

# **TAX ON THE COUCH TOPICS**

## **HOT TOPICS – MONTH-BY-MONTH**



**January/February 2024 Hot Topic**

Taxation of foreign super transferred to Australia

**March 2024 Hot Topic**

GST Going Concern Rules

# **ATO UPDATES/SPECIAL TOPICS – MONTH-BY-MONTH**

## **January/February 2024 ATO Update**

The R&D tax incentive

## **March 2024 TPB Update**

Tax Agent Annual Registrations

## **ETHICS TOPICS – MONTH-BY-MONTH**

### **January/February 2024 Ethics topic**

The new Items 15 and 16 in the Code of Professional Conduct for tax practitioners

### **March 2024 Ethics topic**

NTAA update on new Code items 15 and 16 of the *Tax Agent Services Act 2009* (TASA)

## **ALL TOPICS COVERED**

### **January/February 2024**

#### **Monthly Legislative Update**

- Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023
- Administrative Review Tribunal Bill 2023
- Superannuation (Objective) Bill 2023
- Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023
- Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023
- Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023
- Superannuation in retirement – Treasury discussion paper

#### **Monthly Rulings Update**

- **TD 2023/6** – Income tax: tax incentives for early stage investors: what is an ‘expense’ that is ‘incurred’ for the early stage test?
- **PS LA 2011/23 update** – This practice statement discusses the credit interest regime administered by the Commissioner and details when interest is payable
- **TR 2023/4** – Income tax: pay as you go withholding – who is an employee?
- **PCG 2023/2** – Classifying workers as employees or independent contractors – ATO compliance approach
- **TD 2023/D4** – Income tax: deductions for financial advice fees paid by individuals who are not carrying on a business

#### **Monthly Case Update**

- The ATO denied the taxpayer's application for an early release of super on compassionate grounds. The AAT found that this decision was not a reviewable decision. The AAT noted the taxpayer can seek assistance from the Inspector General of Taxation and the Taxation Ombudsman - *Yarahmadi and Commissioner of Taxation (Taxation) [2023] AATA 3811*
- The AAT upheld the Commissioner's denial of holding costs for land that had been purchased with the intention of development, which never eventuated. The AAT also upheld the penalties that the Commissioner had imposed for recklessness - *Meakins and Commissioner of Taxation (Taxation) [2023] AATA 3852*
- The taxpayer has been granted leave to appeal to the High Court in relation to whether cars that were displayed in a museum and also for sale, were held solely as trading stock - *Automotive Invest Pty Limited v Commissioner of Taxation [2023] FCAFC 129*
- The Federal Court upheld the finding made by the AAT that a \$500k payment was an Employment Termination Payment, and not a capital payment for personal injury - *Stark v Commissioner of Taxation [2023] FCA 1523*
- The AAT found that various deposits to trading trusts were assessable income and not equity contributions or loans as asserted by the taxpayers - *CVMW and Commissioner of Taxation (Taxation) [2023] AATA 4039*
- The AAT found that GST was payable on the sale of a property as the scale of the activities and the amount of capital invested meant that the taxpayer had engaged in an enterprise - *Lance and Commissioner of Taxation (Taxation) [2024] AATA 11*
- The AAT agreed with the Commissioner that the lump sum received in satisfaction of all future income protection insurance claims was assessable income. The taxpayer has appealed - *Sladden and Commissioner of Taxation (Taxation) [2023] AATA 3815*

### **Other Developments**

- New Commissioner of Taxation
- Tax Treatment of Digital Assets and Transactions
- ATO guidance on acquiring and disposing of crypto assets
- Super funds claiming reduced input tax credits

### **Hot Topic**

- The taxation of foreign super funds transferred to Australia

### **ATO Updates/Special Topic**

- The R&D tax incentive

### **Ethics topic**

- The new Items 15 and 16 in the Code of Professional Conduct for tax practitioners

### March 2024

#### Monthly Legislative Update

- Treasury Laws Amendment (Making Multinationals Pay their Fair Share-Integrity and Transparency) Bill 2023
- Treasury Laws Amendment (2024 Measures No. 2) Bill 2024: Location offset and producer offset for films
- Treasury Laws Amendment (Cost of Living Tax Cuts) Bill 2024
- Treasury Laws Amendment (Cost of Living – Medicare Levy) Bill 2024

#### Monthly Rulings Update

- **TR 2024/3** Income tax: deductibility of self-education expenses incurred by an individual
- **TR 2024/1** Income tax: composite items – identifying the relevant depreciating asset for capital allowances
- Last-in first-out method for the holding period requirement
- **MT 2024/D1** Miscellaneous tax: time limits for claiming an input tax or fuel tax credit
- **PCG 2024/2** Electric vehicle home charging rate – calculating electricity costs when a vehicle is charged at an employee's or individual's home

#### Monthly Case Update

- The ATO has released Decision Impact Statement – Commissioner of Taxation versus Wood. This case concerned whether a payment made by a taxpayer to settle litigation after his relevant employment ended, was deductible. The Commissioner was unsuccessful at the AAT and the Federal Court, so has issued a Decision Impact Statement.
- The AAT has denied a real estate agent taxpayer large work related expense deductions because they did not incur the expense or they failed to keep adequate records to substantiate the claim - *Copely and Commissioner of Taxation (Taxation) [2024] AATA 8*
- The AAT found the taxpayer had not discharged the onus of proof to show that default assessments issued by the ATO were excessive. The taxpayer argued the disputed funds were predominantly the repayment of loans lent to his company – *The Counsellor and the Commissioner of Taxation (Taxation) [2024] AATA 220*
- The NSW Supreme Court has determined that an individual did in fact have the mental capacity to make a valid binding death benefit nomination on the day he passed away – *van Camp V Bellahealth Pty Ltd [2024] NSWSC 7*

#### Other Developments

- Supported Lodgment Program
- Upcoming changes in the Small Business Super Clearing House
- ATO statement on ANAO GST Performance Audit
- Self-managed super funds: A statistical overview 2021/22
- Illegal early access to super estimate
- ATO statement on debts on hold

#### Hot Topic

- GST Going Concern rules

#### ATO Updates/Special Topic

- Tax agent Annual Registration

### **Ethics topic**

NTAA update on new Code items 15 and 16 of the *Tax Agent Services Act 2009* (TASA)