

TAX ON THE COUCH TOPICS

HOT TOPICS – MONTH-BY-MONTH



January/February 2023 Hot Topic

Worker Classifications (**TR 2022/D3** – Income tax: pay as you go withholding - who is an employee? and **PCG 2022/D5** – Classifying workers as employees or independent contractors – ATO compliance approach).

March 2023 Hot Topic

Guardian's case – Trust distributions and S.100A and Part IVA

April 2023 Hot Topic

Division 7A – Tips and Traps

May 2023 Hot Topic

Key Tax and GST issues on the death of a business partner

June 2023 Hot Topic

Federal Budget Update

July 2023 Hot Topic

Skills and Training boost and the Technology Investment boost measures

August 2023 Hot Topic

Common tax issues affecting rental property loans in the current economic climate

September 2023 Hot Topic

Modernising the individual tax residency rules

October 2023 Hot Topic

Treasury consultation on Government's response to PwC scandal

November 2023 Hot Topic

Self-education claims and draft TR 2023/D1

December 2023 Hot Topic

GST withholding on property sales

ATO UPDATES/SPECIAL TOPICS – MONTH-BY-MONTH

January/February 2023 ATO Update

There is no ATO Update for this edition

March 2023 ATO Update

Using business money and assets for private purposes – Dale Adams, Director of the ATO's Risk & Strategy - Small Business

April 2023 ATO Update

New Lodgment Deferral Function in Online Services for Agents

May 2023 ATO Update

New lodgment deferral function in Online Services for Agents

June 2023 ATO Update

Question and answers on social media influencer tax issues

July 2023 ATO update

ATO risk areas for Tax Time 2023

August 2023 ATO Update

Section 100A questions and answers

September 2023 TPB Update

Cyber security and proof of identity requirements

October 2023 ATO Update

ATO debt management

November 2023 Special Topic

An interview with the Inspector General of Taxation and Taxation Ombudsman – Ms Karen Payne

December 2023 ATO Update

Small business lodgment amnesty

ALL TOPICS COVERED

January/February 2023

Monthly Legislative Update

- Treasury Laws Amendment (Electric Car Discount) Bill 2022
- Treasury Laws Amendment (2022 Measures No.2) Bill 2022
- Crimes Amendment (Penalty Unit) Bill 2022
- Income Tax Assessment (1936) Amendment (Period of Review) Regulations 2022
- Treasury Laws Amendment (2022 Measures no.4) Bill 2022
- Treasury Laws Amendment (Modernising Business communications and Other Measures) Bill 2022

Monthly Rulings Update

- **PCG 2018/9** – Central management and control test of residency: Identifying where a company's central management and control is located
- **TR 2022/4** – Income tax: Section 100A reimbursement agreements
- **PCG 2022/2** – Section 100A reimbursement agreements: ATO compliance approach
- **TR 2022/3** – Income tax: Personal services income and personal services businesses

Monthly Case Update

- The Federal Court of Australia has dismissed an appeal by the taxpayer against an Administrative Appeals Tribunal decision in relation to the calculation of a net capital gain on the disposal of partnership goodwill. The terms of the partnership agreement provided for the offsetting of moneys payable to and due from the retiring partner upon retirement. The Federal Court affirmed that the relevant capital gain crystallised before the offset amounts were to be considered - *Hedges v Commissioner of Taxation* [2022] FCA 1389.
- The Administrative Appeals Tribunal determined that a property developer was not able to treat the sale of a residential rental property as input taxed as it had not been solely used for input taxed supplies of residential rent for five years from the date of completion until it was marketed for sale - *Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust and Commissioner of Taxation (Taxation)* [2022] AATA 4436
- The Administrative Appeals Tribunal held the taxpayer failed the requisite standard of proof to show that unexplained and unreported income was the result of non-assessable gambling wins - *Cammarano and Commissioner of Taxation (Taxation)* [2022] AATA 3910
- The Administrative Appeals Tribunal has determined the taxpayer was not entitled to the CGT small business Concessions in relation to a capital gain made on the disposal of a block of residential units, as the CGT asset was not an active asset under Division 152 of the Income Tax Assessment Act 1997 - *Del Castillo and Commissioner of Taxation (Taxation)* [2022] AATA 4233

Other Developments

- Electric cars exemption
- Support for tax practitioners affected by Coronavirus (COVID-19)
- Super Scheme Smart: Intermediaries
- Albanese Government to abolish Administrative Appeals Tribunal
- Eligibility for compassionate release of super

Hot Topic

- Worker Classifications (**TR 2022/D3** – Income tax: pay as you go withholding - who is an employee? and **PCG 2022/D5** – Classifying workers as employees or independent contractors – ATO compliance approach).

March 2023

Monthly Legislative Update

- Treasury Laws Amendment (2022 Measures No 4) Bill 2022
- Treasury Laws Amendment (2023 Measures No 1) Bill 2023

Monthly Rulings Update

- **TPB(I) 38/2023** – What is a BAS service?
- **TPB(I) 39/2023** – What is a tax agent service?
- **TPB(I) 40/2023** – What is a fee or other reward?
- **TA 2023/1** – Interposition of a holding company to access company profits tax-free
- **PCG 2023/1** – Claiming a deduction for additional running expenses incurred while working from home – ATO compliance approach

Monthly Case Update

- A previously registered tax agent who continued to supply tax agent services for fee or reward after the lapsing of their registration (and after an injunction was granted ordering him not to do so) has been required by the Federal Court to pay civil penalties of \$80,000. He was also sentenced to a term of imprisonment of 10 days for contempt of court. A final injunction prohibiting them from supplying tax agent services was also granted. *Tax Practitioners Board v Williams [2023] FCA 63*.
- A previously registered tax agent who continued to supply tax agent services for fee or reward after the lapsing of their registration (and after an injunction was granted ordering him not to do so) has been required by the Federal Court to pay civil penalties of \$80,000. He was also sentenced to a term of imprisonment of 10 days for contempt of court. A final injunction prohibiting them from supplying tax agent services was also granted. *VTBL and FCT [2023] AATA 168*.

Other Developments

- Electronic sales suppression tools
- General transfer balance cap index from 1 July 2023
- Superannuation NALI rules – Government discussion paper released (and NTAA submissions)
- Legislating the objective of super – consultation paper
- Billion dollar GST fraud and ATO actions

Hot Topic

- Guardian's case – Trust distributions and S.100A and Part IVA

ATO Topic

- Using business money and assets for private purposes – Dale Adams, Director of the ATO's Risk & Strategy - Small Business

April 2023

Monthly Legislative Update

- Exposure Draft Legislation – Treasury Laws Amendment Bill 2023: Thin capitalisation interest limitation
- Treasurer’s Media Release, 28 February 2023, Superannuation tax breaks
- Treasury Laws Amendment (Refining and Improving Our Tax System) Bill 2023
- Exposure Draft Legislation – Treasury Laws Amendment Bill 2023: Tax accounting for primary producer registered emissions units

Monthly Rulings Update

- **LI 2023/D3** through to **LI 2023/D6** – Legislative Instruments in relation to FBT record-keeping and adequate alternative records
- **PS LA 2005/2 updated** - Penalty for failure to keep certain records
- **CR 2023/11** - Logbook Me Pty Ltd – In-Car Logbook Solution for reporting of road tolls
- **CR 2023/14** - Logbook Me Pty Ltd – In-Car Logbook Solution for calculating car parking benefits
- **ATO Factsheet** – New South Wales Point to Point Financial Assistance Scheme for taxi licence owners
- **ATO Factsheet** – Electric vehicles and fringe benefits tax

Monthly Case Update

- The New South Wales Court of Appeal dismissed an appeal of taxpayer, the operator of a medical centre. Accordingly, the Chief Commissioner’s view in relation to whether certain payments made to medical practitioners from the collection of Medicare benefits on the practitioners’ behalf, were “taxable wages” and, therefore subject to payroll tax was effectively upheld. *Thomas and Naaz Pty Ltd and Chief Commissioner of State Revenue* [2023] NSWCA 40.
- The Deputy Commissioner of Taxation was unsuccessful in seeking the Court to enter a summary judgment against an individual, Mr Ziccardi, to pay an amount arising under a Director Penalty Notice, in relation to Superannuation Guarantee Charge amounts. The Court held that Mr Ziccardi had an arguable defence and that awarding a summary judgment against Mr Ziccardi, would be inappropriate. *Deputy Commissioner of Taxation and Ziccardi* [2023] WASC 58.

Other Developments

- Private health insurance rebate adjustment factor effective 1 April 2023
- 2022-23 Tax Expenditures and Insights Statement
- Check your myGov account for your share of \$16 billion in lost and unclaimed super

Hot Topic

- Division 7A, Tips and Traps

ATO Topic

- New Lodgment Deferral Function in Online Services for Agents – Felix Manero, Senior Director of the ATO’s Practitioner Assistance, Lodgment and Support

May 2023

Monthly Legislative Update

- Tax Laws Amendment (2022 Measures No.4) Bill 2022
- Exposure Draft – Taxation Administration (Remedial Power- Work Test for Personal Super Contributions) Determination 2023 (Draft LI 2023/D11)
- Exposure Draft – Taxation Administration (Remedial Power – Remission of Charges and Penalties) Determination 2023 (Draft LI 2023/D10)
- Better targeted superannuation concessions – Treasury consultation paper and NTAA submission

Monthly Rulings Update

- **TD 2023/2** FBT: LAFH – Reasonable amounts for meals for 2023/2024 FBT year
- **TD 2023/1** FBT: Cents per kilometre rates for 2023/2024 FBT year – vehicles other than cars
- **Draft PCG 2023/D1** – Electric vehicle home charging rate – calculating electricity costs when charging a vehicle at an employee's or individual's home
- **PS LA 2023/1** SMSFs – ATO rectification directions

Monthly Case Update

- This DIS outlines the ATO's response to *Guardian's case*, which concerned the application of the anti-avoidance provisions in S.100A and Part IVA of the ITAA 1936 – Decision Impact Statement (DIS) – *Commissioner of Taxation v Guardian AIT Pty Ltd ATF Australian Investment Trust*.
- Truck Drivers held to not be employees for super guarantee purposes - *Jamsek v ZG Operations Australia Pty Ltd (No 3)* [2023] FCAFC 48
- Taxpayers not carrying on an agistment business - *DQTB and FCT* [2023] AATA 515
- An enterprise held not to be carried on by a trustee resulting in no claim for input tax credits - *Konebada Pty Ltd ATF the William Lewski Family Trust v FCT* [2023] FCA 257

Other Developments

- 2024 Superannuation rates and thresholds
- ATO focus on Influencers – Is your content creating income?
- Joint Bodies Submission: Senate Economics Legislation Committee – Implementation of the Government's response to the review of the Tax Practitioners Board
- ATO Data-matching - Residential investment property loan and ride-source data matching
- Grants and sponsorships for not-for-profits

Hot Topic

- Key Tax and GST issues on the death of a business partner

ATO Topic

- New lodgment deferral function in Online Services for Agents – Felix Manero, Senior Director of the ATO's Practitioner Assistance, Lodgment and Support

June 2023

Monthly Legislative Update

- Treasury Laws Amendment (2023 Measures No 2) Bill 2023
- Treasury Laws Amendment (Measures for Consultation) Regulations 2023

Monthly Rulings Update

- **Legislative Instrument** - Notice of Requirement to lodge a Return for the Income Year Ended 30 June 2023
- **Legislative Instrument** - Notice of Requirement for Parents with a Child Support Assessment to lodge a Return for the Income Year Ended 30 June 2023
- Taxation Administration (Remedial Power – Work Test for Superannuation Contributions) Determination 2023
- Luxury car tax rate and thresholds
- **LI 2023/D12** – Income Tax Assessment (Cents per Kilometre Deduction Rate for Car Expenses) Determination 2023
- Notification of the repayments incomes and the repayment rates for the Higher Education loan Program for 2023/2024 income year

Monthly Case Update

- This Decision Impact Statement outlines the ATO's response to *The Buddhist Society of Western Australia Inc case*, which focussed on the definition of a 'school' in determining if the taxpayer should be granted deductible gift recipient status – Decision Impact Statement (DIS) – *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No2) [2021] FCA 1363*.
- Taxpayer has failed to prove the ATO's asset betterment assessments were excessive – *Elchekh and Commissioner of Taxation (Taxation) [2023] AATA 859*
- The AAT has determined that amounts paid out to the member of an SMSF were in breach of its operating standards resulting in them being assessable income to the member. It also found the member not to be a fit and proper person to be a trustee of the SMSF – *WZWK and Commissioner of Taxation (Taxation) [2023] AATA 872*

Other Developments

- Foreign investment services unavailable
- Applying for lodgment deferral
- Join our paid pilot for retailers
- In the ATO's sights this tax time
- Rollovers
- ATO debts on hold

Hot Topic

- 2023/24 Federal Budget Update

ATO Topic

Questions and answers on social media influencer tax issues – Melissa Fulton, Law Interpretation Officer from the ATO

July 2023

Monthly Legislative Update

- Treasury Laws Amendment (2022 Measures No. 4) Bill 2022
- Treasury Laws Amendment (2023 Measures No. 2) Bill 2023
- Treasury Laws Amendment (Measures for Consultation) Bill 2023: Non-arm's length expense rules for superannuation funds
- Treasury Laws Amendment (2023 Measures No. 3) Bill 2023

Monthly Rulings Update

- Income Tax Assessment (Cents per Kilometre Deduction Rate for Car Expenses) Determination 2023
- A New Tax System (Goods and Services Tax): Recipient Created Tax Invoice Determination 2023
- **Taxation Ruling TR 2023/1** Income tax: residency tests for individuals
- **Taxation Determination TD 2012/22A1** – Addendum Income tax: for the purposes of paragraph 97(1)(a) of the *Income Tax Assessment Act 1936* is a beneficiary's share of the net income of a trust estate worked out by reference to the proportion of the income of the trust estate to which the beneficiary is presently entitled?
- **Taxpayer Alert 2023/2:** Diverting profits of a property development project to a self-managed superannuation fund, through use of a special purpose vehicle, involving non-arm's length arrangements.
- **Taxation Ruling TR 2023/2 Income tax:** application of paragraph 8-1(2)(a) of the *Income Tax Assessment Act 1997* to labour costs related to the construction or creation of capital assets

Monthly Case Update

- The Full Federal Court has dismissed an appeal from the taxpayer against a previous Federal Court decision determining that a share buy-back arrangement constituted a reimbursement agreement under *Section 100A of the Income Tax Assessment Act 1936* – *B&F Investments Pty Ltd as trustee for the Illuka Park Trust v Commissioner of Taxation* [2023] FCAFC 89.
- An taxpayer appeal to the Full Federal Court has determined a lecturer was an independent contractor for superannuation guarantee purposes because he had a right to delegate his responsibilities. On that basis, he was not engaged principally for his labour and was not an employee– *JMC Pty Ltd v Commissioner of Taxation* [2023] FCAFC 76
- The AAT has determined that a taxpayer was entitled to a deduction for rental property holding costs in the 2017 income year despite little activity to renovate the property over an extended period – *DiStefano and Commissioner of Taxation (Taxation)* [2023] AATA 1697
- The AAT has denied a taxpayer over \$148,000 worth of deductions determining that, due to lack of evidence, he was not carrying on a business nor was he required to use his own vehicle to derive his assessable income – *Mathews and Commissioner of Taxation (Taxation)* [2023] AATA 1329

Other Developments

- Car depreciation limit for 2023/24
- The super guarantee is increasing
- Proportional indexation of personal transfer balance caps
- Changes to minimum annual payments for super income streams
- Sharing Economy Reporting Regime will begin on 1 July 2023

Hot Topic

- Skills and Training boost and the Technology Investment boost measures

ATO Topic

ATO's risk areas for Tax Time 2023 – Tim Loh, ATO Assistant Commissioner

August 2023

Monthly Legislative Update

- Income Tax Assessment (Digital Games Tax Offset) Rule 2023
- Treasury Laws Amendment (Measures for Consultation) Bill 2023: Small business energy incentive

Monthly Rulings Update

- **Tax Determination TD 2023/3 Income tax:** Reasonable travel and overtime meal allowance amounts for 2023/24
- **Tax Determination TD 2023/4 Income tax:** Payments for the authorised use of an individual's home
- **Draft Tax Determination TD 2023/D1 Income tax:** how the non-arm's length income and capital gains tax provisions interact to determine the amount of statutory income that is non-arm's length income
- **Draft Tax Determination TD 2023/D2 Income tax:** aggregated turnover and connected entities – Commissioner's discretion that an entity does not 'control' another entity
- **Draft Practical Compliance Guideline PCG 2018/DC1:** Central management and control test of residency: identifying where a company's central management and control is located
- **ATO Practice Statement Law Administration PS LA 2003/7:** How to treat a request to lodge a late objection

Monthly Case Update

- The Commissioner of Taxation has lodged an application for special leave to appeal to the High Court in relation to the Full Federal Court decision determining that an individual independent contractor was not an employee in relation to the payer's super guarantee obligations - *JMC Pty Ltd v Commissioner of Taxation* [2023] FCAFC 76
- The Full Federal Court has dismissed the taxpayer's appeal determining the capital gain on the disposal of his share of partnership goodwill could not be reduced by amounts he owed the partnership - *Hedges v Commissioner of Taxation* [2023] FCAFC 105
- The Federal Court found that the employees of the taxpayer were not entitled to a travel deduction for home to work travel. This meant that the otherwise deductible rule was not available for the employer to reduce their FBT liability where they paid for the employee's travel expenses - *Bechtel Australia Pty Ltd v Commissioner of Taxation* [2023] FCA 676
- The AAT determined there were no exceptional circumstances for the ATO to use their discretion to transfer super contributions to another year to avoid excess super contributions - *Aston and Commissioner of Taxation (Taxation)* [2023] AATA 1848

Other Developments

- The lodgment program 2023/24 is now available
- ATO PAYGW pre-fill is coming to Activity statements
- GST and digital currency
- GST and digital currency for payment
- GST and digital currency exchanges
- GST and trading digital currency

Hot Topic

- Common tax issues affecting rental property loans in the current economic climate

ATO Topic

- Section 100A questions and answers

September 2023

Monthly Legislative Update

- Treasury Laws Amendment (Measures for Consultation) Bill 2023: Miscellaneous and technical amendments – Spring 2023
- Treasury Laws Amendment (Measures for Consultation) Bill 2023: PRRT deductions cap
- Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023
- Treasury Laws Amendment (Measures for Consultation) Bill 2023: Small business energy incentive
- Treasury Laws Amendment (2023 Measures No. 1) Bill 2023
- Treasury Laws Amendment (2023 Measures No. 3) Bill 2023
- Joint Government Media Release - Government taking decisive action in response to PwC tax leaks scandal

Monthly Rulings Update

- **Practical Compliance Guideline PCG 2023/1** – Claiming a deduction for additional running expenses incurred while working from home
- **Draft Legislative Instrument LI 2023/D15** - Taxation Administration (Transitional Exemptions for reporting by Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023
- **Draft Legislative Instrument LI 2023/D16** - Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023
- **Class Ruling CR 2023/40**: Pemby Pty Ltd – use of an electric bicycle by an employee

Monthly Case Update

- The taxpayer has appealed a Federal Court decision that found certain employees of the taxpayer were not entitled to a travel deduction for home to work travel. This meant that the otherwise deductible rule was not available for the employer to reduce their FBT liability where they paid for the employee's travel expenses – *Bechtel Australia Pty Ltd v Commissioner of Taxation* [2023] FCA 676
- The AAT has determined the taxpayer was assessable on receipt of a bonus received in relation to his employment in Kuwait. He was not a resident of Australia during his employment in Kuwait, but was a resident by the time the bonus was paid to him - *Tawfik and Commissioner of Taxation (Taxation)* [2023] AATA 2541
- The AAT has determined that a self-managed superannuation fund's interest income derived as a beneficiary in a unit trust was not non-arms length income to the fund. This was on the basis that the interest income received was not more than would be expected had the fund been dealing at arm's length with the other parties - *BPFN and Commissioner of Taxation (Taxation)* [2023] AATA 2330
- The AAT has determined a payment received by the taxpayer from the Victorian Government Fairness Fund in relation to changes in the regulation of the taxi industry, was not income according to ordinary concepts - *Bains and Commissioner of Taxation (Taxation)* [2023] AATA 2477
- The AAT has determined that interest expenses were not deductible where incurred by the taxpayer on monies borrowed to invest in a fraudulent investment opportunity - *TKYY and Commissioner of Taxation (Taxation)* [2023] AATA 2497

Other Developments

- Penalty unit increased from 1 July 2023
- Applying for lodgment deferrals changed from 1 September 2023
- SMSF auditors checking for charges over property assets
- ATO offsetting refunds to debts on hold update

Hot Topic

- Modernising the individual tax residency rules

TPB Topic

Cyber security and proof of identity requirements

October 2023

Monthly Legislative Update

- The Albanese Government stops Business Registers Program after independent review damning assessment
- Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023
- Superannuation (Objective) Bill 2023

Monthly Rulings Update

- **Taxation Determination TD 2023/5** – Income tax: aggregated turnover and connected entities – Commissioner’s discretion that an entity does not ‘control’ another entity
- **ATO – Employees guide for work expenses**
- **Tax Ruling TR 2013/7A2** – Addendum Income tax: foreign employment income: interpretation of subsection 23AG(1AA) of the *Income Tax Assessment Act 1936*
- **Taxation Determination TD 2005/14A1** – Addendum Income tax: does subsection 23AG(2) of the *Income Tax Assessment Act 1936* apply where foreign earnings are exempt from tax in a foreign country for one or more of the reasons listed in that subsection and there is no additional reason for exempting that income
- **Taxation Determination TD 2005/15A1** – Addendum Income tax: does subsection 23AG(2) of the *Income Tax Assessment Act 1936* apply where foreign earnings are exempt from tax in the foreign country for a reason listed in that subsection as well as a reason not listed?
- **Luxury Car Tax Determination LCTD 2023/1** – Luxury car tax: how to determine the principal purpose of a vehicle
- **Practice Statement PS LA 2023/2** Communication protocols governing ATO objections

Monthly Case Update

- 7 years gaol for GST Fraud
- 2 years gaol for fraudulently obtaining GST refunds
- The Federal Court has determined that land held by the taxpayer was not the taxpayer’s main residence. Rather it was held as trading stock as part of a property development from the date it was acquired - *Makrylos v Commissioner of Taxation [2023] FCA 971*
- The AAT has determined an individual was a common law employee, as well as an employee under the extended definition of employee for the purposes of the Superannuation Guarantee Assessment Act, rather than an independent contractor. As a result, the Applicant was liable for superannuation guarantee charges - *Trustee for the Kitchen Unit Trust and Commissioner of Taxation (Taxation) [2023] AATA 2831*
- The AAT has denied a taxpayer a personal superannuation contribution deduction because they did not comply with the legislative notification requirements to advise his superannuation fund of his intention to claim a tax deduction - *Nicholls and Commissioner of Taxation (Taxation) [2023] AATA 2772*

Other Developments

- ATO expanding client-to-agent linking to more businesses
- ATO Tips to help your sole trader clients
- ATO ramps up compliance activities

Hot Topic

- Treasury consultation on Government’s response to PwC scandal

TPB Topic

- ATO debt management

November 2023

Monthly Legislative Update

- Regulating digital asset platforms
- Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023
- Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023
- Securing Australians' superannuation

Monthly Rulings Update

- **Legislative Instrument 2023/D17** - Legislative Instrument LI 2023/D17 Tax Administration (Withholding Variation for Occasional Payroll Donations to Deductible Gift Recipients) Legislative Instrument 2023
- **Tax Ruling 2022/4A1 – Addendum** - Income tax: section 100A reimbursement agreements
- **Practical Compliance Guideline 2022/2 – Update** - Section 100A reimbursement agreements - ATO compliance approach
- **Tax Ruling 2023/3** - Income tax: expenses associated with holding vacant land
- **Practical Compliance Guideline 2018/4DC1** - Income tax – liability of a legal personal representative of a deceased person
- **Tax Ruling 2013/5DC1** - Income tax: when a superannuation income stream commences and ceases

Monthly Case Update

- The High Court has dismissed the Commissioner's application to seek special leave to appeal a Full Federal Court decision that determined a lecturer was an independent contractor, rather than an employee, for superannuation guarantee purposes - *JMC Pty Ltd v Commissioner of Taxation [2023] FCAFC 76*
- The ATO has issued a Decision Impact Statement outlining its response to this case, which concerns whether the sale of residential property was input taxed on the basis of having been used for making rental supplies for 5 years, and if so, whether GST had been passed on - *Decision Impact Statement - Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust and Commissioner of Taxation*
- The Tribunal determined that an unpaid present entitlement between a discretionary trust and a corporate beneficiary was not to be considered a loan for Division 7A purposes, so could not be considered a deemed dividend under subsection 109D(3) of the *Income Tax Assessment Act 1936* - *Bendel and Commissioner of Taxation (Taxation) [2023] AATA 3074* STOP PRESS: The Commissioner has now appealed this decision
- **Other Developments**
- Where to access effective life information
- Questions about the technology investment boost?
- Client-to-agent linking in online services
- Our new requirement to publish R&D expenditure information
- ATO reminds businesses to pay before they disclose their debts
- Clearing house troubleshooting

Hot Topic

- Self-education claims and draft TR 2023/D1

Special Topic

- An interview with the Inspector General of Taxation and Taxation Ombudsman – Ms Karen Payne

December 2023

Monthly Legislative Update

- Superannuation (Objective) Bill 2023
- Gazette notice: Commissioner of Taxation – Notice of an Officeholder data-matching program 3 November 2023
- Statutory Declarations Amendment Bill 2023
- Treasury Laws Amendment (2023 Measures No. 1) Bill 2023
- Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

Monthly Rulings Update

- **Practical Compliance Guideline PCG 2022/1** Non-commercial losses – Commissioner's discretion regarding flood, bushfire or COVID-19
- **Practical Compliance Guideline 2018/9**: Central management and control test of residency: identifying where a company's central management and control is located.
- **Law Companion Ruling LCR 2023/D1** The corporate collective investment vehicle regime
- **Law Administration Practice Statement PS LA 2011/4** Collection and recovery of disputed debts

Monthly Case Update

- The Commissioner has appealed the decision in *Bendel and Commissioner of Taxation (Taxation) [2023] AATA 3074*. The ATO has also issued an Interim Decision Impact Statement outlining it does not intend to revise the current views in Tax Determination TD 2022/11 relating to private company entitlements to trust income - *Interim Decision Impact Statement Bendel and Commissioner of Taxation*
- The ATO has issued a Decision Impact Statement outlining its response to the decision in *Bains and Commissioner of Taxation (Taxation) [2023] AATA 2477*. The AAT determined that a payment received by the applicant from the Victorian Taxi Reform Fairness Fund was not income according to ordinary concepts. The Commissioner accepts that payments from the Fund are not income according to ordinary concepts and will administer the law in accordance with the Tribunal's decision.
- The taxpayer has been denied his application for special leave to the High Court in relation to the calculation of a net capital gain made on the disposal of partnership goodwill - *Hedges v Commissioner of Taxation [2023] FCAFC 105*
- The AAT has determined the taxpayer was entitled to a revenue loss on the sale of a residential unit despite the legal owner residing in the unit - *Bowerman and Commissioner of Taxation (Taxation) [2023] AATA 3547*
- The Commissioner has appealed an AAT decision that determined a distribution of fully franked dividends was not part of a dividend stripping operation - *Michael John Hayes Trading Pty Ltd as trustee for MJH Trading Trust and Others v Commissioner of Taxation (Taxation) [2023] AATA 3005*

Other Developments

- Super guarantee – annual employer compliance results
- Not entitled to Medicare benefits
- If you don't pay
- Payment Plans
- Prohibited SMSF loans

Hot Topic

- GST withholding on property sales

Special Topic

- Small business lodgment amnesty