client alert | explanatory memorandum

April 2023

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 27 March 2023.

Keeping you informed about the Federal Budget

The Federal Budget is expected to be handed down on Tuesday 9 May. The Client Alert team will, as usual, work to bring you a special **Budget Extra** edition that outlines the key announcements to assist you in dealing with your clients' queries. You can expect to receive it by the morning of Wednesday 10 May, after the Treasurer presents the Budget to Parliament on Tuesday evening.

Cheaper child care on the horizon

Families struggling with the current cost of living crisis could soon have some relief with cheaper child care coming mid-year. The recently passed child care subsidy reforms were a component of Labor's election platform, with a promise to make early childhood education and child care more affordable. According to the government, with the passing of the legislation, 96% of families with children in early childhood education and care will benefit, with no family being worse off.

From 1 July 2023, the rate of child care subsidy (CCS) that Australian families are entitled to receive will increase. Currently, the highest CCS percentage families can receive for their first child in care is 85%. With the passing of the legislation, families that earn up to $80,000 will receive a CCS rate of 90%, which will taper down until it reaches 0% for families earning $530,000.

"A lot of Australians want to work more, but if they do a lot of that pay is gobbled up by child care costs. It means it's not worth it. At the moment, 60 per cent of mothers with young children work part-time hours. Treasury estimates the Government's child care reforms will add the equivalent of up to 37,000 extra full-time workers to the economy in 2023–2024", said the Hon Jason Clare MP, Minister for Education.

Currently, the highest CCS rate is reserved for families with a combined income of up to $72,466. Then between the family income thresholds of $72,467 and $177,465 the CCS percentage reduces by 1% for every $3,000 of income the family earns. Effectively, this drops the CCS percentage down to 50% at the family income of between $177,465 and $256,755.

In addition, families that presently earn between $256,756 and below $346,755 receive a CCS of between 50% and 20%. Those that earn between $346,756 and $356,755 receive a 20% rate for CCS and those that earn $356,756 or more receive no child care subsidy at all from the government.

With the passing of the latest legislation, families that earn up to $80,000 will receive a CCS rate of 90%, which will taper down by 1% for each additional $5,000 of family income until it reaches 0% for families earning $530,000. The existing measure that provides a higher CCS rate for families with multiple children under five years old in child care will continue to apply, so that for second and younger children five years and under in care, families will receive an additional 30% up to a maximum of 95%.

The new rates will apply from the first CCS fortnight starting on 1 July 2023 and the base rate threshold of $80,000 will be indexed annually with CPI increases, although the amount will not be indexed in 2023.

Example

Kim and Valerie have one child aged under five who goes to child care. They have a family income of $346,755. Under the current system, the CCS percentage they receive is 20%, which generally means that the government will subsidise 20% of their child care fees (although it may be lower in reality, as there is a 5% withholding and the subsidy is also capped at a maximum of $12.74 per hour). Under the new CCS system coming in 1 July 2023, Kim and Valerie will be able to receive a higher CCS of 36.65% for their child care fees at the same family income.

The legislation also extends the FBT exemption for staff discounts to include cooks employed or otherwise engaged in child care services.

It is estimated by the government that the CCS reforms will cut the cost of child care for around 1.26 million families. It is hoped that by making these reforms, many more parents will re-enter the work force or have the opportunity to work more if they choose.

Source: www.servicesaustralia.gov.au/changes-if-you-get-family-payments?context=41186
https://ministers.education.gov.au/clare/more-million-families-benefit-more-affordable-early-learning-and-care

FBT reminder: electric cars exemption

It's FBT time again, and for the 2022–2023 FBT year it's important to remember that businesses may be able to get an exemption for certain eligible electric vehicles made available for the private use of employees. To meet the conditions for exemption, the car must be either a battery electric vehicle, a hydrogen fuel cell electric vehicle or a plug-in hybrid electric vehicle used for the first time on or after 1 July 2022, even if it was held (eg owned or leased) before that date, and must be valued under the luxury car tax (LCT) threshold for fuel efficient cars.

For the 2022–2023 FBT year (1 April 2022 to 31 March 2023), businesses may be able to receive an FBT exemption for certain eligible electric cars and associated car expenses which could lower their tax bill. There are a few hurdles to jump regarding eligibility, including the type of car, the cost, and when it was first held and used.

To meet the conditions for exemption, the vehicle must be either a battery electric vehicle, a hydrogen fuel cell electric vehicle or a plug-in hybrid electric vehicle designed to carry a load of less than one tonne and fewer than nine people (including the driver). It should be noted that for FBT purposes, motorcycles and scooters are not considered to be cars and therefore would not be eligible for the exemption even if they happened to be electric.

Businesses that own plug-in hybrid electric vehicles need to be aware that these vehicles will not be considered a zero or low-emissions vehicle from 1 April 2025 unless certain requirements are met. The use of the plug-in hybrid electric vehicle must have been exempt before 1 April 2025 and the business must have a binding commitment (ie novated lease) to continue providing private use of the vehicle on and after 1 April 2025. It should be noted that any options to extend a lease (ie commitment) are not considered binding, thus no exemption would apply beyond the original binding period.

Unless the preceding conditions are met, plug-in hybrid electric vehicles will not be exempt from FBT from 1 April 2025.

Any eligible electric vehicles must also be used for the first time on or after 1 July 2022, even if they were held (eg owned or leased) before that date. For the purposes of the exemption, an electric vehicle is considered to be "used" when it is actually used or is available for use by any entity or person. This means that businesses that have purchased secondhand cars that might otherwise have been eligible for an FBT exemption may in fact not be.

Example

Ian purchased an electric car through his company, Hyphen Co, that was not subject to LCT on 1 May 2022. Due to supply chain issues, the car was not delivered until 20 June 2022. Ian made the car immediately available for the private use of his employees, Matt and Jenny. After a few months of use, Ian decides the electric car doesn't suit their business purposes and sells the car to another company, Snape Co, on 7 September 2022. Snape Co in turn makes the car immediately available to its employees from that date.

In this scenario, both Hyphen Co and Snape Co would be subject to FBT given that the car was first used on 20 June 2022, which is before 1 July 2022. If, however, Hyphen Co had waited until 2 July 2022 to make the vehicle available for the private use of its employees, any car fringe benefits for both Hyphen Co and Snape Co would be exempt from FBT.

The last element to determine whether a particular vehicle is eligible for the FBT exemption is the value of the vehicle. The value of the car must be below the LCT threshold for fuel efficient vehicles at the time it is first sold in a retail sale and in any subsequent sale. Businesses that purchase secondhand vehicles will need to determine if it was subject to LCT at any time in the past. The LCT threshold for fuel efficient vehicles for the 2022–2023 financial year is $84,916.

If an electric vehicle meets all of the conditions to be an eligible vehicle for FBT exemption, car expenses such as registration, insurance, repairs and maintenance, and the fuel/electricity to charge cars, will also be exempt. However, it should be noted that a home charging station is not considered a car expense associated with providing a car fringe benefit, so those costs will not be exempt. Businesses will also need to

include the value of any eligible electric cars benefits provided when working out whether an employee has a reportable fringe benefits amount.

Source: www.ato.gov.au/Business/Fringe-benefits-tax/Types-of-fringe-benefits/fbt-on-cars,-other-vehicles,-parking-and-tolls/electric-cars-exemption/

Tax-records education direction measure now in place

Late in 2022, amendments to the tax law passed Parliament that, among other things, included a measure to allow the ATO to issue a "tax-records education direction" where the Commissioner of Taxation reasonably believes that an entity has failed to comply with one or more specified record-keeping obligations. As an alternative to imposing a financial penalty, such an education direction will require the entity to complete an approved record-keeping course. Successful completion of the course will mean the relevant entity will no longer be liable for a penalty.

This measure came into effect on 13 March 2023 and as a result, Practice Statement Law Administration PS LA 2005/2 relating to the penalty for failing to keep or retain records has now been updated to include the new ATO power. In addition to general principles in administering a penalty for failing record-keeping obligations, the practice statement contains guidance on eligibility for the tax-records education direction, factors the ATO will consider in that assessment, and how to comply with such a direction.

It should be noted that the "tax-records education direction" does not apply to Pt X of the *Fringe Benefits Tax Assessment Act 1986* or Div 900 of the *Income Tax Assessment Act 1997*. It also does not apply to the *Superannuation Guarantee (Administration) Act 1992*, although a similar power already exists for not complying with super guarantee record-keeping obligations within the Commissioner's powers.

According to the ATO, the purpose of the tax-records education direction is to help educate businesses about their tax-related record-keeping obligations. This type of direction will only be issued to entities that are carrying on a business, and will be best suited to small business entities. A direction to educate will most likely be issued in cases where the ATO believes an entity has made a reasonable and genuine attempt to comply with, or had mistakenly believed they were complying with, their tax record-keeping obligations.

Factors the ATO will consider when deciding whether an education direction is appropriate include:

- knowledge gaps within the business which may benefit from the completion of a course;
- inappropriate records kept due to unintentional mistakes or digital illiteracy;
- whether genuine attempts have been made to comply with tax obligations;
- that the entity has not been issued an education direction previously;
- that the entity is new to business (ie trading less than two years); and
- that the entity has cooperated with the ATO regarding information requests.

The ATO notes that entities that have been or are disengaged from the tax system or deliberately avoiding obligations to keep records will not be eligible for this alternative to penalties. Factors that point to disengagement or deliberate avoidance include poor compliance history, poor engagement with the ATO regarding information requests, deliberate loss or destruction of documents, or fabrication of documents.

Once an education direction has been issued, the ATO is able to vary the terms if certain circumstances arise (eg if a course is unavailable, in the case of a natural disaster, etc). The entity can also request a variation, such as an extension, in writing, before the end of the period specified in the direction. To help businesses understand record-keeping obligations, the ATO states that all "reasonable" extension requests received before the end of the specified period should be granted.

To comply with the education direction, a relevant individual to the entity (a director, public officer, partner, etc), must be able to show evidence that they have completed the ATO-approved online record-keeping course by the end of the specified period. Successful completion of the course by the due date means the entity will no longer be liable to a penalty. Conversely, if the appropriate course is not completed by the due date, the entity will be liable to a penalty of up to 20 penalty units (currently $5,500).

Source: www.ato.gov.au/law/view/view.htm?docid=%22PSR%2FPS20052%2FNAT%2FATO%2F00001%22
www.ato.gov.au/business/record-keeping-for-business/index---record-keeping-for-business/

Have you checked for lost and unclaimed superannuation?

The ATO has recently reported there is now $16 billion in lost and unclaimed super across Australia. This is an increase of $2.1 billion since last financial year, and the ATO is urging Australians to check their MyGov account to see if some of the money is theirs.

Super becomes "lost super" when it's still held by the fund but the member is uncontactable or the account is inactive. Australian funds currently hold $10.4 billion in lost super.

All lost member accounts with balances of $6,000 or less are transferred to the ATO, which means the ATO is holding large sums of money waiting for people to claim it. Super providers are also required to report and pay unclaimed super to be held by the ATO once the money meets certain criteria.

The ATO currently holds $5.6 billion in super, an increase of $1.6 billion (40%) since 2019.

Deputy Commissioner Emma Rosenzweig said finding your lost or unclaimed super is easy and can be done in a matter of minutes.

"Super is one of the most important investments many Australians will have during their lifetime, which is why we want to reunite hardworking Australians with what is rightfully theirs. When it comes to protecting your financial future, every bit counts", said Ms Rosenzweig.

"People often lose contact with their super funds when they change jobs, move house, or simply forget to update their details. This doesn't mean your super is lost forever – far from it. By accessing ATO online services through myGov, you can easily find your lost or unclaimed super."

While the ATO says it's doing all it can to get this money back where it belongs, this relies on people keeping their contact information up to date. The best thing you can do to ensure you're getting what you're entitled to is check that your super fund and MyGov account have your current contact information and correct bank account details.

The new data from the ATO also shows that almost one in four Australians hold two or more super accounts, which can contribute to forgetting about or losing super. If you've unknowingly got multiple accounts, you could possibly be losing hundreds of dollars a year to fees and duplicated insurance costs. If you're unsure whether to consolidate your accounts, check with your super funds, which can advise if there are any exit fees and whether you'll lose any valuable insurance.

For information on how to manage super and view super accounts, including lost and unclaimed super, visit ato.gov.au/checkyoursuper.

Source: www.ato.gov.au/Media-centre/Media-releases/Check-your-myGov-account-for-your-share-of-$16-billion-in-lost-and-unclaimed-super/
www.ato.gov.au/Super/Super-funds-newsroom/Reporting-and-obligations/Super-data-update--lost,-unclaimed,-multiple-accounts-and-consolidations/

ASIC: insurance in super improvements

The Australian Securities and Investments Commission (ASIC) has released results of its recent review on the progress by some super trustees to improve arrangements for life insurance in their super funds. The review was conducted as a follow-up to issues first identified in 2019, when ASIC found that some super trustees offered insurance that unnecessarily erodes a member's retirement balance, inappropriate coverage of insurance due to restrictive definitions and exclusions, and unreasonably onerous or lengthy claims handling processes. Overall, the review has concluded that while the changes observed are a positive step, trustees need to continue improving how they monitor and respond to those risks.

To find out whether improvements had been made in the industry, ASIC used its compulsory information-gathering powers to examine the actions of 15 selected trustees. In total, approximately three million super accounts in these trustees' funds had death and/or total and permanent disability (TPD) cover, and approximately 800,000 accounts had income protection (IP) cover at 30 June 2022. This information was further supplemented with industry-level data from the Australian Prudential Regulation Authority (APRA) and the Australian Financial Complaints Authority (AFCA) to gauge the overall level of improvement.

In terms of restrictive TPD definitions previously criticised by ASIC as not meeting the needs of a broad range of members, this time around the regulator found that out of the 15 trustees, 12 had either amended the restrictive definitions or had changed eligibility criteria whereby claims were reviewed under an "activities of daily living" (ADL) definition. The remaining three trustees were in the process of making these changes.

ASIC noted that across the super industry, the share of TPD claims assessed under an ADL definition has fallen to 1.3% and is likely to fall further as the changes take effect.

In relation to claims handling, ASIC found that most trustees had made changes to improve their claims processes, including making it easier for members to lodge claims and providing clearer communications about what to expect during the process. In addition, all 15 trustees are reviewing declined claims decisions to test whether their insurers have correctly applied the terms of the insurance policy and most trustees are regularly monitoring their insurers' compliance with industry codes.

Although there is an overall improvement in claims handling, ASIC's report highlights that only 10 trustees also analysed withdrawn claims and complaints to identify and address frictions in the claims handling process.

The last area examined by ASIC in the review was improvements in communications to help fund members understand their insurance and make appropriate decisions. It found that most of the 15 trustees have made changes to member communications in response to complaints analysis, and have taken some steps to more clearly explain when and how different terms and conditions apply, including by adding explanations to insurance guides and annual insurance statements.

Overall, the report concluded that while the changes observed are a positive step towards reducing risks of members receiving insurance that does not meet their needs or paying for cover they cannot claim on, trustees need to continue improving how they monitor and respond to those risks. ASIC says it will continue to work closely with APRA to drive better practices in the super industry, and will use its regulatory powers where trustees and insurers are not complying with their obligations.

Source: https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-076mr-superannuation-trustees-urged-to-improve-insurance-outcomes-for-members/
https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-760-insurance-in-superannuation-industry-progress-on-delivering-better-outcomes-for-members/

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Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668
PO Box 3502, Rozelle NSW 2039

Tel: 1800 074 333

Email: SupportANZ@thomsonreuters.com

Website: www.thomsonreuters.com.au