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PRACTITIONER ARTICLE

Navigating the skies – a new tax dilemma for FIFO workers and their employers

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In the worlds of the miners, mining services companies, transport companies and other businesses engaging fly-in-fly-out (FIFO) workers, a new crossroad has emerged following a recent decision by the Federal Court in *Bechtel Australia Pty Ltd v FC of T* 2023 ATC ¶20-869; [2023] FCA 676.

Some businesses must now choose to pay their workers more (to cover the flights and other transport) or pay fringe benefits tax (FBT) on the transport costs. Affected businesses should review their employment practices and model the financial impact of this choice pending the outcome of the taxpayer's appeal to the Full Federal Court which was filed on 20 July 2023.

FIFO practices

FIFO workers are a necessity dictated by the remote locations of mining, oil and gas operations.

When a FIFO worker is rostered from a major airport (say, Perth or Brisbane), the employer compensates the worker for the duration of the flight (and possibly even check-in and waiting time) to the work site, and similarly in reverse. However, when the FIFO worker is rostered at the work site, the employer avoids remunerating the worker for the flight from the major airport to the work site, resulting in significant cost savings.

Somewhat surprisingly, both cases fall within the FBT rules. The transport provided qualifies as either an expense payment fringe benefit or a residual fringe benefit, depending on how payment is made and the transport provided.

Obviously, practices will differ between employers and workers, so consideration will need to be given to whether these differences have an impact.

Deciphering the rostering riddle

The key to understanding the FBT consequences lies in where a worker's roster commences and ends.

In this case, Bechtel chose the second approach, rostering its FIFO workers on and off at the Curtis Island LNG plant, off Gladstone, Queensland. This meant that it provided its FIFO workers flights from major airports to Gladstone airport, and then a series of bus and ferry rides to reach the temporary accommodation on Curtis Island, and then in reverse when workers left.

Bechtel argued that the "otherwise deductible rule" applied to reduce the taxable value of the fringe benefits to nil. The rule applies where, had the worker incurred the relevant expenditure themselves, the expenditure would have been deductible to the worker. Thus, the FBT treatment for Bechtel turned on whether its FIFO workers would be entitled to claim a tax deduction for the flights and ground transport costs if they had incurred those costs themselves.

The Court held that the workers would not be entitled to a deduction (and therefore Bechtel would be liable for FBT) because those costs were incurred before they commenced work, not during the course of income producing activities. Think about this like the bus or train or ferry you catch to work – the bus, train and ferry fares are not deductible because you have not yet commenced your working activities (even though you need to incur the expenditure to get to your work). This turned solely on where the FIFO workers were rostered on and off – at the work site.

By contrast, in a 2015 decision of the Federal Court in *John Holland Group Pty Ltd v FC of T* 2015 ATC ¶20-510; [2015] FCAFC 82, the workers were rostered on and off when they arrived at the major airport closest to their usual place of residence. Thus, the travel from that airport to the relevant work site was in the course of their income producing activities – hence, the otherwise deductible rule applied to reduce the taxable fringe benefit to nil.

Importantly, in *Bechtel*, the Court also observed that the rules and policies that applied to FIFO workers during the course of their travel were not enough to displace the above conclusion.

Therefore, employers must carefully weigh up the financial costs associated with alternative rostering locations when choosing where to roster FIFO workers on and off.

FIFO exemption

Readers may be aware that there are exemptions within the FBT law for accommodation-related benefits and food provided to FIFO workers and their families. These exemptions do not extend to flights or other forms of transport. A specific exemption for travel must satisfy several conditions, one of which is that the travel be to enable the worker to get to his or her usual place of work at a "remote" location. Some businesses, like Bechtel, may not be able to satisfy this condition.

As the Court itself noted, this creates a gap between what appears to be a policy decision to provide exemptions for benefits provided to FIFO workers and what is in fact exempted. Depending on the outcome of the appeal, there may be opportunity for industry bodies to lobby Government to seek changes to the FBT law to address this gap.

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PRACTICE ALERT

Guideline on deductions for additional running expenses incurred while working from home updated

The ATO has updated its guideline on the method for taxpayers to calculate their deduction for certain additional running expenses while working from home from 1 July 2022.

The minor update to PCG 2023/1 clarifies the availability of the fixed rate method in circumstances where some, but not all, additional work from home expenses have been paid or reimbursed by the employer.

Source: *Practical Compliance Guideline* PCG 2023/1 Claiming a deduction for additional running expenses incurred while working from home – ATO compliance approach, ATO website, 17 August 2023, accessed 17 August 2023.

INCOME TAX

Burden of proof too heavy for Buzadzic to bear

The Federal Court has dismissed an appeal against an AAT decision (2021 ATC ¶10-606; [2021] AATA 4820) that upheld default assessments issued by the Commissioner in respect of unreported income and penalties imposed on the basis of fraud or evasion. The court held that the AAT did not, as the taxpayer contended, apply the wrong test in respect of the burden of proof or make conclusions that were unreasonable. Nor did the AAT misconstrue or misapply s 6-5 of ITAA 1997 (ordinary income) or item 5 of s 170(1) of ITAA 1936 (fraud or evasion).

Facts

The taxpayers in the matter before the AAT were a husband and wife (Mr and Mrs B). During the 2007 to 2013 income years they were associated with at least 16 companies and 3 trusts that carried on various business or investment holding activities. The taxpayers each lodged income tax returns that included trust distributions and salaries paid by the companies and trusts.

Following an audit, the Commissioner identified amounts that he considered were unreported income. In relation to Mr B, these amounts comprised unexplained bank deposits, unverified credit entries credited to his loan account in the books of entities associated with him, interest on a term deposit, a capital gain from the realisation of shares and a deemed dividend under Div 7A of ITAA 1936. In relation to Mrs B, the amounts were unexplained bank deposits.

The Commissioner amended each of the taxpayers' assessments for the relevant years to include the undeclared amounts as income and imposed penalties on the basis there had been fraud and/or evasion. Mr B conceded that the undeclared interest amounts and the undeclared capital gain were assessable but claimed there had not been any fraud or evasion. On the taxpayers' objections, the Commissioner conceded that a small number of assessed amounts had been adequately explained but otherwise maintained the assessments. The taxpayers then sought review.

AAT decision

At first instance the AAT affirmed the objection decisions in relation to Mr B but set aside those in relation to Mrs B. The AAT held that Mr B did not discharge the onus of proving the correct amount of his taxable income. Apart from a small minority of instances, Mr B did not explain the sources of the deposits in his bank accounts or the credits to his director loan accounts. In particular, the evidence provided by Mr B in relation to the distributions made to him and how funds flowed to him from his related entities was not sufficient to conclude that the amounts identified by the Commissioner were not income or otherwise assessable to him.

Furthermore, there was not a sufficient foundation on which to conclude that the fraud or evasion opinion formed by the Commissioner ought not to have been formed, or to conclude that the penalty decision should have been made differently. However, there was uncontradicted evidence that Mrs B was a stay-at-home parent whose involvement in the family business was limited to acting at the direction of Mr B and that the amounts deposited in her accounts actually belonged to Mr B.

From that decision Mr B appealed to the Federal Court on various grounds, including:

- that the AAT applied the wrong test for burden of proof under s 14ZZK(b)(i) of TAA 1953 (essentially that the AAT applied too high a standard of proof) and/or that the AAT's decision that Mr B had not discharged the burden of proof was unreasonable (Grounds 1 and 2)
- that the AAT misconstrued and/or misapplied s 6-5 of ITAA 1997 by presuming that "unexplained" bank deposits and "unverified" credit entries were income on ordinary concepts unless shown to be of a non-income character (Ground 3)
- that the AAT erred by failing to exclude deposits, credit entries and other amounts that were explained or shown to be erroneous from the assessments (Ground 4)
- that the AAT misconstrued and/or misapplied item 5 of s 170(1) of ITAA 1936 (relating to the opinion that there had been fraud or evasion) and/or applied the wrong test for burden of proof or made an unreasonable finding in relation to that provision, with Mr B claiming that the proposition that the taxpayer bore the onus of showing that the opinion of fraud or evasion should not have been formed operated oppressively and rendered the statutory time limits to amend assessments effectively redundant (Grounds 5, 6 and 7)
- that the AAT misconstrued and/or misapplied the penalty provisions and/or made unreasonable findings in relation to penalties (Grounds 8, 9, 10, 11 and 12)
- that the AAT failed to consider certain grounds of objection and submissions in relation to penalties and their potential remission (Ground 13)
- that the AAT made unreasonable findings of fact and/or that there was no evidence or proper basis for certain findings (Grounds 14 and 15), and
- that the AAT failed to afford Mr B procedural fairness in that it failed to properly consider the evidence he tendered and/or to give it proper weight (Ground 16).

Decision

The Federal Court (Moshinsky J) determined that none of the grounds of appeal were made out and dismissed the appeal. In relation to Grounds 1 and 2, Moshinsky J held that Mr B had not established that the AAT fell into error by adopting or applying too high a standard of proof. It was clear from the AAT's reasons that it correctly understood that: (a) Mr B bore the burden of proof, (b) this required him to show that the assessments in issue were excessive, and (c) the standard of proof was the balance of probabilities. Further, Mr B had not demonstrated that the AAT erred in the way that it applied these principles.

In respect of Ground 3, Moshinsky J said that was inconsistent with the accepted principles of the standard of proof to contend, as Mr B submitted, that it was incumbent on the Commissioner to show that particular items that he included in a taxpayer's taxable income were income according to ordinary concepts before the taxpayer was put to proof to the contrary. Mr B had not demonstrated that the AAT adopted a meaning of "income" that was contrary to established authority. Mr B's submissions in relation to Ground 4 were also inconsistent with the established principle that it was incumbent on the taxpayer to demonstrate the true amount of their taxable income. It was not enough for him to explain some of the relevant deposits or credit entries; he needed to demonstrate the true amount of his taxable income in order to demonstrate that the amounts in the assessments were excessive.

In finding that Grounds 5, 6 and 7 were not made out, Moshinsky J said that the AAT provided clear and logical reasons for reaching the conclusion that Mr B had not demonstrated that the Commissioner should not have formed the view that there had been fraud

or evasion. That conclusion was open on the evidence and Mr B's challenge to who bore the onus of proof was to be rejected. Nor did the AAT misconstrue the notion of "intentional disregard of a taxation law" (Grounds 8, 9, 10, 11 and 12). It provided clear and logical reasons for its conclusion, which was open on the evidence.

In relation to Ground 13, Moshinsky J said that, although the AAT did not expressly refer to certain contentions or provisions, its findings and conclusions encompassed findings and conclusions on those contentions and provisions. It was implicit in the AAT's findings and conclusions that it considered Mr B had not established the elements of either s 284-75(5) or (6). The AAT did not fail to consider these matters or whether the penalties should be remitted. Mr B's contention that there was no evidence to support, or no proper basis for, certain findings was also to be rejected (Grounds 14 and 15). Justice Moshinsky concluded by finding that the AAT did not fail to consider relevant evidence (Ground 16), noting that the weight to be given to evidence was a matter for the AAT.

Source: *Buzadzic v FC of T* 2023 ATC ¶20-876; [2023] FCA 954, 16 August 2023.

Entrepreneurial partner of accounting firm scammed by partner in life

The AAT has held that over $18 million "incurred" by a taxpayer by way of interest on borrowings to fund a non-existent casino junket business promoted by his girlfriend was not deductible.

Facts

The taxpayer was a lawyer and chartered accountant. He was a partner in an accounting firm for 18 years until he began working full-time in an agribusiness conducted by his family trust in 2005. By then he had become involved in a "casino junket" business with K, his girlfriend at the time. Due to his position at the accounting firm, it was agreed that K would conduct that business.

The taxpayer's evidence was that it was K's role to register as a junket operator, deal with the casinos and cultivate gambling contacts in ethnic communities who would then be registered with the casinos. It was his role to obtain external funding for the venture. He claimed to have advanced nearly $780,000 of his own cash in late 2004 or early 2005 and obtained loan advances from friends and associates who were interested in participating in the casino junket opportunity. Interest was payable on the loans at up to 30% per annum to reflect the unsecured nature of many of the loans. The interest was to be paid out of the junket operation's income, with the net income remaining to be split 50/50 between him and K.

Up until early 2008 K provided the taxpayer with paperwork that suggested the business was successful and made monthly payments in cash that he would return to lenders. When those payments ceased in April 2008 the taxpayer realised that K had scammed him and the lenders – there had never actually been a business. Amounts due in respect of principal and interest on the various loans were thereafter unpaid, or not fully paid.

The taxpayer lodged returns for the 2008 and 2009 income years that recorded no tax payable and reported taxable income for the 2010 and 2011 years that was sourced from "cleaning". The taxpayer was issued with amended assessments for those 4 years to reflect taxable income he derived from personal services provided to the family business. The Commissioner made a finding of fraud or evasion pursuant to s 170 of ITAA 1936 in respect of these years enabling him to disregard the statutory time limit that otherwise applied. Default assessments were also issued to the taxpayer in respect of the 2012, 2013 and 2014 years, and amended assessments with respect to the 2015 and 2016 years, to reflect underreported personal services income.

The taxpayer objected to the assessments in respect of the 2008 to 2016 years as well as associated penalty assessments. It was the Commissioner's case that the taxpayer should have reported $6 million paid by the family company to his family trust in respect of work carried out by him over the years in question. The taxpayer accepted that that amount was assessable but claimed he was entitled to deductions exceeding $18 million over the 9-year period in respect of interest incurred (but mostly not paid) during those years on the funds advanced by lenders.

The taxpayer accepted that he could not claim the deductions under the second limb of s 8-1(1)(b) of ITAA 1997 but submitted that he never claimed he was carrying on a casino junket business himself; rather he was providing money he had borrowed to K for use in a profit-seeking venture in order to generate a return to him and the lenders. He also contended the finding of fraud or evasion should not have been made.

The Commissioner submitted that the taxpayer failed to establish the interest charges were a loss or outgoing incurred in gaining or producing assessable income within the meaning of s 8-1(1)(a), primarily because the casino junket operation promoted by K never actually came into existence. There could be no nexus between the expenditure and the earning of assessable income in circumstances where there was no money-making opportunity, just a fraud.

Decision

The AAT affirmed all decisions under review, finding that the taxpayer could not be incurring outgoings "in gaining or producing assessable income" when there was no possibility of that occurring, whatever he might have intended. In truth, the taxpayer (unwittingly) incurred outgoings in furthering K's gambling habit. The AAT said that, even if the interest referable to the loans was deductible under either limb of s 8-1(1), there was evidence that at least some of the money advanced by lenders was used to fund expenses of a private or domestic nature, and hence fell foul of s 8-1(2).

The taxpayer also failed to persuade the AAT that the Commissioner's finding of fraud or evasion should not have been formed. The taxpayer had failed to report the fee income that was generated in connection with his consulting to a family company. The AAT said that, as a qualified lawyer and chartered accountant, there was no reason to suppose he did not know what he was doing at the time he filed his returns. His non-disclosure was blameworthy as opposed to being a fortuitous consequence of his idiosyncratic approach to his finances.

Source: *TKYY v FC of T* 2023 ATC ¶10-680; [2023] AATA 2497, 10 August 2023.

Fairness fund payment not assessable as ordinary income

The AAT has held that a payment from a "Fairness Fund" established by the Victorian Government in connection with changes to the regulation of the taxi industry was not income according to ordinary concepts but rather a one-off discretionary payment for the relief of unfair financial hardship.

Facts

The taxpayer owned 3 taxi licences before he exited the Victorian taxi industry in mid-2018. He and his wife acquired their first taxi licence in 2001 for $280,000, the second licence in 2006 for $385,000, and the third licence in 2010 for $180,000, funded by ANZ bank loans secured against their family home.

Subsequent changes to and reforms of the taxi industry adversely affected taxi licence holders in Victoria. The introduction of Uber drivers as well as the reforms (which had the effect of revoking existing tradeable taxi licences and replacing them with non-tradeable licences) resulted in the taxpayer's income dropping substantially and his licences becoming worthless.

To address the disruption caused by the reforms, the Victorian Government provided various financial relief, such as the Victorian Taxi Reform Hardship Fund and Transitional Assistance Payments. The Victorian Taxi Reform Fairness Fund (the Fairness Fund) was also set up to provide support to persons facing significant financial hardship caused by the reforms. In or around September 2016 the taxpayer received $62,500 from the Hardship Fund and, about a year later, 3 Transition Assistance Payments totalling $183,750. He received a $250,000 payment from the Fairness Fund on 6 March 2018, which, consistent with the eligibility criteria, was calculated according to his income and indebtedness. When the Commissioner treated the $250,000 payment as assessable income the taxpayer objected. He then sought review of the Commissioner's decision disallowing his objection.

At issue was whether the $250,000 payment was assessable as income according to ordinary concepts under s 6-5 of ITAA 1997. The taxpayer submitted that the payment was made in recognition of financial hardship occasioned by the destruction in value of a particular form of licence owned during a particular time. The Commissioner submitted that the payment was received in the ordinary course of the taxpayer's taxi business.

Decision

After rejecting both the taxpayer's characterisation of the payment and the Commissioner's approach of focusing on the taxpayer's reduced income to the exclusion of other factors, the AAT set the decision under review aside.

The AAT said there was no doubt that the taxpayer suffered financially because of the loss of value of his licences, which had become worthless due to the reforms. However, to focus only on the destruction in value of the licences would be to disregard both the expressed purpose of the Fund (which was not to alleviate financial hardship resulting from destruction in value of the licences but rather hardship resulting from the reforms) and the basis on which the payment was calculated. On the other hand, the payment was not calculated as a substitute or recompense for a particular amount or estimate of forgone income, nor was it paid on a periodic or regular basis. It was a one-off discretionary payment.

The AAT considered that, as indicated by its name, the Fairness Fund compensated entities for the unfairness suffered as a consequence of regulatory change. The payment was for the alleviation of the unfairness of licence holders suffering financial hardship from the reforms. It was a one-off discretionary payment paid as a matter of public policy for the relief of unfair financial hardship, rather than a product of the taxpayer's remaining taxi business or as a substitute for or estimate of income forgone. Accordingly, the payment was not income according to ordinary concepts.

Source: *Bains v FC of T* 2023 ATC ¶10-681; [2023] AATA 2477, 11 August 2023.

Delayed bonus payment taxable when derived

The AAT has held that a taxpayer who became entitled to a bonus payment relating to his employment in Kuwait when he was not a resident of Australia but who did not receive the bonus until later (by which time he had become a resident), was assessable to tax in respect of such.

Facts

The taxpayer had been employed in Kuwait where he was in receipt of a monthly salary. He became entitled to a "milestone bonus" in the first week of February 2017. At that time he was not an Australian resident. His employer was unable to pay the bonus when

it became due, instead paying it in 3 instalments on 23 January 2018, 2 July 2018 and 3 July 2018. By that time the taxpayer was an Australian resident.

The Commissioner issued the taxpayer with notices of amended assessment bringing the first payment to account as assessable income in the 2017–18 year and the second and third payments in the 2018–19 year. The taxpayer objected to those assessments and then sought review of the Commissioner's decision to disallow his objections. At issue was when the taxpayer "derived" the payments.

The taxpayer submitted that the bonus should be brought to account when he earned it or at least when he became entitled to recover it, ie on an accruals rather than a receipts basis. If so, no Australian income tax would be payable on the payments because he was not an Australian resident at that time and the payments were not Australian-sourced income. The taxpayer submitted that s 83-235 of ITAA 1997 (which provided that certain termination payments relating to a period of employment when the taxpayer was not an Australian resident were not assessable and not exempt income) indicated the "spirit" of the law was that he should not pay tax on payments relating to a period of employment when he was a non-resident but received after he became a resident.

Decision

The AAT affirmed the decision under review, noting that, in accordance with long-standing authority, the question to be answered was what gains had "come home" to the taxpayer during the relevant period in a realised or immediately realisable form. It could not be said that the bonus had come home to the taxpayer in January 2017 when he completed his work for the employer or in February 2017 when the bonus fell due for payment. He had not received it, nor had it been applied for his benefit at that time. The bonus payments were derived on their receipt.

The AAT went on to say that s 83-235 did not assist the taxpayer. The tax treatment of his bonus payments fell to be determined by s 6-5(2) of ITAA 1997, and the only relevant consideration under that provision was when the payments were derived.

Source: *Tawfik v FC of T* 2023 ATC ¶10-682; [2023] AATA 2541, 10 August 2023.

Product ruling amended

The ATO has issued an addendum to *Product Ruling* PR 2021/4 Income tax: taxation consequences for a customer entering into an XLD Grain and Fertiliser Prepayment Program with XLD Commodities Pty Ltd. It amends PR 2021/4 to expand the class of entities that rely on it by including entities covered by ITAA 1936 s 82KZM(1A).

SUPERANNUATION

Exemption from compliance with SIS Act

A legislative instrument has been made which exempts specific persons from compliance with certain provisions of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

The Superannuation Industry (Supervision) Act exemption No 1 of 2023, exempts a specific class of persons, namely current, former and prospective directors of a registrable superannuation entity (RSE) licensee, from compliance with ss 29HA and 29JCB of the SIS Act where certain conditions are met.

These provisions respectively require a person to apply to APRA for approval to hold a "controlling stake" in an RSE licensee, and set out that a person that holds a controlling stake in an RSE licensee without approval commits an offence for which strict liability applies. A person holds a controlling stake in an RSE licensee if the person holds a stake of more than 15% in the RSE licensee. The SIS Act definition of "stake" in an RSE licensee has the same meaning as in the *Financial Sector (Shareholdings) Act 1998* (FSS Act). Clause 10 of sch 1 of the FSS Act sets out that a person's stake in a company is the aggregate of the direct control interests held by the person and their associates.

The legislation ensures that persons who seek to acquire a controlling stake in an RSE licensee are subject to an APRA approval process that is similar to that required to be undertaken to become an RSE licensee. This is to address the risk that an RSE licensee would be unduly influenced by persons that have a controlling stake in the ownership of the RSE licensee.

The exemption applies to a narrow class of persons and addresses an unexpected operation of the relevant FSS Act provisions in the superannuation industry context. It applies to persons that are directors of an RSE licensee who meet certain conditions, such that it only applies to persons whose shareholding in the RSE licensee:

- must be transferred or forfeited when they cease to be a director of the RSE licensee
- does not carry with it an entitlement to any financial benefit directly arising from the shareholding, and

- is only a controlling stake based on the aggregation of their shareholding with the shareholdings of the other directors.

The legislative instrument commences on 15 August 2023.

Source: Superannuation Industry (Supervision) Act exemption No 1 of 2023, registered as F2023L01078 on the Federal Register of Legislation, 14 August 2023, accessed 14 August 2023.

GOODS AND SERVICES TAX

Luxury car tax: cars exhibited at museum not solely used as trading stock

The Full Federal Court has confirmed that a taxpayer that sold motor vehicles exhibited at a car museum owned by it was liable to increasing luxury car tax adjustments because the cars were not used only for the purpose of holding them as trading stock.

Facts

This was an appeal from a decision of the Federal Court (Thawley J) reported at 2022 ATC ¶20-823; [2022] FCA 281.

The taxpayer owned and operated a "Classic Car Museum" that housed over 400 vehicles ranging from vintage and veteran cars to modern day cars. The museum, which opened in May 2016, was promoted on its website as a tourist attraction open to the general public on payment of an admission fee. A few months after the museum opened the website also stated that "many museum cars are for sale". Prior to opening the museum, the taxpayer advertised motor vehicles for sale over the internet. During the museum's first full financial year of operation the taxpayer received $1.32 million in admission fees and approximately $4.39 million in revenue from car sales.

The Commissioner determined that the taxpayer was liable to both luxury car tax and goods and services (GST) tax for the tax periods between June 2016 and November 2017. In the Commissioner's view:

- the taxpayer had "increasing luxury car tax adjustments" on the basis that, once the cars were placed in the museum, the taxpayer started to use the cars for a purpose other than a "quotable purpose" (ss 15-30 and 15-35 of the *A New Tax System (Luxury Car Tax) Act 1999* (LCT Act)), and
- the input tax credits the taxpayer could claim were limited by s 69-10 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), which limited a taxpayer's entitlement to an input tax credit to 1/11th of the "car limit" where the taxpayer acquired or imported a car and the taxpayer was not entitled to quote under the LCT Act.

The taxpayer objected and, on its objection being disallowed, appealed. At issue between the parties was whether, when the taxpayer imported or acquired a car, it had the intention of using the car for the purpose of holding it as trading stock "and for no other purpose" (s 9-5(1) of LCT Act).

At first instance the primary judge concluded that each car was not used for no purpose other than holding the car as trading stock. Each car was also used for the purpose of displaying the car together with other cars as exhibits in a museum, being operated commercially as a museum.

The taxpayer appealed, contending that the primary judge erred in construing the phrase "no other purpose" in s 9-5(1) as meaning "no additional purpose" rather than "no alternative purpose", and in his conclusion generally.

Decision

The Full Federal Court majority dismissed the appeal.

Wheelahan and Hespe JJ held that the taxpayer's construction of "and for no other purpose" as requiring the other purpose to be exclusive or alternative to the purpose of holding the cars as trading stock was not accepted. The taxpayer's construction was not consistent with the ordinary reading of the phrase and, most importantly, rendered the phrase "and for no other purpose" otiose. The phrase "and for no other purpose" was to be read as "solely" or "only".

Wheelahan and Hespe JJ also held that the purpose for which the cars were used was ascertained by an objective consideration of the totality of the facts and circumstances. The existence of the cafe and memorabilia shop in the museum in conjunction with the charging of an entrance fee, the engagement of staff to provide information to visitors and the marketing of the exhibited collection of cars as a tourist destination was not consistent with a conclusion that the cars were used for the purpose of being held as trading stock and for no other purpose.

Further, it was held that the scale and nature of the taxpayer's activities resulted in each of the cars being held as more than trading stock.

In the dissenting judgment, Logan J held that an analysis of the whole of the evidence disclosed that the use of the assessed motor vehicles for display at a so-called "museum" was only ever a means to an end, which was always their retail sale. To focus on aspects of promotional literature, staff titles and display in isolation was to fail to discriminate between an overarching end and its incidental means. The conclusion that the motor vehicles were used (or intended to be used) other than as trading stock did not survive the objective analysis of the whole of the facts and the related discounting, dictated by the true construction of s 15-30(3)(c) of the LCT Act, of incidental or subservient uses.

Source: *Automotive Invest Pty Ltd v FC of T* 2023 ATC ¶20-875; [2023] FCAFC 129, 11 August 2023.

TAX ADMINISTRATION

Draft determinations on reporting exemptions for certain electronic distribution platform operators

The ATO has issued draft legislative determinations on reporting exemptions for certain electronic distribution platform (EDP) operators.

- Draft Taxation Administration (Transitional Exemptions for Reporting by Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023 (LI 2023/D15) provides a temporary reporting exemption (for a reporting period ending on or before 30 June 2024) for small EDPs in certain circumstances where transactions involve a supply of relevant accommodation or taxi travel. Where operators choose not to rely upon the exemption, LI 2023/D15 also provides for extensions of time to report where certain conditions are met. LI 2023/D15 is proposed to commence on 1 July 2023. It has a retrospective commencement date to provide support to operators of EDPs while they transition to the new sharing economy reporting regime that commenced on 1 July 2023.
- Draft Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023 (LI 2023/D16) provides a reporting exemption for certain operators of an EDP with respect to certain transactions involving a supply of relevant accommodation or taxi travel. LI 2023/D16 is proposed to commence on 1 July 2023. It has a retrospective commencement date to provide reporting exemptions from the date that the sharing economy reporting regime commenced.

The closing date for comments on LI 2023/D15 and LI 2023/D16 is 12 September 2023.

Source: LI 2023/D15, ATO website, 15 August 2023, accessed 15 August 2023; LI 2023/D16, ATO website, 15 August 2023, accessed 15 August 2023.

CUSTOMS

Customs: Japan–Australia reciprocal access agreement enters into force

The Agreement between Australia and Japan concerning the Facilitation of Reciprocal Access and Cooperation between the Australian Defence Force and the Self-Defense Forces of Japan (the Agreement) entered into force on 13 August 2023.

The Agreement was signed by the former Prime Minister of Australia and the Prime Minister of Japan on 6 January 2022 to provide a framework governing the legal status of the visiting force of one Party to the Agreement while present in the territory of the other for the purpose of a mutually determined cooperative activity. Article XIV of the Agreement provides that the visiting force may transport, store and handle weapons, ammunition, explosives and dangerous goods, for the conduct of cooperative activities in the receiving State. It is intended that the visiting force would also be able to export the same goods that was imported in accordance with the obligation under art XIV.

The Customs (Prohibited Imports) Regulations 1956 and the Customs (Prohibited Exports) Regulations 1958 are amended by the Customs Legislation Amendment (Japan—Australia Reciprocal Access Agreement) Regulations 2023 (the Amendment Regulations) to implement Australia's obligations under art XIV of the Agreement. The amendments exempt equipment, including firearm, weapons and their parts, imported and exported by the Self-Defense Forces of Japan and members of those Forces, for the purposes of conducting mutually determined cooperative activities, from import and export controls that would otherwise apply to those goods.

The Amendment Regulations commence on 13 August 2023, ie the day on which the Agreement entered into force for Australia.

Source: Customs (Japan-Australia Reciprocal Access Agreement) Notice 2023 (F2023N00240), Federal Register of Legislation website, 15 August 2023, accessed 17 August 2023.

Duty rates for spirits, beers and fuel products from 1 August 2023

The rates of customs duty for certain excise-equivalent goods, including spirits, beers and fuel products, have increased from 1 August 2023.

In accordance with the indexation provisions of s 19 of the *Customs Tariff Act 1995*, the rates of customs duty for certain excise-equivalent goods, including spirits, beers and fuel products, classified to subheadings in Chs 22, 27, 29 and 38 in sch 3 increased from 1 August 2023.

The new rates also apply to goods subject to indexation in:

- Sch 4A (Singaporean originating goods)
- Sch 5 (US originating goods)
- Sch 6 (Thai originating goods)
- Sch 6A (Peruvian originating goods)
- Sch 7 (Chilean originating goods)
- Sch 8 (ASEAN-Australia-New Zealand originating goods)
- Sch 8A (Pacific Islands originating goods)
- Sch 8B (Trans-Pacific Partnership originating goods)
- Sch 9 (Malaysian originating goods)
- Sch 9A (Indonesian originating goods)
- Sch 10 (Korean originating goods)
- Sch 10A (Indian originating goods)
- Sch 11 (Japanese originating goods)
- Sch 12 (Chinese originating goods)
- Sch 13 (Hong Kong originating goods)
- Sch 14 (Regional Comprehensive Economic Partnership originating goods)
- Sch 15 (UK originating goods).

Source: Notice of Substituted Rates of Customs Duty for Excise-Equivalent Goods Notice (No 3) 2023, Gazette – C2023G00941, Federal Register of Legislation website, 14 August 2023, accessed 14 August 2023.

STATE TAXES

Payroll tax (NSW): Harmonised revenue ruling on medical centres

Revenue NSW has issued a revenue ruling that provides guidance to medical centre businesses and reflects its position.

The purpose of Revenue Ruling PTA 041 Payroll Tax Act - Relevant Contracts - Medical Centres is to explain the application of the relevant contract provisions in the *Payroll Tax Act 2007* (NSW) to an entity that conducts a medical centre business (referred to as a "medical centre"), including dental clinics, physiotherapy practices, radiology centres and similar healthcare providers who contract with medical, dental and other health practitioners or their entities ("practitioners") to provide patients with access to the services of practitioners.

This ruling incorporates the decisions in *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue* [2021] NSWCATAD 259 and the *Commissioner of State Revenue (Vic) v The Optical Superstore Pty Ltd* [2019] VSCA 197, which considered the application of the relevant contractor provisions in the context of arrangements between medical and optometry centres and practitioners.

This ruling should not be interpreted as a change in position or interpretation. It is harmonised with rulings in South Australia and Queensland. Victoria has also issued a harmonised ruling.

Source: PTA 041, Revenue NSW website, 11 August 2023, accessed 11 August 2023.

Payroll tax (Vic): Harmonised revenue ruling on medical centres

The Victorian State Revenue Office (SRO) has issued a revenue ruling that provides greater clarity to medical centre businesses, and reflects the longstanding position of determining whether there is a payroll tax liability in such matters on a case-by-case basis.

Revenue Ruling PTA-041 Relevant contracts - medical centres does not represent a change in practise or interpretation. The ruling explains the application of the contractor provisions in the *Payroll Tax Act 2007* (Vic) on an entity operating a medical centre business that contracts with medical and health practitioners (or the entities of such practitioners) to provide services to patients. The ruling outlines Victoria's longstanding position and is harmonised with rulings in South Australia and Queensland. NSW has also issued a harmonised ruling.

Source: PTA-041, Victorian State Revenue Office website, 11 August 2023, accessed 11 August 2023.

State taxes (Vic): updated ruling on objections lodged out of time

The State Revenue Office of Victoria has issued an updated revenue ruling on objections lodged out of time.

Revenue Ruling TAA-004v5 explains how the Commissioner applies s 100 of the *Taxation Administration Act 1997* (Vic) and the process of making an application under that provision. Section 100 allows the Commissioner to permit a person to lodge an objection after the stipulated 60-day period. While the Commissioner may permit a person to lodge an objection after the 60-day period, such an objection must be lodged within 5 years after the date of service of the assessment or decision on the taxpayer. If the late objection is not received within 5 years after the date of service of the assessment or decision, it will be considered invalid.

TAA-004v5 replaces TAA-004v4 which ceased on 17 August 2023, and:

- extends the application of the ruling to the *Gambling Taxation Act 2003* (Vic), and
- reflects the 5 year time limit for lodging objections out of time.

TAA-004v5 commences on 17 August 2023.

Source: TAA-004v5, Victorian State Revenue Office website, 17 August 2023, accessed 17 August 2023.

Duties (ACT) — regulation on preparation of acquisition statement

A regulation has been made prescribing when an acquisition statement is required to be prepared for a relevant acquisition in relation to landholder duty.

The Duties Regulation 2023, made under s 87 of the *Duties Act 1999* (ACT), prescribes that a person is not required to prepare an acquisition statement for a relevant acquisition in relation to landholder duty (under Ch 3 of the Duties Act) if the rate of duty for the relevant acquisition is nil.

The rate of duty for landholder duty is determined under a disallowable instrument authorised under s 139 of the T*axation Administration Act 1999* (ACT), for the Duties Act. The rate of duty may change over time but if it is nil an acquisition statement is not required.

An acquisition statement is still required to be lodged if a person is claiming an exemption from landholder duty under another provision of the Duties Act. An exemption under the Duties Act usually only applies if the Commissioner is satisfied that the exemption criteria have been met. A person cannot self-assess their entitlement to an exemption and therefore determine that they are not required to lodge an acquisition statement.

The regulation is effective from 1 October 2023.

Source: Duties Regulation 2023, ACT government website, 10 August 2023, accessed 14 August 2023.

CCH LEARNING

CCH Learning webinars

Incapacity Planning and the Role of a Financial Advisor – 30 August, 10.30am – 11.45am AEST

Presented by Adeline Schiralli, Consulting Principal/Accredited Specialist (Wills & Estates) Keypoint Law

The importance of incapacity planning for clients with a financial portfolio and the role the financial advisor plays in encouraging clients to ensure that they have planned appropriately. As the population ages, the concepts of mental incapacity and substitute decision making become more and more relevant in our society. As our population is living longer, more and more people suffer from loss of capacity to some degree or another. As professional advisors, we play an important role with regard to incapacity planning. This practical & informative session will provide an overview of the following topics:

- Incapacity – the legislative framework
- The importance of incapacity documents for your client before they lose capacity
- Decision making and diminished capacity
- A case law update, and
- The role of the financial advisor in relation to incapacity planning. ... Click here for more info

Aged Care Forms, Fees and Funding, 31 August, 10.30am – 11.30am AEST

Presented by Jemma Briscoe, Head of Research and Technical Advice, Aged Care Gurus

Understanding the fees, funding and framework of Residential Aged Care. In this session we will discuss the key considerations associated with fees, funding and framework related Residential Aged Care providers. The topics covered include:

1. Funding models for resident in care
2. Government payments and AnAcc funding
3. Understanding the cost of care for an individual and the MTCF
4. Government safety nets, maximum fees and charges
5. Rights and responsibilities, policies and procedures facilities need to follow

We will look at the key considerations relating to the Government funding models and the cost of care. ... Click here for more info

Excel Basics – Power Query and Tables – 5 September, 10.30am – 11.30am AEST

Presented by Lance Rubin, CEO & Founder, Model Citizn

Save time by bringing data into Excel from websites, PDF files or other Excel workbooks. The process of getting data from different sources into Excel without writing code (low-code) is extremely valuable for bookkeeping and accounting as a means to simplify and automate parts of their compliance processes or any form of reconciliation or reporting process. This session will outline the key elements and first principles of working with data in Excel starting with the fundamentals of a table. Tables don't just create nice format and layouts (although that's a bonus, they are powerful tools to make it easier to analyse data and quicker to refresh. Power Query is highly underutilised and still stands as one of the most powerful ETL (extract, transform and load) tools in Excel but doesn't need ANY coding whatsoever. All interfaces in Power Query are simply clicks and graphic screens to clean up the financial information you might be pulling from bank statements, invoices, supplier documentation or CRM (customer relationship management) systems like SalesForce or Hubspot. By starting to use tables and structured formula references (which are much easier to read in [square brackets] like that, you can get answers and build forecasts much quicker. This will be an extremely practical session with live examples and data being provided including PDF, website address and other Excel files to extract into your workbook. You may also be interested in 'Excel Basics – Dashboards and Data' which starts to explore how you can use structured references and other recent Excel formulas. ... Click here for more info

CONTRIBUTORS

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