

# **TAX ON THE COUCH TOPICS**

## **HOT TOPICS – MONTH-BY-MONTH**



### **January/February 2022 Hot Topic**

ATO loses case regarding S.100A and reimbursement agreements

### **March 2022 Hot Topic**

FBT 58ZE– FBT exemption for retraining and reskilling of employees

### **April 2022 Hot Topics**

Class Ruling 2022/1 Westpac Banking Corporation – off market share buy-back

*PLUS* NTAA's 2022/2023 Federal Budget update

### **May 2022 Hot Topic**

FBT and Meal Entertainment

### **June 2022 Hot Topic**

Law Companion Ruling LCR 2021/3 - Temporary full expensing

### **July 2022 Hot Topic**

Key changes for 2022 tax season

### **August 2022 Hot Topic**

Key tax issues for leasehold improvements

### **September 2022 Hot Topic**

Taking a closer look at TD 2022/11 and Division 7A, UPEs and sub-trust arrangements

### **October 2022 Hot Topic**

Discussion on the following;

- Treasury Laws Amendment (Measures for consultation) Bill 2022: Technology investment boost
- Treasury Laws Amendment (Measures for Consultation) Bill 2022: skills and training boost

### **November 2022**

October 2022 Federal Budget Update

### **December 2022**

Christmas parties and gifts – FBT and income tax consequences

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

## **January/February 2022 ATO Update**

Cyber Security and Threats (with Mitchell White, Assistant Commissioner for Enterprise Solutions and Technology from the ATO)

## **March 2022 ATO Update**

Update on the ATO's 'Cash Flow Coaching Kit' (with Mr Andrew Watson, Assistant Commissioner in the ATO's Small Business Line)

## **April 2022 ATO Update**

Update on Section 100A and Division 7A (with ATO Director Mr Christopher Ryan)

## **May 2022 Special Update – Tax Practitioners' Board**

Update on Proof of Identity Guidelines (with TPB board member Ms Debra Anderson)

## **June 2022 ATO Update**

PCG 2021/4 – Allocation of professional firm profits – ATO compliance approach (with Jade Hawkins – Private Wealth)

## **July 2022 ATO Update**

2022 Tax Time (with ATO Assistant Commissioner Mr Tim Loh)

## **August 2022 ATO Update**

eInvoicing – Mark Stockwell Director of eInvoicing

## **September 2022 ATO Update**

Restriction on claiming deductions related to holding vacant land – Will Vuong, Law Interpretation Director at the ATO's Tax Counsel Network

## **October 2022 ATO Update**

No ATO update

## **November 2022 ATO Update**

Tax debts and lodgment (with Rowan Fox, Assistant Commissioner of Solutions in Lodge and Pay)

## **December 2022 ATO Update**

[There was no ATO Update for December]

## **ALL TOPICS COVERED**

### **January/February 2022**

#### **Monthly Legislative Update**

- Treasury Laws Amendment (2021 Measures No 5) Act 2021
- Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021
- Miscellaneous amendments to Treasury portfolio laws 2022
- Treasury Laws Amendment (Miscellaneous Amendments) Rules 2021

#### **Monthly Rulings Update**

- PCG 2021/4 – Allocation of professional firm profits – ATO compliance approach
- PS LA 2021/3 – Remission of additional superannuation guarantee charge
- LCR 2021/3 – Temporary full expensing
- TD 2021/D6 – Income tax: tax treatment of a superannuation benefit when the Commissioner exercises the discretion in subsection 304-10(4) of the *Income Tax Assessment Act 1997*
- PS LA 2021/D3 – Superannuation: Commissioner's discretion where members receive benefits in breach of legislative requirements

#### **Monthly Case Update**

- Taxpayer's valuation an 'approved valuation' for GST margin scheme purposes – *Decleah Investments Pty Ltd and anor as Trustee for the PRS Unit Trust and Commissioner of Taxation (Taxation)* [2021] AATA 4821
- Airline provided car parking fringe benefits to flight and cabin crew at various airports – *Commissioner of Taxation v Virgin Australia Regional Airlines Pty Ltd* [2021] FCAFC 209
- Taxpayer who provided rooms for rent through AirBnB not carrying on business and not eligible for JobKeeper – *FFYS and Commissioner of Taxation* [2021] AATA 4844
- Promotional make-up artist not carrying on business as an independent contractor and so not eligible for JobKeeper payments – *RWPY and Commissioner of Taxation* [2021] AATA 4921
- Husband and wife could not prove assets held in a regulated superannuation fund and they were therefore available for division amongst their creditors – *Frigger v Trenfield (No 10)* [2021] FCA 1500

#### **Other Developments**

- TPB's new CPE policy
- Tax treatment of COVID-19 vaccination incentives and rewards

#### **Hot Topic**

- ATO loses case regarding S.100A and reimbursement agreements

#### **ATO Update – ATO**

- Cyber Security and Threats (with Mitchell White, Assistant Commissioner for Enterprise Solutions and Technology from the ATO)

## March 2022

### Monthly Legislative Update

- Corporate Amendment (Meetings and Documents) Bill 2021
- Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Business Invest) Bill 2021
- Corporate Collective Investment Vehicles Framework and Other Measures Bill 2021
- Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022
- Treasury Laws Amendment (Streamlining and Improving Economic Outcomes For Australians) Bill 2022

### Monthly Rulings Update

- TD 2022/1 - TD 2022/1 Income tax: commercial debt forgiveness — does the exclusion for debts forgiven for reasons of natural love and affection require that the creditor be a natural person?
- TR 2022/D1 Income tax: section 100A reimbursement agreements
- PCG 2022/D1 Section 100A reimbursement agreements - ATO compliance approach
- TA 2022/1 Parents benefitting from the trust entitlements of their children over 18 years of age
- TD 2022/D1 Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?

### Monthly Case Update

- The High Court has rejected the taxpayers' special leave to appeal against the Full Federal Court ('FFC') decision in Peter Greensill Family Co Pty Ltd (trustee) v FCT; Nicholas Martin & Anor v FCT [2021] FCAFC 99.
- The Commissioner has lodged an appeal to the Full Federal Court from the decision in Guardian AIT Pty Ltd Australian Investment Trust v FCT [2021] FCA 1619.
- Two truck drivers held to be independent contractors rather than employees – ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2
- Individual held to be employee rather than contractor – Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1
- Plumber was engaged to perform services as an employee rather than as independent contractor - The Trustee For Virdis Family Trust t/a Rickard Heating Pty Ltd and Commissioner of Taxation (Taxation) [2022] AATA 3
- No deduction for personal superannuation contribution for a late section 290-170 notice - Khanna and Commissioner of Taxation (Taxation) [2022] AATA 33

### Other Developments

- TPB Practice Note TPB(PN) 5/2022 Proof of identity requirements for client verification
- ATO website Guidance - Strengthening client verification guidelines

### Hot Topic

- FBT Section 58ZE – FBT exemption for retraining and reskilling of employees

### ATO Update – ATO

- Update on the ATO's 'Cash Flow Coaching Kit' (with Mr Andrew Watson, Assistant Commissioner in the ATO's Small Business Line)



April 2022

### Monthly Legislative Update

- Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022
- Treasury Laws Amendment (Measures for Consultation) Bill 2022: Digital games tax offset
- Superannuation Industry (Supervision) Self-Managed Superannuation Funds (COVID-19 Rental Income Deferrals – In-House Asset Exclusion) Determination 2022

### Monthly Rulings Update

- LI 2022/D8: 2023 cents per kilometre rate
- LCTD 2022/D1: Luxury car tax – How to determine the principal purpose of a vehicle
- TD 2022/D2: Income tax: deductibility of expenses incurred in establishing and administering an 'employee share plan'

### Monthly Cases Update

- The Commissioner has released its Decision Impact Statement (DIS) in relation to – Commissioner of Taxation v Virgin Australia regional Airlines Pty Ltd
- The Commissioner has released its Decision Impact Statement (DIS) in relation to – Clough Ltd v Commissioner of Taxation
- The AAT has upheld an excess non-concessional contribution determination after agreeing with the Commissioner that there were no special circumstances prevailing to justify the exercise of the discretion to disregard all or part of the non-concessional superannuation contributions in the relevant year - SQQM and Commissioner of Taxation (Taxation) [2022] AATA 298
- Tax agent's registration terminated for breaching registration conditions – Mihajlovic and Tax Practitioners Board [2022] AATA 342
- Tax agent was found to have allowed the misappropriation of client money and was banned for 5 years - Plaskitt and Tax Practitioners Board [2022] AATA 267
- The taxpayer has been granted partial release from tax debts on the grounds of serious hardship - Shaw and FCT [2022] AATA 343

### Other Developments

- Superannuation rates and thresholds
- Support for flood affected areas
- NALI announcement
- JobMaker – baseline headcount
- ATO reminder of COVID early release superannuation amounts

### Hot Topics

- Class Ruling 2022/1 Westpac Banking Corporation – off market share buy-back
- NTAA's 2022/2023 Federal Budget update

### ATO Update – ATO

- Update on Section 100A and Division 7A (with ATO Director Mr Christopher Ryan)

### May 2022

#### Monthly Legislative Update

- Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No. 3) 2022
- Treasury Laws Amendment (Cost of Living Support and Other Measures) Bill 2022
- Excise Tariff Amendment (Cost of Living Support) Bill 2022 and Customs Tariff Amendment (Cost of Living Support) Bill 2022
- Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2022

#### Monthly Rulings Update

- TD 2022/2: FBT- Reasonable food and drink amounts in relation to Living-Away-From-Allowances for the 2023 FBT year
- TD 2022/3: FBT – Cents per kilometre rates for calculating the taxable value from the private use of a vehicle that is not a car for the 2023 FBT year
- TD 2022/4: Income tax – When are you genuinely restricted from immediately disposing of an interest provided under an employee share scheme?
- CR 2022/35: Urban Mobility Pty Ltd – use of an electric bicycle by an employee

#### Monthly Cases Update

- The Commissioner has released its Decision Impact Statement (DIS) in relation to – Construction, Forestry, Maritime, Mining and Energy Union and Personnel Contracting Pty Ltd [2022] HCA 1
- The High Court has upheld an appeal by the Commissioner against a decision of the Full Federal Court. The High Court found that attempts to disclaim an interest in trust income by default beneficiaries were ineffective - Commissioner of Taxation and Natalie Carter and Others [2022] HCA 10
- An SMSF's disposal of residential property lots was found to be subject to GST on sale – The Collins Retirement Fund and Commissioner of Taxation [2022] AATA 628
- An individual taxpayer that worked as a dog handler for the Department of Corrections was allowed to claim deductions for gym memberships but not for certain fitness equipment and supplements - London and Commissioner of Taxation [2022] AATA 644
- The AAT found that a therapeutic care worker was allowed a 50% deduction for the cost of renting private office space used to undertake administrative aspects of their car worker role/the other use (non-deductible) was considered to be preliminary to the earning of assessable income from an unrelated income earning activity - XGPH and Commissioner of Taxation [2022] AATA 567

#### Other Developments

- NTAA submission to the ATO on PCG 2022/D1 and S.100A reimbursements dated 29 April 2022
- Lodgement reminder for Child Care Subsidy and Family Tax Benefit recipients
- Deferral requests during peak lodgment period
- Government consultation on FBT and car parking benefits

#### Hot Topic

- FBT and Meal Entertainment

#### Special Update – Tax Practitioners' Board

- Update on Proof of Identity Guidelines (with TPB board member Ms Debra Anderson)

June 2022

### Monthly Legislative Update

- No new legislation this month due to calling of Federal Election
- Proposed legislation that lapsed upon calling of Election
- Labor Government proposed election tax changes

### Monthly Rulings Update

- ATO updated media release on Section 100A
- PCG 2022/D2 Non-commercial business losses – Commissioner’s discretion regarding flood, bushfire or Covid-19
- PCG 2016/3 Fuel tax credits – fuel tax credit rate for non-business claimants

### Monthly Cases Update

- Applicant proposed to transfer several freehold interests in land to third party as part of single contract. The issue was whether this could be a single “supply” of land for the purpose of calculating the “margin” contained in s 75-10 of the GST Act. It was held that each supply of a freehold interest was a separate supply. Landcom V Commissioner of Taxation [2022] FCA 510
- The taxpayer failed to have penalties remitted for late lodgement of SGC statements and statements relating to the their PAYG withholding obligations. RFZD and Commissioner of Taxation (Taxation) [2022] AATA 988
- RI Advice Group has been found guilty of breaching its AFS Licence requirements because it failed to have adequate systems in place to manage cybersecurity risks. Australian Securities and Investments Commission v RI Advice Group Pty Ltd [2022] FCA 496
- The taxpayer was found to have held cars on display in a museum for both exhibition as well as trading stock, resulting in a liability for Luxury Car Tax (LCT) and limitations on its claim for Input Tax Credits (ITC). Automotive Invest Pty Ltd and Commissioner of Taxation (Taxation) AATA 673

### Other Developments

- CPI Index for March quarter
- Tax Practitioner’s Board impersonation email – Stop and think before you click the link
- Four priorities for the ATO this tax time
- ATO Warning against GST Fraud
- Diving in too deep – GST fraud by swimming teacher
- Get ready for super changes from 1 July

### Hot Topic

- Law Companion Ruling LCR 2021/3 - Temporary full expensing

### ATO Update – ATO

PCG 2021/4 – Allocation of professional firm profits – ATO compliance approach (with Jade Hawkins – Private Wealth)



July 2022

### Monthly Legislative Update

- New Federal ministry
- Income Tax Assessment – Cents per Kilometre Deduction Rate for Car Expenses Determination 2022
- Cryptocurrency to be excluded from foreign currency rules formally via legislative amendment

### Monthly Rulings Update

- ATO update to PCG 2020/5
- ATO update to PCG 2017/13
- ATO web page update – Managing section 100A for the 2021-2022 income year

### Monthly Cases Update

- The Tribunal refused to grant a medical practitioner release from his tax debt after finding that he would not suffer serious hardship if required to satisfy his taxation liabilities primarily because along with various other expenditure, the taxpayer's purchase of a Porsche Macan was not consistent with the financial circumstances he reported. *Dua and Commissioner of Taxation (Taxation) [2022] AATA 1520*
- The High Court has considered how long an SMSF binding death benefit nomination (BDBN) can last for (i.e., indefinitely, and not three years – subject of course to what the SMSF deed has to say about it). *Hill v Zuda Pty Ltd [2022] HCA 21*.
- The Commissioner has released its Decision Impact Statements (DIS) in relation to *Commissioner of Taxation v Carter* relating to the High Court decision dealing with the taxation implications associated with the disclaiming of the default beneficiary entitlements of a discretionary trust.
- The Commissioner has released its Decision Impact Statements (DIS) in relation to *Ian Mark Collins & Mieneke Mianno Collins ATF The Collins Retirement Fund and Commissioner of Taxation* relating to the GST status of a property development.

### Other Developments

- TPB raises tax agent registration fees from 1 July 2022
- TPB to run advertising campaign targeting consumers to use registered tax practitioners
- TPB survey results
- Luxury car thresholds – 2023
- ATO debt collection activities
- Tax time – ATO reminders

### Hot Topic

- Key changes for 2022 tax season

### ATO Update – ATO

2022 Tax Time (with the ATO's Assistant Commissioner Tim Loh)

## August 2022

### Monthly Legislative Update

- Treasury Laws Amendment (2022 Measures No. 1) Bill 2022
- Disaster Recovery payment - NSW Floods
- Covid-19: pandemic leave disaster payment reinstated
- Social Security (Asset test Exempt Income Stream (Market-linked) – Payment Factors) Amendment (Minimum Amount) Principles 2022
- Treasury Laws Amendment (Electric Car Discount) Bill 2022
- Notice of Intention to Propose Customs Tariff Alterations Notice (No 6) 2022

### Monthly Rulings Update

- ATO protocol on legal professional Privilege
- Taxation Determination 2022/10 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2022/23 income year?
- TD 2022/11 - Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?
- TA 2022/2 – Treaty shopping arrangements to obtain reduced withholding tax rates

### Monthly Cases Update

- The taxpayer was a higher education provider that engaged a lecturer to provide teaching services. The Federal Court determined the lecturer was an employee of the taxpayer, rather than an independent contractor, therefore payments made were subject to superannuation. *JMC Pty Limited v Commissioner of Taxation [2022] FCA 750*
- The Tribunal found that ongoing payments received by a spouse as a result of a relationship breakdown was assessable income. The payment was determined to be an assessable royalty payment made by an associated entity. *GQRW and Commissioner of Taxation (Taxation) [2022] AATA 1779*

### Other Developments

- Taking the cryptic out of crypto
- CGT improvement threshold for 2022/23
- Dependant (Invalid and Carer) Tax Offset (DICTO) for 2022/23
- Benchmark interest rate for Division 7A loans for 2022/23
- The Tax Practitioners Board's Top Tips to renew tax or BAS agent registration
- ATO change of heart on disposal of rental property depreciating assets
- ATO caution over 'Nil member account balances' for SMSFs
- ATO Covid-19 relief for SMSF trustees has now ended
- ATO advice on winding up an SMSF

### Hot Topic

- Key tax issues for leasehold improvements

### ATO Update – ATO

- eInvoicing (with the ATO's Mr Mark Stockwell, Director eInvoicing)

### September 2022

#### Monthly Legislative Update

- Additional COVID-related business grants declared tax-free
- Lifting the income test limit for the Commonwealth Seniors Health Card
- Treasury Laws Amendment (2022 Measures No. 2) Bill 2022
- Consultation on proposed exclusions from shorter period of review for small and medium entities
- Government consultation on multinational tax reform
- Consultation on Government's Shadow Economy Procurement Connected Policy

#### Monthly Rulings Update

- Erratum to TD 2022/10: Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2022/23 income year?
- Update to TD 2011/15: Income tax: Division 7A – unpaid present entitlements – factors the Commissioner will take into account in determining the amount of any deemed entitlement arising under s 109XI of the *Income Tax Assessment Act 1936*.
- Update to TD 2015/20: Income tax: Division 7A: is a release by a private company of its unpaid present entitlement a “payment” within the meaning of Div 7A of Pt III of the Income Tax Assessment Act 1936?
- Update to TR 2015/4: Income tax: CGT small business concessions: unpaid present entitlements and the maximum net asset value test.
- Update to PCG 2017/13: Div 7A – PS LA 2010/4 sub-trust arrangements maturing in or after the 2016–17 income year.
- Update to PS LA 2004/10 – Tax laws claimed to be invalid.
- GSTR 2012/3A3 – Addendum: Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels.

#### Monthly Cases Update

- The taxpayer failed to make an election to treat payments received from his SMSF as superannuation lump sums. Therefore, they were correctly taxed as superannuation income stream payments. *Prescott and Commissioner of Taxation [2022] AATA 2478*
- In two related cases, the Tribunal confirmed the Commissioner's decision to include unexplained deposits as assessable income of the relevant taxpayer. *TOC Processing Pty Ltd and FCT [2022] AATA 2479* and *Goldsworthy and Commissioner of Taxation (Taxation) [2022] AATA 2472*
- The Tribunal upheld a decision to disqualify the taxpayer as a responsible officer of the corporate trustee of his SMSF following several contraventions of the superannuation laws by the trustee. *Goulopoulas and FCT [2022] AATA 2540*

#### Other Developments

- Board of Taxation releases guide for Review of tax treatment of digital assets and transactions
- TPB exposure drafts on BAS service, tax agent service, fees and client confidentiality

#### Hot Topic

- Taking a closer look at TD 2022/11 and Division 7A, UPEs and sub-trust arrangements

#### ATO Update – ATO

- Restrictions on claiming deductions related to holding vacant land (with the ATO's Tax Counsel Network law interpretation director, Mr Will Vuong)

October 2022

### Monthly Legislative Update

- Tax Administration: Withholding Variation to Nil for Low Income Minors Legislative Instrument 2022
- Social Services and Other Legislation Amendment (Incentivising Pensioners to Downsize) Bill 2022
- Treasury Laws Amendment (Electric Car Discount) Bill 2022
- Treasury Laws Amendment (2022 Measures No 2 ) Bill 2022
- Treasury Laws Amendment (Measures for Consultation) Bill 2022: FBT record keeping
- Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Franked distributions funded by capital raisings
- Treasury Laws Amendment (Measures for Consultation) Bill 2022: Taxation treatment of digital currency

### Monthly Rulings Update

- LI 2022/D14 - A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2022
- Taxation Administration – Single Touch Payroll – Spent Instruments Repeal Determination 2022
- TD 2022/12 Income tax: is the source concept in Division 6 of Part III of the *Income Tax Assessment Act 1936* relevant in determining whether a non-resident beneficiary of a resident trust, or trustee of that trust, is assessed on an amount of trust capital gain arising under Subdivision 115-C of the *Income Tax Assessment Act 1997*?
- TD 2022/13 Income tax: does Subdivision 855-A (or subsection 768-915(1)) of the *Income Tax Assessment Act 1997* disregard a capital gain that a foreign-resident (or temporary-resident) beneficiary of a resident non-fixed trust has because of subsection 115-215(3)?
- PCG 2022/1 Non-commercial business losses – Commissioner’s discretion regarding flood, bushfire or COVID-19
- TR 2022/2 Income tax: the games and sports exemption

### Monthly Cases Update

- Trustee assessments were upheld by the Federal Court as the beneficiary was deemed not to have been presently entitled to trust income. *BBlood Enterprises Pty Ltd v Commissioner of Taxation [2022] FCA 1112*
- The AAT found the Commissioner of Taxation correctly denied input tax credits that were claimed in business activity statements because they were lodged outside the four year time limit. *JHKW and Commissioner of Taxation (Taxation) [2022] AATA 2875*
- The AAT has upheld the Tax Practitioners Board decision to terminate both an individual and company tax agent registration. *Alan Gough and Vision Business Group Pty Ltd and Tax Practitioners Board [2022] AATA 2757*

### Other Developments

- Consumer Price Index for June 2022 quarter
- Shortfall interest charge for December 2022 quarter
- General interest charge for December 2022 quarter
- ATO Professional firm profit allocation arrangements
- Director IDs

### Hot Topic

- Treasury Laws Amendment (Measures for consultation) Bill 2022: Technology investment boost
- Treasury Laws Amendment (Measures for Consultation) Bill 2022: skills and training boost

### ATO Update – ATO

- No ATO update this month

### November 2022

#### Monthly Legislative Update

- Superannuation Guarantee (Administration) Amendment (Aged care Registration Nurses' Payment) Regulations 2022
- Global agreement on corporate taxation: addressing the tax challenges arising from the digitalisation of the economy
- A New Tax System (Goods and Services Act) Adjustment Note Information Requirements Determination 2022

#### Monthly Rulings Update

- Practical Compliance Guideline PCG 2019/5
- Draft Taxation Ruling TR 2022/D2 Income tax: residency tests for individuals
- Draft Taxation Determination TD 2022/D3 Income tax: use of an individual's fame by related entities
- Tax Determination TD 2022/14 If a non-contingent liability to pay a specified amount is included in the cost base of your CGT asset under either subsection 110-25(2) or section 112-35 of the *Income Tax Assessment Act 1997* and you deduct or can deduct that amount, does subsection 110-45(2) of that Act apply?
- Tax Determination TD 2022/15 Income tax: value of goods taken from stock for private use for the 2022-23 income year

#### Monthly Cases Update

- The taxpayer has appealed to the Full Federal Court. The Federal Court held that trustee assessments were valid as the beneficiary was deemed not to have been presently entitled to trust income. *BBlood Enterprises Pty Ltd v Commissioner of Taxation [2022] FCA 1112*
- The Administrative Appeals Tribunal determined that the taxpayer's expenses in relation to work conducted on a rental property was made up of both deductible repairs as well as capital improvements, resulting in an apportionment of deductible expenses. *Wulf and Commissioner of Taxation (Taxation) [2022] AATA 3094*
- The Administrative Appeals Tribunal determined that expenses incurred in relation to a property rented to the taxpayer's estranged husband for below market rent were not deductible in excess of the rental amount received. They did however reduce the Administrative penalty. *Rizkallah and Commissioner of Taxation (Taxation) [2022] AATA 3081*
- The High Court has determined that the presumption of advancement applied for a husband in relation to a property that was held only in his wife's name, despite the fact the couple had jointly borrowed to finance its acquisition. This meant the husband did not have a beneficial interest in the property. *Bosanac v Commissioner of Taxation [2022] HCA 34*
- The Administrative Appeals Tribunal determined that a 25% administrative penalty, was reasonable where the taxpayer lodged their 2017 income tax return late, due to gambling and drug addiction. *Dowsing and Commissioner of Taxation (Taxation) [2022] AATA 3173*
- The Administrative Appeals Tribunal determined the ATO had imposed the correct administrative penalty on a taxpayer who had incorrectly claimed a tax deduction for all his living expenses, as a result of information provided at a 'fringe theory' seminar. *Oxby and Commissioner of Taxation (Taxation) [2022] AATA 3239*

#### Other Developments

- Update on Section 100A green zone examples
- Director IDs

#### Hot Topic

- October 2022 Federal Budget update

#### ATO Update – ATO

- Tax debts and lodgment (with Rowan Fox, Assistant Commissioner of Solutions in Lodge and Pay).

December 2022

### Monthly Legislative Update

- Treasury Laws Amendment (2022 Measures No. 4) Bill 2022
- Crimes Amendment (Penalty Unit) Bill 2022
- Exposure Draft Legislation: Proposed amendments to the Tax Agent Services Act 2009
- Exposure Draft Legislation: Proposed amendments to the treatment of off-market share buy-backs
- Corporations (Eligible Officer Exclusion - non-individuals and resigned directors) Determination 2022

### Monthly Rulings Update

- Draft Practical Compliance Guideline PCG 2022/D4 – Claiming a deduction for additional running expenses incurred while working from home - ATO compliance approach
- Draft Update - Taxation Ruling TR 2021/2DC1 Fringe benefits tax: car parking benefits
- Class Ruling CR 2022/104 Telstra Corporation Limited – Top Hat Restructure

### Monthly Cases Update

- The Administrative Appeals Tribunal upheld a decision of the Tax Practitioners Board to cancel the registration of tax agent who failed to adequately supervise and review the work of an accountant who worked for the tax agent remotely. *Grech and Tax Practitioners Board [2022] AATA 3401*
- The Administrative Appeals Tribunal upheld a decision of the Tax Practitioners Board that a tax agent was to be deregistered after multiple breaches of the Code of Professional Conduct and a breach of the conditions of a stay order. *Worsley v Tax Practitioners Board [2022] AATA 3742*
- The Administrative Appeals Tribunal determined that the taxpayer was unable to claim input tax credits from tax periods for which the Business Activity Statements were lodged more than four years after the required due date. Furthermore, various input credits in relation to tax periods for which the Business Activity Statements were lodged within four years of the due date for lodgement were denied due to a lack of substantiation. *H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation (Taxation) [2022] AATA 3561*
- The Administrative Appeals Tribunal held that a taxpayer, a chef working on cruise ships in international waters, was a resident of Australia for taxation purposes, having failed to establish a domicile outside of Australia or a permanent place of abode outside of Australia. *Duff v Commissioner of Taxation [2022] AATA 3675*

### Other Developments

- Stapled super funds for employers
- Changes in commercial rent or lease payment changes - taxation implications
- SMSFs thinking about investing in crypto assets
- ATO support for Victims of Eastern Floods from September to November 2022

### Hot Topic

- December 2022 Christmas parties and gifts – FBT and income tax consequences

**ATO Update** – No ATO update this month