBAs extended](#)

The ATO is allowing SMSF trustees additional time until 31 January 2017 to ensure that any LRBAs that their fund has are on terms consistent with an arm's length dealing, or alternatively are brought to an end.

Previously, in early December 2015, the ATO advised SMSF trustees to review LRBAs in their fund and ensure that they are on terms consistent with an arm's length dealing by 30 June 2016 (as set out in [PCG 2016/5](#)).

Cases Update

Cases

[Paul J Castan & Son Pty Ltd ATF Castan Investments Unit Trust and Commissioner of Taxation \[2016\] AATA 298](#)

The AAT has held that the owner of a hotel made a taxable supply of commercial residential premises through its agent (which operated the hotel). In coming to this decision, the AAT accepted the construction of S.40-35(1)(a) of the GST Act contended for by the Commissioner, stating “The exclusion contained in that section of the GST Act is plainly concerned with the supply of accommodation in commercial residential premises in the context of whether that supply was properly construed as a taxable supply the purpose of S.9-10 of the GST Act. It includes the supply of accommodation in commercial residential premises provided to an individual by the entity that owns or controls commercial residential premises.”

[Australian Securities and Investments Commission v NSG Services Pty Ltd](#)

ASIC has commenced proceedings against Melbourne-based NSG Services Pty Ltd (formerly National Sterling Group Pty Ltd) (NSG) for breaches of the 'best interests duty' introduced under the 'Future of Financial Advice' (FOFA) reforms.

This is the first civil penalty action ASIC has taken against a licensee alleging breaches of the best interests duty and is seeking declarations of breaches and financial penalties.

ASIC contends that NSG has trained its advisers that it is almost always in a client's best interest to take out some form of life risk insurance, regardless of a client's financial situation. Also, since 1 July 2013, on eight specific occasions, and because of advice provided by NSG advisers, clients were sold insurance and/or advised to rollover superannuation accounts that committed them to costly, unsuitable, and unnecessary financial arrangements.

The first hearing of the matter is listed before the Federal Court of Australia on 8 July 2016.

Ref: ASIC media release 16-187MR, 8 June 2016

[Commissioner of Taxation v AP Energy Investments Pty Ltd \[2016\] FCA 577](#)

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. The Federal Court accepted the taxpayer's method of valuation of those shares (in particular, the value to be attributed to mining information), meaning the shares were not 'taxable Australian property'.

[Deputy Commissioner of Taxation v David John Holton \[2016\] VCC 516](#)

The Victorian County Court has held that a directory was liable for penalties for unpaid employee deductions (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. Specifically, the Court did not accept that it was unreasonable for him to take part in the management of the company, nor that the director took all relevant reasonable steps to comply with the relevant provisions.

Appeals

[Special leave to appeal: Blank v Commissioner of Taxation \[2015\] FCAFC 154](#)

The taxpayer is appealing to the High Court against the Full Federal Court decision that the receipt of US\$160 million for redemption of “profit participation units” after the termination of the taxpayer's employment was assessable as ordinary income, not as a capital gain (and that the income was not exempt under S.23AG of the ITAA 1936).

[Appealed: Delis v Tax Practitioners' Board \[2016\] FCA 570](#)

The applicants have appealed the decision of the Administrative Appeals Tribunal (“Tribunal”) which affirmed the decision of the respondent (“the Board”) to refuse to renew the registration of the applicants as registered tax agents. The Federal Court upheld the AAT's decision, and the applicants have since lodged an appeal against the Federal Court's decision to the Full federal Court.

Other Cases

[2016] VCC 516	Deputy Commissioner of Taxation v. Holton, David John	17 May 2016
[2016] HCA 21	Bell Group N.V. (in Liquidation) & Anor v. The State of Western Australia	16 May 2016
2016] FCA 70	Commissioner of Taxation. Seven Network Ltd	23 May 2016
[2016] FCCA 1180	Deputy Commissioner of Taxation v. Paterson	17 May 2016
[2016] FCA 597	Deputy Commissioner of Taxation v. BE100 Property Investments Pty Ltd	18 May 2016
[2016] FCA 666	Oswal v. Commissioner of Taxation	24 May 2016
[2016] FCA 707	Deputy Commissioner of Taxation v. Ghaly	10 June 2016
2016 ATC 20-571	FC of T v Jayasinghe	9 June 2016

Decision Impact Statements

QUD 615 of 2015	Lee Group Charters Pty Ltd v. Commissioner of Taxation; Keri Lee Charters Pty Ltd v. Commissioner of Taxation	2 June 2016
NSD 442 of 2013	Batchelor v Commissioner of Taxation	3 June 2016

Other Developments

Media Releases: Treasury Ministers and ATO

ATO

19 May 2016	New tax rules for property sales over \$2 million
23 May 2016	Commissioner announces review of MP allowances ruling
01 June 2016	Only 30 days until SuperStream deadline for small business
06 June 2016	ATO retires e-tax in 2016
06 June 2016	ATO helps to work out work-related expenses
06 June 2016	ATO focuses on rental property owners
06 June 2016	Ten tips for first time lodgers
14 June 2016	Tax cheats brought to justice

Treasury

18 May 2016	Release of the Pre-election Economic and Fiscal Outlook (PEFO)
20 May 2016	Release of the Pre-election Economic and Fiscal Outlook (PEFO)

Other Developments

Election 2016: Parties' tax policies

The election will be/has been held on 2 July 2016. For details of each of the major parties' tax policies, please refer to:

- <https://www.liberal.org.au> and <http://nationals.org.au>;
- <http://www.alp.org.au>; and
- <http://greens.org.au>.

ATO: Preparing for tax time

To prepare for tax time, the ATO recommends that practitioners update their client lists on the Tax Agent Portal, check clients' lodgment program due dates, advise the ATO if a return is not necessary and review security to help stop fraud. The lodgment due dates for clients will be available on the Tax Agent Portal by the end of July 2016.

The ATO will start full processing of 2015/16 tax returns on 8 July 2016, and expect to start paying refunds from 18 July 2016.

Roadmap of change for tax professionals

The ATO (along with tax professional representatives and software developers) wants to support tax professionals through legislative and other changes by providing tax professionals with the right message, at the right time. The ATO strives to deliver consistent messages to tax professionals that align to the shared goal – building a better tax and superannuation system for all Australians.

This narrative continues the messages communicated to tax professionals in 2015. It outlines the overarching story for 2016, highlighting the key changes and actions required.

Representatives from the tax profession and other stakeholders have discussed and agreed to this narrative. It may be used by the ATO, software developers and professional associations for communications as required.

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

In the 2015/16 Federal budget, the government announced a number of measures as part of a jobs and small business package. These measures included a 5% tax discount for individuals in receipt of income from an unincorporated small business entity ('SBE') **from 1 July 2015** (i.e., from the 2016 income year). The 5% tax discount would be available in the form of a non-refundable tax offset, and would be capped at \$1,000 per individual per income year.

On 24 June 2015, the government introduced the *Tax Laws Amendment (Small Business Measures No.3) Bill 2015* ('Bill No.3 of 2015') into Parliament to give effect to the 5% tax discount. Bill No.3 of 2015 was passed by both houses of Parliament, and received Royal Assent on 26 August 2015 as the *Tax Laws Amendment (Small Business Measures No.3) Act 2015*. Refer also to Subdivision 328-F of the ITAA 1997 (i.e., S.328-350 to S.328-375).

TAX WARNING – New reporting requirements on the 2016 'I' return

Based on the ATO's draft 2016 tax return guidelines, new disclosure requirements will be introduced on the 2016 'I' return to enable the ATO to calculate the 5% tax discount (in the form of a non-refundable tax offset) for eligible individuals, for the 2016 income year.

In particular, new labels will be introduced on the 2016 'I' return, which will require eligible individuals to report any **net small business income** derived from an unincorporated SBE (i.e., an SBE sole trader, partnership or trust).

1. Which individuals are eligible for the 5% tax discount from 1 July 2015?

An individual will be eligible for the 5% tax discount as a non-refundable tax offset for an income year (referred to as the **Small Business Income Tax Offset** or '**SBITO**', where **either or both** of the following conditions are satisfied:

- (a) The individual is an **SBE** (i.e., small business entity) **sole trader** for the income year.
- (b) The individual's assessable income for the year includes a share of the net income of an SBE that is **not** a corporate tax entity. In other words, the individual is a **partner of an SBE partnership** or a **beneficiary of an SBE trust**, and their assessable income for the year includes a share of the partnership or trust's net income for the year.

Note that the SBITO would **not** be available to an individual who receives an income distribution (i.e., a dividend) from an SBE corporate tax entity. Also, an individual trustee who is liable to pay tax on any net income of an SBE trust is **not** entitled to the 5% tax discount (i.e., the SBITO) in respect of any tax payable:

- under S.99 or S.99A of the ITAA 1936; or
- on behalf of a beneficiary under S.98 of the ITAA 1936 (e.g., where the beneficiary is under a legal disability). In such instances, only the relevant individual beneficiary could be eligible to claim the SBITO if they are required to lodge a tax return (e.g., under S.100 of ITAA 1936).

The SBITO is **not** restricted to Australian resident individuals, nor is it restricted to Australian sourced business income (where it is assessable income of an Australian resident individual), which means that the SBITO can be claimed by a foreign resident in relation to Australian sourced business income, and by an Australian resident in respect of foreign sourced business income (as well as Australian sourced business income).

It should also be noted that the SBITO (or 5% tax discount) does **not** apply in respect of personal services income ('PSI') derived by an individual, or by a partnership or a trust (i.e., income which is mainly a reward for an individual's personal efforts or skills), unless the PSI is produced from conducting a personal services business ('PSB').

2. Calculating the SBITO for eligible individuals

The SBITO is calculated as 5% of that part of an eligible individual's tax liability for an income year that is attributable to their **total net small business income** for that year (i.e., so much of their taxable income that is derived from their own small business activities and/or from an SBE partnership and/or trust). The SBITO, however, is capped at an annual amount of **\$1,000**.

In other words, the SBITO for an income year is calculated by first determining the percentage of an individual's taxable income for the year that represents **total net small business income**. This percentage is then applied to the individual's basic income tax liability for the income year. The amount of the tax offset is then equal to 5% of the result of this calculation, up to a maximum amount of \$1,000 for the income year.

TAX WARNING – Only one SBITO available per individual per year

An eligible individual is only able to claim one SBITO (i.e., small business income tax offset) for an income year, irrespective of the number of sources of small business income that the individual has for the year.

For example, if an individual derives net small business income as an SBE sole trader, and also receives a share of an SBE trust's net small business income, the SBITO cannot be separately claimed in respect of each source of income. Instead, only one SBITO can be claimed in respect of the individual's combined income from each of these two sources.

The maximum amount of the SBITO that can be claimed from all sources of small business income is \$1,000 for an income year.

An individual's **total net small business income** for an income year is generally calculated as the **sum** of the following:

- (a) The **net small business income** the individual derives directly as an SBE (i.e., as an SBE sole trader) during the year.
- (b) The individual's share of an SBE partnership or trust's net small business income **included in their assessable income**, less any deductions available to the individual partner or beneficiary to the extent that they are attributable to that share.

An individual's total net small business income is capped at the amount of their taxable income, so that the calculated proportion of the individual's basic income tax liability that relates to small business activities for a particular income year does not exceed 100%.

An SBE's **net small business income** for an income year is broadly the sum of its **assessable income** minus **deductions** for the income year, to the extent they relate to the entity carrying on a business. In other words, an SBE's net small business income is broadly equivalent to its taxable income that relates to its small business activities.

Only those deductions that are attributable to an SBE's assessable income (included in the entity's net small business income) can be taken into account in calculating the entity's net small business income. This ensures that an SBE's net small business income is only reduced by those deductions that relate to the entity's income included in its net small business income. Certain deductions (e.g., those claimable under S.8-1) incurred in gaining or producing assessable income included in an SBE's net small business income will usually have a direct and clear causal connection to that income.

Also any net capital gains (even if the relevant asset disposed of was primarily used for the business operations of the SBE) and any personal services income ('PSI'), unless the PSI is produced from conducting a personal services business, are also excluded.

Special Update – Superannuation advice post-30 June 2016

The 'accountants' exemption' under regulation 7.1.29A of the *Corporations Regulations 2001* permitted 'recognised accountants' to provide a recommendation in relation to an SMSF, without the need for an AFS licence.

As part of the Future of Financial Advice (FOFA) reforms, this exemption ceased to apply on 1 July 2016.

ASIC has warned that, from 1 July 2016, accountants must hold a limited Australian financial services (AFS) licence or be an authorised representative of a licence-holder or licensee in order to provide financial product advice on self-managed superannuation funds (SMSFs).

This follows the three-year transition period that commenced on 1 July 2013. ASIC is writing to applicants for limited AFS licences who have applied since 1 March 2016 advising them that they should prepare for the contingency that their applications may not be assessed and approved by ASIC by 30 June 2016.

In cases where ASIC has received an application but has not granted a licence by then, the applicant will not be able to provide SMSF-related financial advice and dealing services. They will not be able to give such advice until they are granted a licence or they become an authorised representative of a licensee.

Senior Executive Leader, Assessment & Intelligence, Warren Day reminded accountants that after 30 June 2016, any accountant found to be providing unlicensed advice risked regulatory action. Mr Day said, 'Providing unlicensed financial services is a criminal offence.'

Ref: ASIC media release 16-182MR, 7 June 2016

Editor: If you want to discuss your options regarding the provision of superannuation advice post-30 June 2016, please contact Phil Osborne from NTAA Advice (and Member Services Advocate and Responsible Manager for the AFSL) on 1800 808 105 or email Phil at phil.osborne@ntaa-advice.com.au.

Alternatively, you can contact John Hondros of the SMSF Advisers Network (SAN), also at 1800 808 105.

What is SAN?

SAN is an Australian Financial Services Licence (AFSL) owned by the NTAA. Its purpose is to support members for the provision of SMSF advice with the removal of the accountant's exemption.

After its removal, accountants will need to be licensed under an AFSL to be able to make recommendations about an SMSF for a client.

Many financial planning groups have been offering accountants services under their AFSL, however most offers approach advice from the perspective of becoming a full blown financial planning business.

The NTAA, understanding that there are certain requirements in operating under an AFSL, are seeking to operate the SMSF Advisers Network from the perspective of the accountant - that you are already running a busy and successful accountancy practice and do not necessarily have the desire to operate a full service financial planning operation.

In this manner, the SMSF Advisers Network AFSL restricts authorisation to advice in relation to a clients' SMSF needs. Authorisation will allow members to advise clients not only on the set-up of an SMSF, but also the change to pension, establishment of LRBA structures as well as specific contribution levels, rollovers and the provision of an asset class investment strategy based on the individual member's investor risk profile.

SMSF Advisers Network is your support for the ongoing advice you wish to give to clients regarding SMSFs; both now and after the accountant's exemption has been removed.