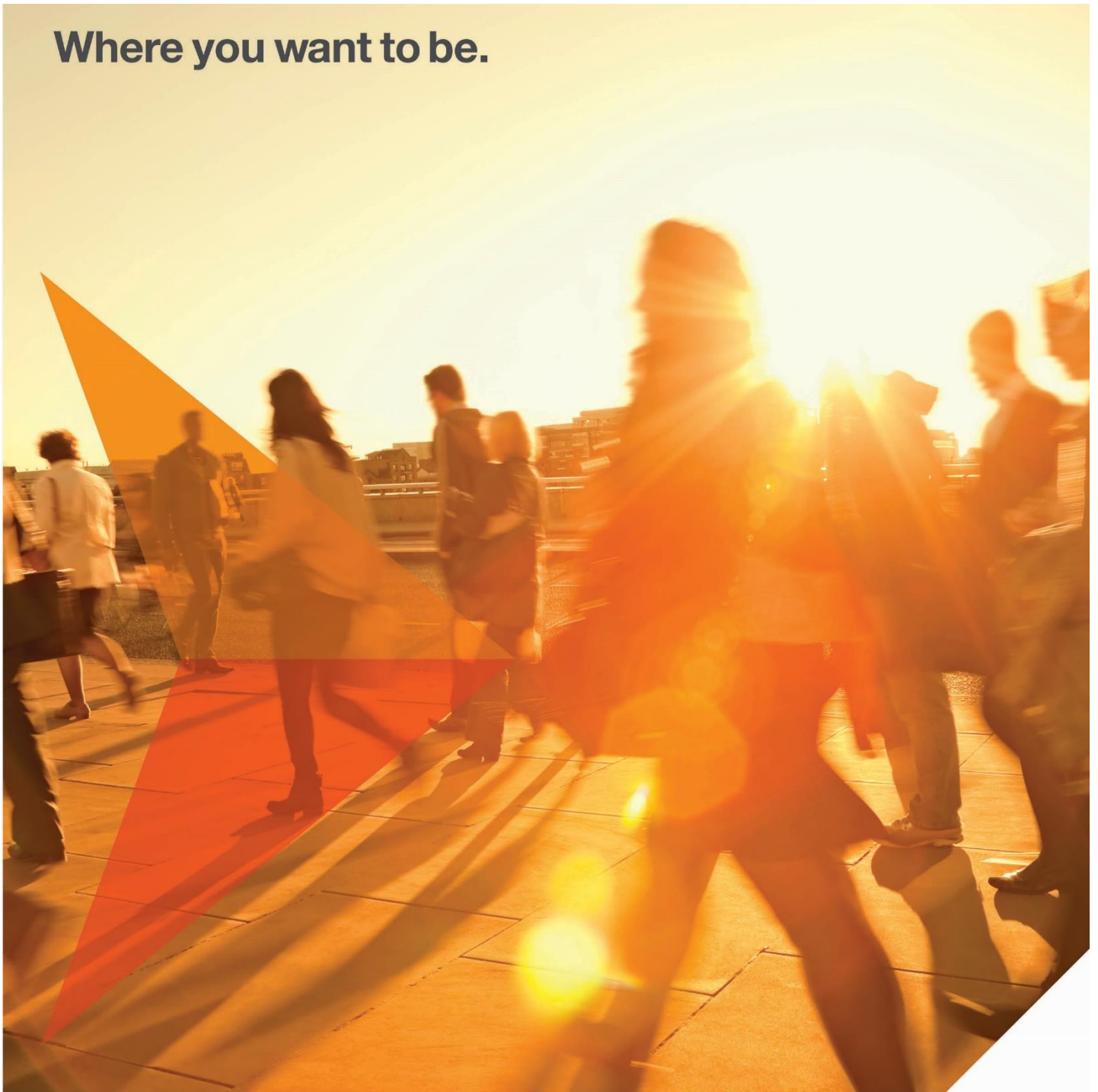


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Monthly Tax Update

March 2020

All the tax updates you need to know in one place. Let us keep you in the know.

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Welcome to the first edition of the Bentleys SA monthly tax update.

We have prepared this document as a single source of tax updates you need to be aware of in your practice. Feel free to contact any one of our team to discuss the issues in further detail.

Your rolling tax agenda

Media in February 2020 was dominated by the aftermath of the bushfires, the implications of Brexit on UK free-trade agreements and concerns about the impact of the Coronavirus on the local economy and international trade. We are continuing to have discussions with our clients on these issues and the potential tax and broader impacts for their business.

We recommend you have the following specific tax issues on your agenda for this month:

Agenda item		Recommendation	Effective date
1	R&D	Review existing R&D and cross-border arrangements to assess impact of new R&D bill and ATO views on intangibles.	Current
2	Anti-hybrids	Review existing cross-border arrangements for compliance with new anti-hybrid rules. We are still seeing issues arise with these rules.	Current
3	Vic & NSW property	Review discretionary trust deeds for trusts owning residential property in NSW and Vic. Determine potential impact of foreign person surcharge. Look at options and flow-on impacts for deed amendments.	Current
4	FBT	Review fringe benefits, especially carparking and entertainment and determine required documentation and process to complete FBT returns.	31 March 2020
5	Directors liability	Review directors' liabilities and insurance in line with new anti-phoenixing law, in particular GST liabilities.	1 April 2020
6	SA Land Tax	Review group property holding structures, identify impacts, understand elections and restructure opportunities. Make sure compliance is completed.	30 June 2020
7	Private company loans	Review client Private company loan strategy ahead of proposed 1 July 2020 start date for law change. Monitor announcements for the change.	30 June 2020
8	Non-resident main residence exemption	Identify clients impacted by removal of main residence exemption for non-residents. Help implement mitigate strategy for affected clients.	30 June 2020
9	Super guarantee shortfall	Review prior year superannuation shortfall amounts and previously disclosed shortfalls for the period 1 July 1992 to 31 March 2018. Prepare submissions where relevant to benefit from super amnesty and avoid increased penalties.	Sept 2020
10	Trust distributions	Monitor future ATO guidance on 'reimbursement agreements' and potential impacts on trust distribution strategies.	TBA

We're happy to discuss any of these issues in more detail with you. We can help you develop a specific tax management plan to mitigate the impact of these changes and identify opportunities for you, your business and your clients.

Business and Corporate General Tax issues

The ATO issued a **Discussion paper** which sets out its proposed methodologies for determining market value when a hybrid note is bought back or a hybrid share is redeemed from an investor who holds the security on capital account. We are consistently seeing more capital raisings using hybrid type instruments to achieve commercial outcomes for investors and the operating company. We can assist you to make sure these instruments remain tax effective.

PBR: Property development: revenue & PBR: Property development: Capital:

In these cases, the taxpayers were inexperienced in developments and previously held the property for other purposes. However, the ATO decided each case differently. These PBRs highlight that taxpayers should always seek advice when looking to do a development where they want to protect a concessionally taxed capital gain.

PBR – Deductibility of legal fees:

concerned fees incurred to defend a claim that insufficient transition occurred following the sale of a business. The fees were considered to be capital in nature due to being incurred shortly after the sale rather than being associated with the carrying on of a business or derivation of income. This ruling reiterates how timing is an important factor when determining the deductibility of expenses.

PBR – Compensation payment – reduction in value of underlying asset: emphasised how a 'look through' approach will be adopted in determining the treatment of compensation payments received where there is a relevant underlying asset. In this ruling, a direct connection was found to exist with the taxpayer's property as the compensation was awarded as a result of the visibility of wind turbines and their impact on the property's value.

Employment Tax issues

FBT guide for employers:

The ATO has released its Fringe Benefits tax – a guide for employers. The guide covers types of fringe benefits, calculating FBT, how to work out and record reportable fringe benefit amounts for employees, record keeping and exempt benefits. The end of the FBT year is

fast approaching, so now is a great time to review any potential fringe benefits and ensure FBT obligations are being met. Key focus areas for the ATO will include motor vehicles, employee contributions, lifestyle assets, entertainment and car parking valuations.

PBR: FBT and VISA expenses:

The ATO ruled that the employer paid costs of a VISA for a person to stay in Australia to work were subject to FBT. Costs of seeking a VISA to come to Australia may be exempt from FBT. This ruling highlights it is important to review all employee related costs when doing your FBT return, not simply those that appear 'private' or 'entertainment' related.

Super Guarantee Amnesty:

The Super Guarantee (SG) Amnesty bill has now passed. Businesses will have 6 months to September 2020 to apply for the amnesty. The amnesty only covers SG shortfalls from 1 July 1992 to 31 March 2018. The benefit of making the disclosure is:

- The SG contributions will be tax deductible;
- The administration component is waived; and
- Penalties are reduced.

Where a disclosure is not made in the amnesty period, the law restricts the ATO's ability to reduce penalties for non-compliance.

GST, Duties, Land Tax and indirect tax issues

Treasury Law Amendments (Combating Illegal Phoenixing) Bill 2020:

The ATO is now able to collect estimates of GST liabilities and make company Directors personally liable for their company's GST liabilities in certain circumstances. It also applies to LCT and WET as these taxes are jointly administered with GST (to commence 1 April 2020).

Corporate cards and GST:

This allows corporate card holders to claim input tax credits without holding a tax invoice in certain circumstances.

PBR: Going Concern exemption:

The ATO ruled that the GST-free going concern exemption for a newly constructed commercial property could only apply where a tenant entered into a lease with the vendor prior to sale. It was not available where the lease was entered into with the purchaser. This ruling highlights it is critical to properly structure arrangements prior to sale if the parties wish to rely on the going concern exemption.

Vic SRO: changes to discretionary trusts and foreign purchaser duty:

The Victorian State Revenue Office has previously had a practical approach to reviewing whether a trust is 'foreign' when considering whether additional duty should apply on a residential property acquisition. From 1 March 2020, this will no longer apply and they will take a strict approach. This means that where a potential beneficiary under the trust deed is a foreign person, the additional duty will apply. Where you have clients who are looking to purchase residential property in discretionary trusts in Victoria in future you should ensure that the trust deeds are drafted to exclude foreign persons. This may have flow-on impacts for groups with other entities interacting with that trusts (which may require further deed amendments).

R&D, Grants and tax concessions

The **Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019** has been referred to the Senate Economics Legislation Committee for **inquiry** and report by 30 April 2020.

The Bill proposes to:

- Increase the R&D expenditure threshold from \$100 million to \$150 million
- link the refundable R&D tax offset to the claimants' corporate tax rates plus a 13.5% premium
- cap the refundability of the R&D tax offset at \$4 million per annum
- increase the targeting of the Incentive to larger R&D entities with high levels of R&D intensity.

This represents a major change for R&D claims. Any company which currently accesses the R&D concession should review how this will impact their future claims.

The **Treasury Laws Amendment (2018 Measures No 2) Bill 2019** amends the venture capital and early-stage investor provisions to ensure that they operate as intended in relation to CGT transactions, managed investment trusts (MITs) and the early-stage investor tax offset. It also amends the definition of public trading trusts. These concessions are very favourable for attracting capital investment. We can help you review your funding structure and capital raising where you might be able to access the concessions.

In **Coal of Queensland Pty Ltd v Innovation and Science Australia [2020] AATA 126** the AAT has held that certain coal mining-related activities conducted by a taxpayer, holding an exploration permit covering an area in central Queensland known to contain unexploited coal deposits, were not "core R&D activities".

International Tax issues

PCG 2020/1:

The ATO has released a practical compliance approach in relation to transfer pricing issues related to projects involving the use in Australian waters of non-resident owned mobile offshore drilling units (such as drill-ships, drilling rigs). Australia's income tax law places an onus on taxpayers to self-assess their compliance with the tax transfer pricing rules on the basis that their related party arrangements represent a set of 'arm's length conditions' so that no transfer pricing benefit result. We can assist you to review your related party transactions and put in place appropriate documentation to manage the transfer pricing risk.

OECD publishes G20 report:

This report provides updates in relation to tax challenges arising from digitalisation, tax transparency, implementing BEPS and supporting developing countries.

The **Treasury Laws Amendment (2020 Measures No 1) Bill 2020** was introduced into the House of Reps. It expands the definition of significant global entity (SGE) as well as modifying the rules that identify which entities must undertake for country by country reporting. Where a company is part of an SGE, it substantially increases its compliance obligations in Australia including a requirement to lodge general purpose financial statements.

The High Court has refused the taxpayer's application for special leave in *Burton v FCT*. The taxpayer in that case was not entitled to a full foreign income tax offset for US tax paid on discounted capital gains on the sale of investments, as only half the capital gains had been included in his assessable income. You should review distribution statements and foreign tax calculations to ensure you only claim the reduced foreign tax offset relating to overseas capital gains.

Cross-border income from intangibles:

The ATO identified arrangements being put in place which effectively shifted income from intangible assets offshore. This predominantly related to the creation of intangibles through R&D where Australia was not appropriately compensated for its contribution. Where you have clients which enter into cross-border R&D arrangements you should ensure that they have reviewed the arrangement's compliance with Australian transfer pricing rules. We work closely with our R&D team to put in place compliant R&D arrangements and can assist clients who may not have properly reviewed or documented their arrangements.

OECD: BEPS - Digitalisation:

The OECD has released information on agreed negotiation for a framework on how to tax digitalisation of activities of multi-national enterprises where there is no physical presence in a jurisdiction.

Individual Tax issues

Bourne and Commissioner of Taxation [2020] AATA 190:

The Taxpayer was the sole director of a Company. The company issued a payment summary to the Director for the 2015 year. The director did not lodge the 2015 tax return by the due date. This resulted in the ATO

issuing a default assessment of income tax for the 2015 year. The Tribunal concluded the taxpayer did not maintain sufficient financial records to support the fact that the amounts received were not payments relating to salary and wages. This case highlights the importance of record keeping and ensuring the necessary documents are kept on file to support any transactions and tax positions adopted.

PBR Deductions for the removal of trees and pruning of trees and shrubs:

The Taxpayer was seeking a deduction for the removal of trees to ensure safety of the tenants living in the Taxpayers rental property. The Commissioner determined that the expense was capital in nature as it was a one-off expense that provides an enduring benefit, being, the removal of a potential hazard.

The Treasury Laws Amendment (2019 Measures No 3) Bill 2019

proposes to amend the Tax Act to ensure the tax concessions available to minors in relation to income from testamentary trusts only apply in respect of income generated from assets of the deceased estate that are transferred to the testamentary trust (or the proceeds of the disposal or investment of those assets). You should review assets in existing testamentary trust to ensure that future distributions will not be taxed at a higher rate to beneficiaries.

PBR: Employee legal expenses:

The taxpayer in this case had action taken against him by a former employer for breaching confidentiality and restraints on changing employment. The employee incurred legal expenses in defending the claim. The expenses were not deductible to the employee. Whilst maybe not possible in this case, it is quite often possible to structure arrangements which are not tax deductible to one party as deductible to another who may incur costs in a different capacity.

Legislation: exemption for bushfire payments:

The government has passed legislation which exempts certain government paid bushfire relief payments and adds two new deductible gift recipients. You will need to be careful to ensure that clients only claim donations to organisations which are deductible gift recipients.

PBR – Self-education expenses:

involved a career change before the taxpayer returned to their former profession. As part of the re-admission process, the taxpayer was required to undertake a course due to the time that had passed since they last practiced. This ruling emphasises that where expenses are incurred to put someone in a position to earn future income (and not current earning activities) they will generally be viewed as occurring at a point too soon to be deductible.

Tax Administration issues

MyGovID:

A reminder that MyGovID is replacing Auskey and after Friday 27 March you'll no longer be able to use AUSkey or Manage ABN Connections to access online services such as the Business Portal.

Tax Practitioners Board looking to revise professional education requirements:

The TPB has released a discussion paper, in which they are looking to revise the professional education requirements for registered tax practitioners. Closing date for submission is 18 March 2020.

External reporting of tax debts:

The government made a declaration that the ATO will be able to disclose debts to external reporting agencies for taxpayers with outstanding tax debts exceeding \$100k and more than 90 days overdue (where no payment arrangement is currently in place)

Contact Bentleys SA

We're happy to discuss any of these issues in more detail with you. We can help you develop a specific tax management plan to mitigate the impact of these changes and identify opportunities for you, your business and your clients.

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