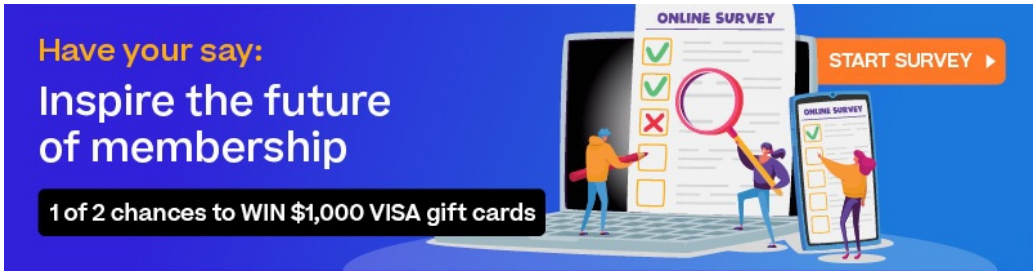
The Tax Institute

TaxVine



This Week in Tax

Member's Report

Adrian Cartland, Principal – Cartland Law

16 Feb 2024

In this week's TaxVine, Adrian Cartland, Principal, Cartland Law, and Chair of The Tax Institute's SA State Taxes Committee, discusses the recent payroll tax changes and the impact on medical centres.

Recent payroll tax changes and medical practices

For many years, it has been common for medical practices not to pay payroll tax in respect of independent contractor medical practitioners they engage. The reasoning was that the independent contractor healthcare practitioners operated separate practices from the medical centres' facilities in which they operated.

However, this position is no longer certain in light of recent State Revenue Office (**SRO**) rulings that take the view there are circumstances in which independent contractor practitioners can be deemed to be employees, thereby giving rise to payroll tax liabilities under the various State and Territory Payroll Tax Acts (**the Acts**). Apart from medical practices, this position also applies to dental clinics, radiology centres, physiotherapy practices and related businesses.

Generally, payroll tax is payable when an employer pays wages to a common law employee. Payroll tax is a self-assessed tax. The employer is responsible for withholding and paying a percentage of the wages to government agencies as payroll taxes. Australia does not have a national standard rate of payroll tax. Payroll tax is a State tax so the percentage payable is determined by the relevant State or Territory.

The term 'employee' is not explicitly defined in the Acts. Instead, specific tests are used to determine if a common law employment relationship exists. In practice, applying these tests to accurately determine a business' potential payroll tax liability is not a straightforward process. Further, the term 'wages' is broad and potentially encompasses a wide range of payments made to independent contractors under a relevant contract.

Before the inclusion of the 'contractor' provisions in the Acts, it was common for medical practices to structure their contractual arrangements by converting common law employees to independent contractors to reduce their payroll tax liability.

Under the new interpretation of the 'contractor' provisions, liability for payroll tax is conferred on the medical practice when payments are made to contractors under a 'relevant contract'. A contract between a medical facility and a practitioner is deemed to be a 'relevant contract' if:

- the practitioner is engaged in the business or practice of providing medical-related services to patients;
- in the course of conducting its business, the medical facility:

- provides members of the public with access to medical-related services; or
- engages a practitioner to supply services to the medical facility by serving patients on its behalf; and

- an exemption does not apply.

All States and Territories have harmonised many of the conceptual and definitional aspects of their payroll tax regimes to establish common rules of practice for consistent administration across different jurisdictions. However, the payroll tax laws across the country have varied definitions of a 'relevant contract' and different approaches concerning the actions that could be taken against medical practices that had not paid payroll tax on their contractor practitioners. While some States have extended an amnesty to such medical practices, others have remained silent on the issue.

Payroll tax changes — State-by-State breakdown

Various States have released similar public rulings confirming that independent contractor arrangements between medical centres and practitioners are subject to the 'relevant contract' provisions. The rulings were issued in response to the precedents set out in two landmark cases that have resulted in extensive scrutiny of the medical profession.

The cases are:

- the Victorian Court of Appeal decision in *Commissioner of State Revenue v The Optical Superstore Pty Ltd* [2019] VSCA 197 (**Optical Superstore**) (affirmed by the High Court of Australia in *The Optical Superstore Pty Ltd v Commissioner of State Revenue* [2020] HCASL 16); and
- the New South Wales Court of Appeal case of *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue* [2023] NSWCA 40 (**Thomas and Naaz**).

Several factors are considered when medical practices determine whether independent contractor practitioners are required to be included in their payroll tax calculations. These factors include:

- the nature of the contract between the medical centre and the practitioner;
- the recipient of the services offered by the practitioner;
- the duration of the period in which the practitioner offers services to the medical centre;
- the nature of services that the medical centre offers to the practitioner; and
- the party that controls the relationships with patients, payments, records and related services.

Although the medical practitioners provide a service to the clients of the medical centre, they also provide a service to the medical practice in discharging obligations to the clients in the premises of the medical practice. The non-zero amount of service provided by the practitioner to the medical practice can form a basis for imposing payroll tax in relation to the payments made by the medical practices.

Victoria

The payroll tax rate in Victoria is 4.85% (or 1.2125% for regional Victorian employees). The annual yearly taxable wages threshold is $700,000 which currently is the lowest among the States and Territories.

The recent payroll tax ruling, PTA-041, was issued on 11 August 2023. The application of the ruling may be retrospective and progressive in accordance with Revenue Ruling GEN-001-Explanations and the status of revenue rulings. This ruling incorporates precedents set in the *Optical Superstore and Thomas and Naaz* cases, but does not make any changes to the practice or interpretation of payroll tax as it applies to medical practices. Rather, the ruling affirms the view that particular arrangements between medical centres and independent contractor practitioners may give rise to a payroll tax liability, thereby providing clarity to medical practices.

Victoria has not announced any amnesties or concessions.

New South Wales

The payroll tax rate in NSW is 5.45% and the threshold is $1.2 million.

On 11 August 2023, NSW followed other States in issuing PTA 041 which affirms the 'relevant contract' provisions for medical practices. The ruling harmonises the 'contractor' provisions for medical centres with Victoria in line with the Optical Superstore and Thomas and Naaz decisions. On 24 August 2023, authorities in NSW announced a 12-month pause on payroll tax audits for general practices.

Like Victoria, NSW has not announced a payroll tax amnesty for medical centres.

Australian Capital Territory

The ACT has the highest payroll tax rate (6.85%) and threshold ($2 million) in the country. The ACT has not issued a specific payroll tax ruling related to medical practices and no formal announcement of any amnesties and concessions has been made.

Queensland

The payroll tax rate in Queensland is 4.75% up to a threshold of $6.5 million and 4.95% over $6.5 million. No payroll tax is payable up to $1.3 million.

The Queensland SRO issued PTAQ000.6.1 on 22 December 2022 stating its interpretation of payroll tax in respect to medical practices. Following the intense backlash, the SRO announced an amnesty for contracted general practitioners. However, this amnesty did not extend to other medical practitioners. Eligible medical practices will be exempt from payroll tax until 30 June 2025 provided they applied for the amnesty by 10 November 2023.

On 19 September 2023, the Queensland SRO issued an updated ruling, PTAQ000.6.2, which clarifies areas that had been overlooked by the initial ruling. The following are the key takeaways from this ruling:

- Medical centres are exempt from payroll tax on:
    - out-of-pocket patient fees paid by the patient directly to the practitioner; and
    - Medicare benefits assigned by the patient to the practitioner and paid directly to the practitioner by Medicare.
- The exemptions apply only when the payments are made to an individual/sole trader practitioner. Payments made to companies and trusts are subject to payroll tax.
- Non-general practitioners are left exposed by the lack of an amnesty.

South Australia

The payroll tax rate in South Australia is a variable rate from 0% to 4.95% above $1.5 million up to $1.7 million and then 4.95% above $1.7 million. No payroll tax is payable up to $1.5 million.

RevenueSA issued PTASA003 on 30 June 2023 which was replaced by PTA041 on 22 November 2023. The ruling seeks to harmonise the payroll tax regime of South Australia with that of Victoria and New South Wales. The ruling does not change the position or interpretation of RevenueSA. Eligible medical practices are exempt from paying payroll tax between 1 July 2018 and 30 June 2024. The deadline for registration was 30 September 2023. The eligibility is limited to contracted general practitioners.

Northern Territory

The payroll tax rate in the Northern Territory is 5.50% and the threshold is $1.5 million.

The Territory has not announced any public ruling specific to medical practices nor has it announced any amnesties or concessions. The Northern Territory has harmonised its payroll tax legislation with the eastern States and the ACT.

Tasmania

Tasmania's payroll tax threshold for medical practices is $1.25 million and the payroll tax rate is 4.00% up to $2 million and 6.1% over $2 million.

The contractor provisions are very similar to those in NSW and Victoria. The Tasmanian SRO has not yet published any guidance on whether the Commissioner will interpret the Tasmanian provisions in the same manner as Ruling PTA-041, undertake any audit activities on medical or allied health practices or provide any voluntary disclosure amnesty. Also, the Tasmanian SRO does not issue private rulings.

Western Australia

Western Australia is the only State that has not committed to updating its payroll tax legislation to implement the *Optical Superstore and Thomas and Naaz* decisions. Western Australia has not issued, and is not planning to issue, any public ruling relating to medical centres.

Western Australia's $1 million threshold means that most medical centres are exempt from payroll tax which is paid at the rate of 5.5%–6.5%.

Uncertainty and current challenges

The question remains whether restructuring a medical practice to reduce payroll tax, based on the new understanding of the 'relevant contract' rules, would trigger the application of the anti-avoidance provisions. In the absence of clarity, practitioners and medical practices are currently assessing the suitability and legality of utilising a trust or reversing the direction of payments.

Reversing the direction of payments means rather than payments being made from the medical practices to the practitioners, payments would be made from the practitioners to the medical

practices for the services provided by the medical practices.

The second scenario involves interposing a trust between the medical practice and the practitioner to handle client payments and distribute them between practitioners and the medical practice. The trustee would receive payments from clients and hold the funds on behalf of the practitioner and the medical practice in pre-agreed proportions, for example, 70% for the practitioner and 30% for the medical practice. However, where the trust arrangement lacks economic substance, there is a risk that payments made by the trustee to the practitioner and the medical practice would not be an effective transfer of funds to the beneficiaries.

The trust approach presents further issues. The concept of establishing a trust relies on the existence of cash or physical assets that can be clearly differentiated and identified as trust property. In the case of electronic payments, where there are no physical assets, it becomes difficult to establish that separate trusts exist for the practitioners and the medical practice. Therefore, tax professionals and medical practitioners should exercise caution when considering such structures to prevent potential tax disputes.

Closing comments

Payroll tax is a significant employment cost for businesses, and the changing landscape for medical practices and practitioners continues to evolve. The Tax Institute will continue to work with our State Taxes Committees in advocating for clear guidance and supporting our members.

As always, we welcome your views and thoughts, which you can provide here.

Kind regards,

Adrian Cartland,

Cartland Law

Member Article

An overview of the Small business restructure roll-over

In this week's Tax Insight/Question Time, we consider a high-level overview of the Small business restructure roll-over (**SBRR**). All section references in this article are to the *Income Tax Assessment Act 1997* (Cth) **(ITAA 1997**) unless otherwise specified.

Subdivision 328-G allows small business owners to restructure their businesses and the way they are held while disregarding tax gains and losses that would otherwise arise. Since 1 July 2016, the SBRR has enabled taxpayers to transfer certain active assets between eligible genuine restructuring entities without giving rise to income tax liabilities. The tax cost of the transferred asset(s) is rolled over from the transferor (entity disposing of the asset(s)) to the transferee (entity receiving the asset(s)).

SBRR eligibility and requirements

The SBRR is available to eligible small business entities and any affiliate of or entities connected with small business entities. Several prerequisites must be met by entities seeking to claim entitlements under the SBRR.

- The entity must be an eligible small business entity — or affiliate of, or an entity that is connected with, such an entity — with an aggregated turnover of less than $10 million (section 328-110).
  The entity must meet the residency requirement in section 328-445.
  Both the transferor and each transferee must choose to apply the roll-over in relation to the assets transferred (paragraph 328-430(1)(f)).
- The restructure must involve the transfer of an active asset(s) from 1 July 2016 that is a CGT asset(s), trading stock, a revenue asset or a depreciating asset from one entity (the transferor) to one or more entities (the transferee(s)). More information on active assets can be found here.
- The transfer forms part of a genuine restructure of an ongoing business (paragraph 328-430(1)(a)) and is not an artificial or tax-driven scheme. Law Companion Ruling (LCR 2016/3) *Small Business Restructure Roll-over: genuine restructure of an ongoing business and related matters* provides guidance on assessing whether the restructure of an ongoing small business is genuine as well as the application of the safe harbour rules (section).
- The transaction must not result in a change in the ultimate economic ownership of the transferred asset(s). If more than one individual has the ultimate economic ownership, each proportionate share of the ultimate economic ownership must be maintained after the transfer. Special rules apply in determining whether a change in the ultimate economic ownership within a discretionary trust has arisen (section 328-440).

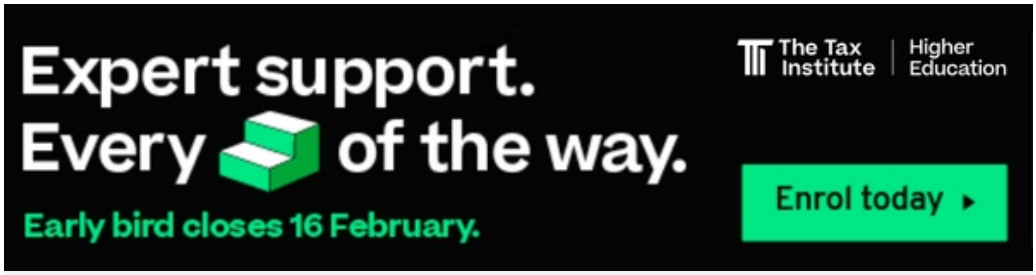
Discretionary trusts and ultimate economic ownership

Discretionary trusts may fulfil the criteria for ultimate economic ownership, such as in cases where there is no practical change in which individuals economically benefit from the assets before and after the transfer.
Family trusts can satisfy an alternative test for maintaining the ultimate economic ownership if the trustee has made a family trust election under Schedule 2F to the *Income Tax Assessment Act 1936* (Cth) (**ITAA 1936**) and if all individuals who had ultimate economic ownership of the transferred asset before the transfer, as well as those who have ultimate economic ownership after the transfer, are members of the same family group of the individual who is specified in the family trust election.

Consequences of choosing the SBRR

A choice to utilise the small business restructure roll-over (paragraph 328-430(1)(f)) will result in the following consequences for taxpayers:

- No income tax liability arises for the transferor or the transferee (section 328-450).
- The CGT asset is treated as being transferred for an amount equal to the transferor's cost base of the asset just before the transfer, thereby preventing any capital gain or loss from arising (paragraph 328-455(2)(a)). If membership interests are issued as consideration for transfer of assets, the cost base or reduced cost base is worked out as per section 328-465. An integrity rule is included to disregard any capital loss on a direct or indirect membership interest in the transferor or transferee that occurs after the roll-over (section 328-470).
- Any pre-CGT asset transferred maintains its pre-CGT status (section 328-460).
- To assess the possibility of a future discount capital gain, the transferee will be considered as having obtained the CGT asset at the time of the transfer. Unlike other roll-overs, there is no assumed acquisition dating back to the original acquisition by the transferor.
- Law Companion Ruling LCR 2016/2 *Small Business Restructure Roll-over: consequences of a roll-over* contains further guidance on the consequences of the roll-over and examples. More information on the effect of roll-over on CGT assets, trading stock, depreciating assets or revenue assets and membership interests can be found here.



Enhance your career prospects with a formal qualification in tax

Early bird discount ends today!

As a Higher Education candidate, you will be provided with tax technical and administrative support to help you succeed. Programs are developed and delivered by tax experts, so they are practical, applied and importantly, accredited.
With prior academic studies, you may also be able to fast-track your learning.

Find out more

Advocacy Tracker

Issue	Tax Policy and Advocacy activity
Ongoing Items	
Public Country-by-Country reporting	The Treasury has released exposure drafts and explanatory materials that propose amendments to the Taxation Administration Act 1953 (Cth) to reflect the Government's announcement in the updated Federal Budget 2022–23 (October) to enhance the tax information entities disclose to the public. The Treasury is seeking feedback and inviting submissions on whether the explanatory draft materials adequately represent and achieve the policy objective of enhancing tax transparency. Also, feedback is invited on priority issues that would inform the Australian Taxation Office's

	priority issues that would inform the Australian Taxation Office's administrative approach and public advice and guidance on this measure. Submissions are due by 5 March 2024. We are currently seeking feedback from members on your views regarding the consultation paper. To enable The Tax Institute to collate member feedback, if you have feedback to share, please email your response by COB on **Monday 19 February 2024** to taxpolicy@taxinstitute.com.au.
Ongoing Items	
Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023	The Senate has referred the Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 to the Senate Education and Employment Legislation Committee for inquiry and report. The report of the Senate Committee is due by 19 April 2024 and submissions are due by 23 February 2024. We are currently seeking feedback from members on your views regarding this consultation. To enable The Tax Institute to collate member feedback, if you have feedback to share, please email your response by COB on **Monday 19 February 2024** to taxpolicy@taxinstitute.com.au.
Income Tax: royalties – character of payments in respect of software and intellectual property rights	The ATO has released a draft ruling TR 2024/D1 containing the Commissioner's preliminary view on when an amount paid under a software arrangement would be considered a royalty and is subject to royalty withholding tax. This draft ruling replaces draft ruling TR 2021/D4 Income tax: royalties character of receipts and TR 93/12W Income tax: computer software. Submissions are due by 1 March 2024. We are currently seeking feedback from members on your views regarding the consultation paper. To enable The Tax Institute to collate member feedback, if you have feedback to share, please email your response by COB on **Monday 19 February 2024** to taxpolicy@taxinstitute.com.au.

MEMBER BENEFITS

Monthly Tax Insight

Get your latest Monthly Tax Insight paper covering the top 5 tax matters as determined by the experts at Brown Wright Stein including:

- CVMW
- Haidi Holdings and Diamond Family Trust
- Integrated Trolley Management
- TASA Code Changes
- Mid-Year Economic and Fiscal Outlook 2023-2

Read it here

Free member webinar

Understanding section 99B

Tuesday 27 February 2024 | 12:00-1:00pm AEDT | Online | 1 CPD hour

Section 99B of the ITAA 1936 is an integrity provision relating to the taxation of trusts. Tax practitioners advising on trusts should understand how the provision operates and its potential application to clients' arrangements.

Join our free member webinar to learn:

- The history and purpose of section 99B
- Practical ways that section 99B can apply, including the application of section 99C, a related provision
- Why proving the corpus exception can be particularly grueling
- What to expect from managing a section 99B audit

Register here

Submissions Lodged

- Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 available on our website
- PRRT – anti-avoidance provisions and clarifying treatment of 'exploration' and MQPRs available on our website

In the Media

- **Accounting Times:** On 14 February 2024, The Tax Institute featured in Greater transparency needed on unregistered entities, says Tax Institute

Treasury

Public country-by-country reporting: second exposure draft bill

On 12 February 2024, the Treasury released for consultation a second exposure draft bill of the Treasury Laws Amendment Bill 2024: Multinational Tax Transparency – country-by-country reporting (the **draft Bill**) together with an accompanying draft explanatory memorandum.

The draft Bill builds on the initial exposure draft that was released in April 2023, based on feedback received during the initial consultation.

The Bill proposes to implement the Government's previous announcement to refine the measure to more closely align with the European Union's public country-by-country regime, that was introduced as part of the updated Federal Budget 2022–23 (October).Treasury is seeking feedback on this exposure draft and the accompanying explanatory materials until 5 March 2024.

More information about this, including how to make a submission, can be found here.

Latest TaxVibe podcast episode: The 2024 tax terrain – treasure and traps included

Strap yourselves in, this is a long episode full of reflections on 2023 and the biggest insights for 2024!

Robyn hosts Todd Want CTA, The Tax Institute's newly appointed President for 2024. They cover everything from the Stage 3 tax cuts to AI and so many things in between!

Listen to this episode for:

- Key reflections on 2023
- The biggest factors at play in 2024
- Labour shortages in the profession and changes in work practice
- The upcoming Federal Budget
- Tax debts and ATO debt collection activities

- All things superannuation – Division 296, Payday super, NALI/NALE
- The integrity of the tax profession
- Todd's vision as President for 2024, including our new digital micro-learning experience, Tax Academy

Listen here or wherever you get your podcasts, or watch the full video here.

Tax Practitioners Board

TPB guidance on new annual registration

On 9 February 2024, the Tax Practitioners Board (**TPB**) reminded registered tax and BAS agents that, from 1 July 2024, the registration period for tax practitioners will occur on an annual basis.

This new annual registration process, given effect by Part 2 of Schedule 3 to the *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*, aligns with other registration models across the Commonwealth and addresses recommendations arising from the independent Review of the TPB and the Tax Agent Services Act 2009 (**TASA**).

Key points:

- From 1 July 2024, the registration period for tax practitioners is changing from at least once every three years to at least once a year. The new annual registration period will apply from the next renewal date that occurs from 1 July 2024.
- The application fee that will be payable for annual registration is currently being determined by the government.
- Annual registration will remove the need for tax practitioners to submit an annual declaration with the TPB.
- No changes will be made to the continuing professional education (**CPE**) requirements at this stage — the CPE period will continue to align with the registration date, and the minimum yearly requirement for hours completed will remain at 20 hours for registered tax and BAS agents. Your CPE period will still be able to be aligned to that of your recognised professional association.
- With a shorter registration period, the TPB now has a maximum of four months (previously six months) to process and determine the outcome of a new registration application. If an applicant does not receive a final decision within this timeframe, the application is considered rejected. Applicants have the right of review should their application be rejected.

More information about this can be found here.

Legislation

Administrative Review Tribunal Bills referred to Senate committee

On 8 February 2024, the Administrative Review Tribunal Bill (2024) (the **Bill**) was referred to the Senate Legal and Constitutional Legislation Committee. The Committee's report is due 24 July 2024.

The Bill proposes to establish a new federal administrative review body. The body will be named the Administrative Review Tribunal (the **Tribunal**) and will replace the existing Administrative Appeals Tribunal (**AAT**). The Bill was introduced following public consultation and the development of recommendations relating to the efficiency of the existing AAT model.

The proposed changes were summarised in TaxVine Edition 44 dated Friday 24 November 2023, and in The Tax Institute's prior submissions are available here and here.

More information about the Bill, including the explanatory memorandum, can be found here.

Legislation to raise foreign investment fees for dwellings introduced

On 13 February 2024, the Foreign Acquisitions and Takeovers Fee Imposition Amendment Bill (the **Bill**) was referred to the Federation Chamber. The Bill seeks to enforce higher fees for foreign investment in established dwellings and increase penalties for individuals who leave properties vacant.

The Bill proposes to amend the *Foreign Acquisitions and Takeover Fees Imposition Act 2015* (the **Act**) to increase the maximum fee that can be imposed by the Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (the **Regulations**) to $7 million.

In addition, Schedule 2 to the Bill proposes to amend the Regulations to triple the foreign investment application fees for established dwellings as well as double the vacancy fees for foreign investors who have purchased residential dwellings, including new and established dwellings, since 9 May 2017.

The proposed changes were summarised in last week's TaxVine Edition 3 dated Friday 9 February 2024.

The Treasury Laws Amendment (Foreign Investment) Bill 2024 can be found here.

The Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2024 can be found here.

Local Tax Clubs

1.5 CPD hours per session

Get involved in your local community and discuss topical issues with like-minded peers at your Local Tax Club. First sessions are kicking off soon, so save your seat today!

Sydney

20 February 2024 | **ATO Focus Area** with Jake Berger, Pitcher Partners
Register

Melbourne

22 February 2024 | **Div 7A & UPEs** with Paul Hockridge, CTA, Hockridge Advisory
Register

Adelaide

20 March 2024 | **Fringe Benefits Tax – Navigating tips, traps, and recent developments** with Raoul Stevenson, CTA, Nexia Edwards Marshall
Register

Perth

28 February 2024 | **Trustee duties – Trust deeds obligations** with Yikai Hoe, CTA, Provident Lawyers
Register

Geelong

23 February 2024 | **Div 7A & UPEs** with Paul Hockridge, CTA, Hockridge Advisory
Register

Gold Coast

21 March 2024 | **Trust issues** with John Ioannou, CTA, Macpherson Kelley
Register

Toowoomba

12 March 2024 | **Trust issues** with John Ioannou, CTA, Macpherson Kelley
Register

Townsville

21 March 2024 | **Trust issues** with David Hall, CTA, Findex
Register

ATO Consultation

Advice under development

The ATO is developing advice and guidance on a range of topics that are updated monthly. You can find these topics here.

A list of public advice and guidance issues that have been completed in 2024 can be found here.

Matters under consultation

The ATO is also consulting with the community on a range of other matters. You can find these matters here.

Completed matters

A list of consultation matters registered in 2023 that have been completed can be found here.

A list of consultation matters registered in 2022 that have been completed can be found here.

ATO Public Advice and Guidance

Class Rulings

CR 2024/7 Tamboran Resources Limited – scrip for scrip roll-over

CR 2024/7 was issued on 13 February 2024 and sets out the income tax consequences for the former shareholders of Tamboran Resources Limited who disposed of their shares in Tamboran to Tamboran Resources Corporation and received Tamboran US HoldCo Chess Depositary Interests as consideration under the scheme implemented on 13 December 2023.

This Ruling applies from 1 July 2023 to 30 June 2024.

CR 2024/8 Danakali Ltd return of capital and special dividend

CR 2024/8 was issued on 13 February 2024 and sets out the income tax consequences for shareholders of Danakali Ltd who received the following payments:

- unfranked special dividend of 14.7 cents per share; and
- return of capital of 27.3 cents per share.

This Ruling applies from 1 July 2023 to 30 June 2024.

Product Rulings

GSTR 2002/5A2 Goods and services tax: when is a 'supply of a going concern' GST-free?

This Addendum was issued on 14 February 2024 and amends GSTR 2002/5 Goods and services tax: when is a 'supply of a going concern' GST-free? to update a legislative reference and correct typographical errors.

Items 1 and 2 of this Addendum apply from 1 April 2019. Items 3, 4 and 5 of this Addendum apply from 16 October 2002.

Other Guidance

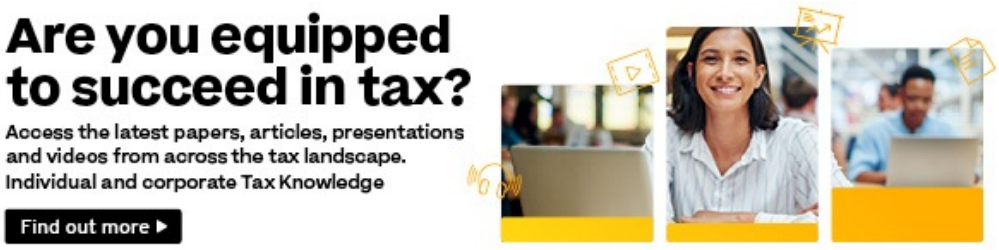
How to apply the last-in-first-out (LIFO) method for the holding period requirement

On 9 February 2024, the ATO updated its website guidance outlining the process of applying the last-in-first-out (**LIFO**) method to determine which shares or interests in shares will be tested to determine if the holding period requirement is satisfied. The requirement plays a key role in

determining whether a shareholder is a 'qualified person' for the purposes of the franking credit trading rules. The LIFO method is an integrity rule that prevents taxpayers from manipulating the holding period requirement of the qualified person rule.

The LIFO method involves grouping primary and related securities held by a taxpayer in the same company. Once the group is established, any shares in the group that you sell are taken to be sold on a last-in first-out basis. The holding period requirement applies to this group and any shares sold during the relevant qualification period are taken to have been acquired at the date of the most recently acquired shares in the group. If (after applying the LIFO method) the shares or interest in shares were not held at risk for a continuous period of at least 45 days (during the relevant qualification period), the taxpayer will not be entitled to the relevant franking credits.

More examples and information about applying the LIFO method (including the process of grouping securities held by connected entities) for the purposes of the holding period requirement can be found here.



Unlock exclusive insights with Tax Knowledge Exchange!

Maximise your effectiveness by equipping yourself with a searchable database of the best in thinking from across the profession.

Choose from two subscription packages that are discounted for members. Opt for the flexibility of pay-by-the-month or empower your team with a corporate subscription.

Discover exclusive content you won't find elsewhere and earn CPD.
Subscribe now and stay ahead in the world of Australian tax.

Cases

Appeal to Full Federal Court – PepsiCo, Inc v FCT [2023] FCA 1490

PepsiCo, Inc v FCT [2023] FCA 1490

Full Court of the Federal Court of Australia, Registry: Victoria

Date: 2 February 2024

The Commissioner (VID74/2024 and VID75/2024) and the taxpayer (VID27/2024) have separately appealed to the Full Federal Court from the Federal Court's decision in PepsiCo, Inc v FCT [2023] FCA 1490.

A summary of the case can be found in TaxVine Edition 46 dated Friday 8 December 2023.

Goods and Services Tax

ANAO report: Management and oversight of fraud control arrangements for the GST

On 12 February 2024, the Auditor-General with the support of the Australian National Audit Office (**ANAO**) released his performance audit report on the ATO's management and oversight of fraud control arrangements for the administration of GST. The audit follows the detection during 2021–22 by the ATO of a significant increase in attempts to obtain false GST refunds.

The report concluded that:

- The ATO's management and oversight of fraud control arrangements for the GST are partly effective.
- The ATO has implemented partly effective strategies to prevent GST fraud, but the framework for assessing and managing GST fraud risk is not fit for purpose.
- The ATO has implemented largely effective strategies to detect and deal with GST fraud but does not have a strategy to deal with large-scale fraud events.
- The ATO's oversight, monitoring and reporting of GST fraud is partly effective, as roles and responsibilities are not clear.

The lack of clarity for roles and responsibilities, inadequate implementation of assurance requirements, and absence of a holistic and contemporary view of GST fraud risks undermines the effectiveness of efforts to prevent, detect and respond to fraud events in a timely manner and minimise fraud losses.

Five recommendations were made to the ATO aimed at strengthening assurance and improving responses to fraud events. The ATO agreed to all five recommendations.

More information about this, including the full report and the recommendations, can be found here.

State Taxes

Tasmanian State Revenue Office: updated guidance on First Home Owner Grant

On 7 February 2024, the Tasmanian Commissioner of State Revenue issued updated Revenue Ruling PUB-FG-2024-1 – First Home Owner Grant Administrative Penalties.

This ruling applies to the *First Home Owner Grant Act 2000* (Tas) (**the Act**), being the Act under which the First Home Owner Grant Scheme in Tasmania is administered. The Act provides the Commissioner with the power to impose administrative penalties in certain circumstances.

The updated version of the Revenue Ruling reorders the content for greater clarity and is supported by additional examples.

More information about this can be found here.

Tasmanian State Revenue Office: guidance on payroll tax

On 7 February 2024, the Commissioner of State Revenue issued Revenue Ruling PTA021v2 – Contractors who ordinarily perform services to the public.

This ruling replaces PTA021 (withdrawn) to address the decision in *Nationwide Towing & Transport Pty Ltd & Ors v Commissioner of State Revenue* [2018] VSC 262. In that case, the Supreme Court of Victoria found that, contrary to PTA021, the Commissioner of State Revenue does not need to be satisfied that a contractor conducts a genuine independent business in order for the exclusion under section 32(2)(b)(iv) of the *Payroll Tax Act 2007* (Vic) to apply.

This ruling removes that requirement and clarifies the application of this exclusion for the purposes of the Payroll Tax Act 2008 (Tas).

More information about this can be found here.

Financial Services Taxation Conference

14–15 March 2024 | Crown Sydney | 11 CPD hours

From transfer pricing and deferred tax, to Pillar 2 and ESG dive into all things financial services, from a uniquely tax-focused point of view.

Putting tax policy topics in the context of real-world economic impact, the Financial Services

Taxation Conference is a must-attend!

Save $200 when you register before midnight on 15 February 2024. Get your tickets today!

Register here | **Find out more**

ATO News

ATO monthly consultation report: December 2023/January 2024

On 13 February 2024, the ATO released its monthly consultation report for December 2023/January 2024 for the following groups:

- Tax Practitioner Stewardship Group
- BAS Agent Association Group
- Tax Profession Digital Implementation Group
- Communication Content Working Group.

The consultation report contains details of:

- consultation matters;
- draft advice and guidance products; and
- recent news from stewardship and other consultation groups.

More Information about this can be found here. Further information on all nine of the ATO's stewardship groups, including key messages, can be found on the stewardship group pages.

Payment-only deferral requests for registered agents

On 12 February 2024, the ATO updated its website guidance regarding payment-only deferral requests for registered agents. A payment-only deferral request can be made for several tax liabilities including income tax, liabilities arising from lodgment of activity statements and fringe benefits tax liabilities.

Registered agents can make a payment-only deferral request if the request:

- is for an existing client;
- includes only documents that have been lodged and processed; and
- meets the requirements under exceptional or unforeseen circumstances.

More information about the process of requesting a payment-only deferral, including the application of the 'exceptional or unforeseen circumstances' test, can be found here.

ATO system maintenance

On 12 February 2024, the ATO updated its website guidance to publish a schedule of planned systems maintenance for the year. The schedule lists the ATO online systems that may be impacted in part or full.

The planned system maintenance for this month is scheduled from 11:30pm AEDT on Friday 23 February 2024 to 7:00am AEDT on Monday 26 February 2024.

The full list of scheduled system maintenance can be found here.

Synthesised text of the Multilateral Instrument and Australian Tax Treaty with the Republic of South Africa

On 9 February 2024, the ATO issued a synthesised text of the Multilateral Instrument signed between the Government of Australia and the Government of Republic of South Africa on 7 June 2017 (**MLI**) and Australia's double taxation avoidance agreement and Protocol with the Republic of South Africa, which entered into force in Australia on 1 July 1999 (**the Agreement**) (as amended by the Amending Protocol signed on 31 March 2008).

The purpose of the synthesised text is to aid in comprehending the implementation of the MLI to the

Agreement and does not hold any legal authority. The legally binding texts of the Agreement and the MLI are the primary sources of law and remain in effect.

More information about the synthesised text of the MLI and the Agreement can be found here.

The Tax Institute

Apart from any fair dealing for the purposes of private study, research, criticism or review, as permitted under the Copyright Act 1968, no part may be reproduced by any process without written permission from The Tax Institute. Unless expressly stated, opinions published in this newsletter are not to be regarded as expressing the official opinion of The Tax Institute, which accepts no responsibility for the accuracy of any of the information contained within it. Whilst every effort is made to provide information that is current, content (including third party content) and links to other websites contained in this newsletter may be subject to change from time to time without any notice. Readers should rely on their own inquiries in making any decisions.