

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

April 2024 Hot Topic

CGT exemption for granny flat arrangements

May 2024 Hot Topic

Sharing Economy Reporting Regime

June 2024 Hot Topic

2024/25 Federal Budget

July 2024 Hot Topic

Debt forgiveness by private companies

August 2024 Hot Topic

Calculating profit on a backyard development

September 2024 Hot Topic

ATO guidance on section 99B of the ITAA 1936

October 2024 Hot Topic

PCG 2024/D2 - Personal services businesses and Part IVA of the *Income Tax Assessment Act 1936*

November 2024 Hot Topic

Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023

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

April 2024 ATO Update

Common issues in complying with Division 7A

May 2024 ATO Update

Support for small business

June 2024 ATO Update

Tax Time 2024

July 2024 ATO Update

Director Penalty Notices and debt management

August 2024 ATO Update

Personal services income

September 2024 ATO Update

Family Trust Distribution Tax

October 2024 ATO Update

Single Touch Payroll

November 2024 IGOT Update

Inspector-General of Taxation & Taxation Ombudsman draft workplan for systemic reviews 2024/25

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)

April 2024 Ethics topic

Code Item 1 of the Code of Professional Conduct of the *Tax Agent Services Act 2009* (TASA)

May 2024 Ethics topic

New obligations for registered tax practitioners to report significant breaches of the Code of Professional Code of the *Tax Agent Services Act 2009* (TASA)

June 2024 Ethics topic

Additional information on Code Item 1 of the Code of Professional Conduct of the *Tax Agent Services Act 2009* (TASA)

July 2024 Ethics topic

Code Item 2 of the Code of Professional Conduct of the *Tax Agent Services Act 2009* (TASA)

August 2024 Ethics topic

Tax Agent Services (Code of Professional Conduct) Determination 2024

September 2024 Ethics topic

TPB(I) D54/2024 False or misleading statements to the TPB or Commissioner

October 2024 Ethics topic

TPB(I) 15/2012 Code of Professional Conduct – Holding money or other property on trust

November 2024 Ethics topic

TPB(I) 19/2014 Code of Professional Conduct – Managing conflicts of interest

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)

April 2024

Monthly Legislative Update

- Treasury Laws Amendment (Cost of Living Tax Cuts) Bill 2024
- Treasury Laws Amendment (Cost of Living – Medicare Levy) Bill 2024
- Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023
- Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023
- Superannuation (Objective) Bill 2023
- Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023
- Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023
- Better Targeted Superannuation Concessions – Draft regulations

Monthly Rulings Update

- GSTR 2006/6DC2 Goods and services tax: improvements on the land for the purposes of Subdivision 38-N and Division 75
- TD 2024/D1 Income tax: hybrid mismatch rules – application of certain aspects of the 'liable entity' and 'hybrid payer' definitions
- GSTD 2024/1 Goods and services tax: supplies of combination food
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Fly-in Fly-out and Drive-in Drive-out Employees) Determination 2024
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Private Use of Vehicles Other Than Cars) Determination 2024
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Temporary Accommodation Relating to Relocation) Determination 2024
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Car Travel to Certain Work-Related Activities) Determination 2024
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Car Travel to Employment Interview or Selection Test) Determination 2024
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Relocation Transport) Determination 2024
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Otherwise Deductible Benefits) Determination 2024
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Overseas Employment Holiday Transport) Determination 2024
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Travel Diaries) Determination 2024
- Fringe Benefits Tax Assessment (Adequate Alternative Records – Living-Away-From-Home – Maintaining an Australian Home) Determination 2024

Monthly Case Update

- The ATO has released a Decision Impact Statement on *Bowerman and the Commissioner of Taxation (Taxation)* [2023] AATA 3547. In this AAT case, the taxpayer was successful in arguing that she could claim a revenue loss on the sale of a property that she had acquired for rental, but used solely as her private residence.
- The Full Federal Court affirmed the decision that the travel expenses for fly in fly out workers were not otherwise deductible. Therefore, the value of that travel was not reduced to nil for FBT purposes by the otherwise deductible rule. *Bechtel Australia Pty Ltd v Commissioner of Taxation* [2024] FCAFC 33

Tax on the Couch

- The Full Federal Court dismissed an appeal by the Commissioner and found that it was correct that a life insurance company was entitled to input tax credits for overhead expenses to the extent that they were related to its GST-free supplies. *Commissioner of Taxation v Hannover Life Re of Australasia Ltd* [2024] FCAFC 23
- The Full Federal Court found that Part IVA did not apply to certain trust distributions. *Minerva Financial Group Pty Ltd v Commissioner of Taxation* [2024] FCAFC 28
- The Full Federal Court dismissed the taxpayer's appeal arguing that his capped defined benefit income streams should not be included in the calculation to ascertain whether he had an excess transfer balance. *Stern v Commissioner of Taxation* [2024] FCAFC 21
- The AAT found that the taxpayer remained a resident of Australia for tax purposes while working overseas. *Quy and Commissioner of Taxation (Taxation)* [2024] AATA 245
- The AAT found that exceptional circumstances did not prevent the company from providing information to the Commissioner regarding its superannuation guarantee shortfall before the Commissioner took compliance action. As such, the Commissioner did not have the discretion to remit the penalties that applied in relation to shortfall amounts for quarters ending on 31 March 2018 and earlier. *Delbake Pty Ltd and Commissioner of Taxation* [2024] AATA 449

Other Developments

- Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators) Determination 2024
- Online lodgment deferrals
- Gazette notice: Commissioner of Taxation – Notice of a rental bond data-matching program
- Gazette notice: Commissioner of Taxation – Notice of a novated leases data-matching program
- Industry benchmarks for the 2022 income year

Hot Topic

CGT exemption for granny flat arrangements

ATO Updates/Special Topic

Common issues in complying with Division 7A

Ethics topic

Code Item 1 the Code of Professional Conduct of the *Tax Agent Services Act 2009* (TASA)

May 2024

Monthly Legislative Update

- Treasury Laws Amendment Instrument 2024: Successor fund transfers and capped defined benefit income streams – Exposure draft
- Treasury Laws Amendment Bill 2024: Build to rent developments – Exposure draft
- Capital Works (Build to Rent Misuse Tax) Bill 2024 – Exposure draft
- Treasury Laws Amendment Bill 2024: Medicare levy lump sum exemption – Exposure draft

Monthly Rulings Update

- TD 2024/1 Fringe benefits tax: what are the rates to be applied on a cents 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 1 April 2024
- TD 2024/2 Fringe benefits tax: reasonable amounts under section 31G of the *Fringe Benefits Tax Assessment Act 1986* for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit for the fringe benefits tax year commencing 1 April 2024
- GSTD 2024/D1 Goods and services tax: supplies of food of a kind marketed as a prepared meal
- PCG 2018/4 Income tax – liability of a legal personal representative of a deceased person
- PS LA 2008/6 Fraud or evasion

Monthly Case Update

- The ATO has released a Decision Impact Statement on *BPFN and the Commissioner of Taxation (Taxation)* [2023] AATA 2330. In this AAT case, the Tribunal found that while the related party borrowing arrangements were not arm's length, the income was not NALI because the SMSF did not derive more income than it would have, had the dealings been arm's length.
- The ATO has released a Decision Impact Statement on *GQHC and the Commissioner of Taxation (Taxation)* [2024] AATA 409. In this AAT case, the Tribunal affirmed the Commissioner's decision that the taxpayer's activities related to poultry farming were not eligible for the R&D tax offset.
- The Commissioner has appealed the AAT's decision to reduce the penalties that had been imposed on a taxpayer. *Huang and Commissioner of Taxation (Taxation)* [2024] AAT 397
- The taxpayer has appealed the AAT's finding that Part IVA applied to a complex structure that moved business profits through various entities without the taxpayer bearing any tax on the income. *Collie and Commissioner of Taxation (Taxation)* [2024] AATA 440
- The taxpayer has appealed the AAT's finding that Part IVA applied to a complex structure that resulted in no tax being payable on funds that were given to the taxpayer as loans. *Grant and Commissioner of Taxation (Taxation)* [2024] AATA 427
- The Queensland Supreme Court granted a summary judgment for the payment of a Director Penalty Notice for \$10.8m in relation to unpaid PAYG withholding, as it found that the director did not have a valid defence. *Deputy Commissioner of Taxation v Gerhard Horst Heinrich* [2024] QSC 51
- The AAT affirmed the Commissioner's decision to deny deductions to a property development business due to inadequate records, apart from allowing a deduction for property maintenance expenses. However the penalties that had been imposed were reduced. *Beta Leigh Pty Ltd and Commissioner of Taxation (Taxation)* [2024] AATA 596
- The AAT agreed with the Commissioner that special circumstances did not exist in relation to a taxpayer who had excess concessional contributions in the 2021 income year. As such, there were no grounds for the Commissioner to exercise his discretion to reallocate the contributions to another year or disregard them. *Oldenburger and Commissioner of Taxation (Taxation)* [2024] AATA 635

Other Developments

- HELP repayment thresholds and rates
- ATO fact sheet – Category B players of WAFL clubs – taxation of match payments
- The Modernisation of Trust Administration Systems
- Troubleshooting guide for agents – Client-to-agent linking

Hot Topic

Sharing Economy Reporting Regime

ATO Updates/Special Topic

Support for small business

Ethics topic

New obligations for registered tax practitioners to report significant breaches of the Code of Professional Code of the *Tax Agent Services Act 2009* (TASA)

June 2024

Monthly Legislative Update

- Treasury Laws Amendment (Extending the FBT Exemption for Plug-In Hybrid Electric Vehicles) Bill 2024
- Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023
- Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023
- Draft Legislative Instrument – LI 2024/D5 Income Tax Assessment (Cents per Kilometre Deduction Rate for Car Expenses) Determination 2024
- Response to PwC – Tax regulator information gathering powers review – Consultation Paper

Monthly Rulings Update

- PS LA 2015/2 Time limits for trustee assessment [updated]
- TR 2024/D2 Income tax: exempt income of international organisations and persons connected with them
- CR 2024/29 Queensland Health – Nursing and Midwifery Regional, Rural and Remote Student Placement Allowance

Monthly Case Update

- The ATO has released a Decision Impact Statement on the *Commissioner of Taxation v Hannover Life Re of Australasia* [2024] FCAFC 23. The Full Federal Court dismissed the Commissioner's appeal against the decision that the taxpayer was entitled to claim input tax credits on overheads to the extent these expenses related to making GST-free supplies.
- The ATO has released a Decision Impact Statement on *JMC Pty Ltd v Commissioner of Taxation* [2023] FCAFC 76. The court found that a lecturer was a contractor, and not an employee, for superannuation guarantee purposes.
- The ATO has released a Decision Impact Statement on *Jamsek v ZG Operations Australia Pty Ltd (No. 3)* [2023] FCAFC 48 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2. These decisions found that truck drivers were contractors and not employees under the extended definition.
- The AAT has set aside the Commissioner's decision to disqualify an SMSF trustee. *Merchant and Commissioner of Taxation* [2024] AATA 1102
- An employee truck driver had most of his food and drink expense deduction denied. *Duncan and Commissioner of Taxation (Taxation)* [2024] AATA 974
- A cleaner who worked as a contractor was found to be an employee under the extended definition for superannuation purposes. *S&H Investments Pty Ltd and Commissioner of Taxation* [2024] AATA 893
- The Federal Court allowed the taxpayer's appeal against an AAT decision that unexplained deposits to a trust were assessable income. *Liang v Commissioner of Taxation* [2024] FCA 535

Other Developments

- Crypto assets data matching program
- Regulation of accounting, auditing and consulting firms in Australia – Consultation paper
- Incapacity of a tax practitioner – TPB guidance

Hot Topic

2024/25 Federal Budget

ATO Updates/Special Topic

Tax Time 2024

Ethics topic

Additional information on Code Item 1 of the Code of Professional Conduct of the *Tax Agent Services Act 2009* (TASA)

July 2024

Monthly Legislative Update

- Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023
- Administrative Review Tribunal Bill 2024
- Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2024
- Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Bill 2024
- Taxation Administration (Withholding Schedules) Instrument 2024
- Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024
- Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024

Monthly Rulings Update

- Tax Agent Services Amendment (Updating Fees) Regulations 2024
- Gazette notice: Commissioner of Taxation – Notice of the Services Australia specified benefits and entitlements data-matching program
- Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators) Determination 2024
- PCG 2023/1 Claiming a deduction for additional running expenses incurred while working from home – ATO compliance approach

Monthly Case Update

- The ATO has released a Decision Impact Statement on *Minerva Financial Group Pty Ltd v Commissioner of Taxation* [2024] FCAFC 28. The Full Federal Court found that Part IVA did not apply to decisions made by the trustee to either not distribute income to Australian resident entities, or to distribute only nominal amounts to them.
- The ATO has lodged an appeal against the decision in *Liang v Commissioner of Taxation* [2024] FCA 535 where the court allowed the taxpayer's appeal from an AAT decision that certain deposits was assessable income for a trust.
- The taxpayer has lodged an appeal against the decision in *Merchant v Commissioner of Taxation* [2024] FCA 498, where it was found that Part IVA and dividend stripping provisions applied to certain transactions between entities within the Merchant group.
- The AAT found that the taxpayer was eligible for the small business CGT concessions as it met the maximum net asset test, and rejected the valuation relied on by the Commissioner. *Moloney and Commissioner of Taxation (Taxation)* [2024] AATA 1483
- The AAT found that FBT did not apply to non-cash benefits given to directors of a corporate trustee because they were not employees and the benefits were given to them as beneficiaries of the trust. *BQKD and Commissioner of Taxation (Taxation)* [2024] AATA 1796
- A taxpayer was unsuccessful in arguing that the Commissioner should release him from certain tax debts on the basis of serious hardship. *Doery and Commissioner of Taxation* [2024] AATA 1493
- The Full Federal Court found that the AAT misconstrued the dividend stripping provisions, and as such, it remitted the case back to the AAT to be redetermined according to the law. *Commissioner of Taxation v Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust* [2024] FCAFC 80

Other Developments

- Eligibility for the small business restructure rollover
- Decoding Division 7A – offsetting against the minimum yearly repayment
- High certainty pre-fill data expanding to cover more fields
- TPB(I) 41/2024 Code of Professional Conduct – Employing or using a disqualified entity in the provision of tax agent services without approval

Tax on the Couch

- TPB(l) 42/2024 Code of Professional Conduct – Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity
- Effective life of depreciating assets

Hot Topic

Debt forgiveness by private companies

ATO Update

Director penalty notices and debt management

Ethics topic

Code Item 2 of the Code of Professional Conduct of the *Tax Agent Services Act 2009* (TASA)

August 2024

Monthly Legislative Update

- Income Tax Assessment Amendment (Superannuation) Regulations 2024
- Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024
- Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023
- Consultation Paper: Review of eligibility requirements for registration with the Tax Practitioners Board

Monthly Rulings Update

- TD 2024/3 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2024-25 income year?
- TR 2013/5A1 – Addendum Income tax: when a superannuation income stream commences and ceases
- Division 7A – benchmark interest rate
- TD 2024/5 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
- TR 2023/4DC1 Income tax and superannuation guarantee: who is an employee?

Monthly Case Update

- The Commissioner has appealed the Federal Court decision in *Ierna v Commissioner of Taxation* [2024] FCA 592, where it was found that anti-avoidance provisions did not apply to a business restructure that included extinguishment of Division 7A loans.
- The Tribunal found that a taxpayer was not eligible for input tax credits as there was no evidence that the acquisition actually occurred. *Ecosse Group Holdings Pty Ltd and Commissioner of Taxation (Taxation)* [2024] AATA 2073
- The court found that the AAT's reasoning included errors of law when it concluded that a taxpayer was a tax resident of Australia, and remitted the matter back to the Tribunal for redetermination according to the law. *Quy v Commissioner of Taxation (No 3)* [2024] FCA 726
- The taxpayers were unsuccessful in arguing that the market value substitution rule applied to reduce the capital proceeds from the sale of shares. *Kilgour v Commissioner of Taxation* [2024] FCA 687
- The court found that the trustee was liable for CGT on the sale of properties from a bankrupt estate. *Robson as trustee for the bankrupt estate of Lanning v Commissioner of Taxation* [2024] AATA 1796
- A taxpayer was unsuccessful in arguing that international money transfers were not assessable on the basis they were loans or gifts from his son. *Youssef Said Abdelbari (Taxation)* [2024] FCA 720
- The Tribunal found that unexplained bank deposits were assessable income. *GMBF and Commissioner of Taxation (Taxation)* [2024] AATA 2152

Other Developments

- Gazette notice: Commissioner of Taxation – Notice of an online selling data-matching program
- Do you need to lodge a 'nil' BAS?
- Has your member received a Division 293 assessment?
- Administrative Review Tribunal to commence in October 2024
- Rental property – repairs or capital expenses?
- Are you an employer?

Hot Topic

Calculating profit on a backyard development

ATO Update

Personal services income

Ethics topic

Tax Agent Services (Code of Professional Conduct) Determination 2024

September 2024

Monthly Legislative Update

- Universities Accord (Student Support and Other Measures) Bill 2024
- Treasury Laws Amendment Bill 2024: Self-amendments by small and medium businesses – Exposure draft
- Consultation Paper: Strengthening the foreign resident capital gains tax regime
- Treasury Laws Amendment Bill 2024: Foreign Resident Capital Gains Withholding Payments – Exposure draft

Monthly Rulings Update

- PS LA 1998/1 Law administration practice statements
- GSTD 2024/D2 Goods and services tax: supplies of sunscreen
- Self-review checklist for small to medium businesses: GST classification of food and health products
- ATO's voluntary disclosure process

Monthly Case Update

- The taxpayers have appealed to the High Court in relation to the decision of the Full Federal Court in *Commissioner of Taxation v Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust* [2024] FCAFC 80, where it was found that the AAT had misconstrued the dividend stripping provisions.
- The taxpayers have appealed the decision in *Kilgour v Commissioner of Taxation* [2024] FCA 687 where it was found that the market value substitution rule did not apply to reduce the capital proceeds from the sale of shares.
- The Commissioner has appealed the decision in *PepsiCo, Inc v Commissioner of Taxation* [2024] FCAFC 86 where it was found that the taxpayer was not liable for royalty withholding tax and that the Diverted Profits Tax did not apply either.
- In five cases that were based on the same fact pattern, the AAT found that horseracing clubs were liable for the superannuation guarantee charge for unpaid superannuation for jockeys. This was because the clubs were deemed employers under the extended definition in S.12(8) of the Superannuation Guarantee Administration Act, as they paid jockeys to participate in a sport. *Armidale Jockey Club and Commissioner of Taxation (Taxation)* [2024] AATA 2726; *Illawarra Turf Club Ltd and Commissioner of Taxation (Taxation)* [2024] AATA 2727; *Australian Turf Club Ltd and Commissioner of Taxation (Taxation)* [2024] AATA 2728; *Clarence River Jockey Club Ltd and Commissioner of Taxation (Taxation)* [2024] AATA 2729; *Grenfell Jockey Club Limited and Commissioner of Taxation (Taxation)* [2024] AATA 2730
- The AAT upheld the 50% shortfall penalties that the ATO imposed on a taxpayer who amended her return to claim deductions she was not entitled to, without consulting her tax agent. *Bootlis and Commissioner of Taxation (Taxation)* [2024] AATA 2723
- The Federal Court imposed \$1.8m of civil penalties on Mr Van Dyke for providing tax agent services for a fee, without being a registered tax practitioner. *Tax Practitioners Board v Van Dyke* [2024] FCA 899
- The AAT upheld the amended and default assessments issued by the Commissioner as the taxpayer did not discharge his burden of proof that the assessments were excessive, nor establish what his assessable income was, in the relevant income years. *CJYB and Commissioner of Taxation (Taxation)* [2024] AATA 2640

Other Developments

- Correct records for work-related expenses
- Appointing an SMSF auditor
- Guide to the Superannuation Guarantee Charge statement
- The ATO's corporate plan

Tax on the Couch

- Enhancement of the TPB register
- TPB proof of identity for tax practitioners
- Commissioner's remedial power

Hot Topic

ATO guidance on section 99B of the ITAA 1936

ATO Update

Family Trust Distribution Tax

Ethics topic

TPB(I) D54/2024 False or misleading statements to the TPB or Commissioner

October 2024

Monthly Legislative Update

- Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024
- Anti-money Laundering and Counter Terrorism Financing Amendment Bill 2024
- Administrative Review Tribunal (Miscellaneous Measures) Bill 2024
- Crimes and other Legislation Amendment (Omnibus No.1) Bill 2024
- Treasury Laws Amendment (Self-managed superannuation funds—legacy retirement product conversions and reserves) Regulations 2024
- Treasury Laws amendment (2024 Tax and Other Measures No 1) Bill 2024
- Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Bill 2024
- Payday super update

Monthly Rulings Update

- Taxation Administration (Withholding Variation for Certain Payments to US Resident Entertainers Including Athletes) Legislative Instrument
- TR 2024/4 - First home super saver scheme
- Employees guide for work expenses

Monthly Case Update

- The Commissioner has issued a Decision Impact Statement in relation to *Merchant and Commissioner of Taxation [2024] AATA 1102*. The Commissioner lost this case where the AAT found the individual should not be disqualified as trustee of his SMSF as although the breaches were serious, he was unlikely to reoffend in the future.
- The AAT has determined that the use of the unused concessional contributions cap for a year is mandatory where excess concessional contributions have been made, rather than a taxpayer choice. *WTBW and Commissioner of Taxation (Taxation) [2024] AATA 3268*
- The AAT affirms the decision by the Commissioner of Taxation to disqualify the applicant from acting as trustee of a self-managed superannuation fund due to multiple contraventions of the *Superannuation (Industry) Supervision Act 1993*. *Coronica and Commissioner of Taxation (Taxation) [2024] AATA 2592*

Other Developments

- TPB launches its plan for 2024/25
- Almost \$17.8 billion in lost super
- myGovID is changing its name to myID
- Officeholder data-matching program
- Property management data-matching program
- Lifestyle assets data-matching program
- Proof of identity checks for tax practitioners

Hot Topic

PCG 2024/D2 - Personal services businesses and Part IVA of the *Income Tax Assessment Act 1936*

ATO Update

Single touch payroll

Ethics topic

- TPB(I) 15/2012 Code of Professional Conduct – Holding money or other property on trust

November 2024

Monthly Legislative Update

- Review of tax promoter penalty laws
- Taxation Administration Amendment (Extending Tax Whistleblower Protections) Regulations 2024
- Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024
- Treasury Laws Amendment Bill 2024: Denying Deductions for Interest Charges

Monthly Rulings Update

- Practice Statement Law Administration PS LA 2004/10 - Tax laws claimed to be invalid
- Taxation Ruling TR 2013/2A1 – Addendum - Income tax: school or college building funds
- Taxation Determination TD 2024/7 - Income tax: deductions for financial advice fees paid by individuals who are not carrying on an investment business
- Draft Practical Compliance Guideline PCG 2024/D3 - Restructures and the new thin capitalisation and debt deduction creation rules - ATO compliance approach

Monthly Case Update

- The taxpayer has been refused special leave to the High Court in relation to a dividend stripping dispute as the application did not raise any question of law of public importance and advances no grounds of appeal. *Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust and Ors v Commissioner of Taxation [2024] HCASL 268*
- The High Court has found in favour of the taxpayer in their appeal against a decision relating to the ATO imposing increasing luxury car tax adjustments where the cars were held in a museum for display. *Automotive Invest Pty Limited v Commissioner of Taxation [2024] HCA 36*
- The AAT has determined a licenced plumber was not an employee for superannuation guarantee purposes because the relevant contracts were for the provision of plumbing services to complete specified plumbing jobs and not principally for his labour. *The Trustee for the Peter Hatfield Trust and Commissioner of Taxation (Taxation) [2024] AATA 3428*
- The AAT has determined an employee taxpayer working from home was not entitled home office and various other expenses claimed as deductions. *Shugai and Commissioner of Taxation (Taxation) [2024] AATA 3619*
- The AAT has determined that a legal practitioner making an honest mistake in relation to the non-concessional contributions cap could not access special circumstances warranting an excess concessional contributions determination. *BVZH and Commissioner of Taxation (Taxation) [2024] AATA 3618*
- The AAT has disallowed an employee's deductions for travel expenses and a balancing adjustment loss on the disposal of his car, whilst allowing his home office expenses. *Hudson and Commissioner of Taxation (Taxation) [2024] AATA 3678*

Other Developments

- WA woman jailed for exploiting hardship superannuation support
- Troubleshooting guide for agents Client-to-agent linking
- Aussies have had enough: ATO receives 250,000 tip-offs
- Administrative treatment: acquisitions and disposals of interests in 'no goodwill' professional partnerships, trusts and incorporated practices
- Assessing the risk: allocation of profits within professional firm
- Everett assignments

Hot Topic

- Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023

IGOT Update

- Inspector-General of Taxation & Taxation Ombudsman draft workplan for systemic reviews 2024/25

Ethics topic

- TPB(I) 19/2014 Code of Professional Conduct – Managing conflicts of interest