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WELCOME

By Andrew Goldman

It's a jam-packed edition of The Practitioner, with several excellent articles from the team, which we are sure you will find interesting and informative.

As this edition goes to press, we have just experienced the first great stretch of Spring weather and we're sure everyone is now looking forward to more to come so we can get out and enjoy ourselves.

LAND TAX, VACANT LAND AND HOLIDAY HOMES

By Philip Gruchy



The Victorian Government introduced a residential vacant land tax back in 2018 that applied to land with a home on it that had been unoccupied for 6 months in the preceding year. At that time, it only applied to properties in inner and middle Melbourne.

However, this has now been widened to include all residential land in Victoria from 1st January 2025 in respect of properties vacant for more than 6 months in the preceding year (2024).

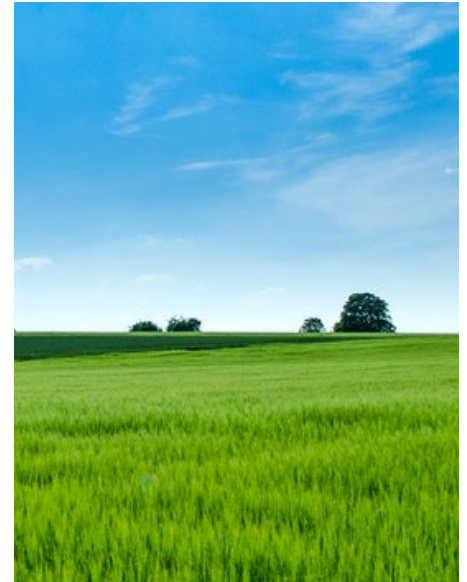
The rate of tax is 1% of the capital improved value as per the rates notice, in year 1, 2% in year 2 and 3% in year 3.

There are some exemptions from this tax, and we suggest clients visit the State Revenue Office website or contact them directly to discuss how this new tax may impact their holdings.

One of the significant and of interest exemptions is for holiday homes which have been occupied by the owner for at least 4 weeks in the year and the owner has a principal place of residence in Australia.

Recent amendments to the exemptions for holiday homes that also apply from 1st January 2025, allows for the 4 weeks of use to be satisfied if occupied by relatives of the owner or vested beneficiary, and eligible shareholders or beneficiaries of a company or trust or their relatives.

There is a requirement to notify the SRO by 15 January 2025 if you owned residential land in Victoria that was vacant for more than 6 months in the preceding



calendar year. We understand that there will be at some point on the website, hopefully before the end of this calendar year, the ability to also select the option under which you believe you are exempt.

Failure to advise the SRO by this date may expose you to penalty tax ranging from 5% to 90% depending how late your notification is made, any intentional disregard for the law or if you hinder any investigation.

The outline above of the new tax is not specific advice but more an alert to make you aware of potential outcomes and issues to be addressed. As there are potential twists and turns in the legislation, we would suggest that you consider your own circumstances and decide if it may be appropriate to get an informed legal opinion in respect of your situation.

If you don't have your own legal contact, we can offer you a referral to a legal firm that has been working in this area if you wish. They do anticipate a high demand on this topic, so we suggest you take action as soon as possible.



PAYDAY SUPER - WHAT WE KNOW SO FAR

By Ivan Yeung

The government has shared more details about its proposed new "payday super" plan, which will start on 1 July 2026.

What is payday super?

Starting in July 2026, employers must pay superannuation guarantee (SG) contributions to their employee's super funds at the same time they pay their salary and wages – weekly, fortnightly, or monthly. Currently, employers are legally required to pay their contributions on a quarterly basis.

What this means for employers

All employers, no matter the size, will have to make contributions when they pay their workers. This might affect cash flow, especially for small businesses, and could create an extra administrative burden if they don't have the right systems in place (such as payroll software, etc).

What this means for employees

The goal of payday super is to make contributions more transparent and help boost retirement savings. For example, according to the Government, a 25-year-old earning the median income and receiving superannuation could have about \$6,000 extra by retirement because of the proposed changes.

Further details announced

The government recently released further policy design details on the payday super measure.

Here's what we know so far regarding the proposed payday super model:

- Super must reach employee funds within 7 days of wages being paid, except for new employees or small, irregular payments.
- For new employees, the timeframe will be 14 days after they commenced employment, and
- SG contributions in relation to small and irregular payments can be made within seven days of the next regular ordinary time earnings (OTE) payment.
- Super is still calculated based on an employee's OTE which includes regular salary and wages but excludes overtime.

If employers don't pay on time, they will continue to face penalties.

Small businesses may need to find alternative payroll software solutions to pay their employee super as the ATO's small business clearing house will close from 1 July 2026.



SUPER ON PARENTAL LEAVE PAY IS NOW LAW

By Kushal Sharma

Starting 1 July 2025, new parents will receive superannuation payments on top of their paid parental leave (PPL).

The change

Eligible parents with babies born or adopted from 1 July 2025 will have 12% of their government-funded PPL paid as a superannuation contribution to their nominated superannuation fund.

The lump sum superannuation payment will be paid annually by the ATO after the end of each financial year. The contribution will also include an additional interest component to account for the delay.

Eligible parents can continue to apply for PPL through Services Australia, who are responsible for assessing eligibility for the payment and superannuation contribution.

Who is eligible?

Currently, parents can get up to 22 weeks of government-funded PPL at the minimum wage, which will increase to 24 weeks from 1 July 2025 and to 26 weeks by 1 July 2026.

To be eligible, parents must meet the following requirements:

- Have a newborn or have recently adopted a child
- Have met an income test
- Won't be working during their PPL period, except for allowable reasons
- Have met the work test
- Have met the residency rules
- Have registered or applied to register their child's birth with their state or territory birth registry if they're a newborn.

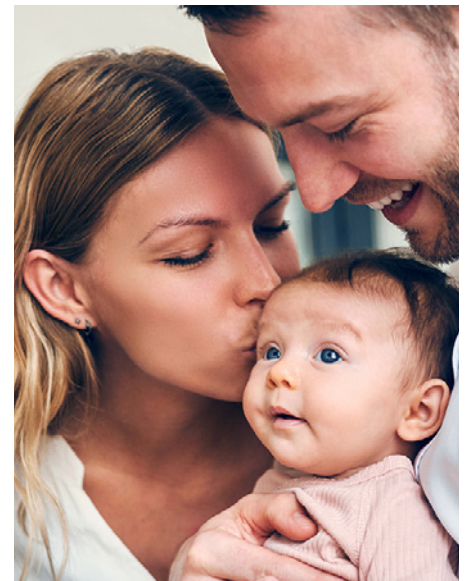
For further information regarding the government-funded PPL scheme see the Services Australia website.

What about employer-funded PPL?

PPL falls into two categories: government-funded PPL, or employer-funded PPL. If eligible, employees could receive both types.

Although it is not compulsory for employers to do so, many choose to support their employees with PPL.

Generally, employers will set out a minimum service period that employees need to meet before they are eligible for employer-funded PPL, and the amount they receive (usually measured in weeks) varies from employer to employer. Employers will have their own policies when it comes to parental leave and the available benefits will depend on the employee's agreement/contract. So, while some employers offer PPL and pay superannuation on top of that, the new laws ensure parents using government-funded PPL will be able to have the same benefit.





CGT AND TRUSTS

By Philip Gruchy

The interaction of the Capital Gains Tax (CGT) laws and trusts is complicated.

It was Einstein who apparently quipped that “the hardest thing in the world to understand is the tax law” when filing his income tax return in the United States in the 1950s.

Here are a few basic things that are worthwhile noting if you hold an asset in a trust or transfer an asset to a trust. They are as follows:

- if your home is held in the name of trust, rather than in the name of an individual or individuals – you cannot get any CGT main residence exemption regardless of what type of trust it is (unless it is a “special disability trust”);
- if you transfer an asset to a trust, there will be CGT implications (in the same way that there are CGT implications in transferring or selling an asset to a third party);
- there are special rules and ATO policy that apply where the trust arrangement involves “life and remainder interests” ie, where the asset is owned by a trust for the benefit of a person while they are alive (eg, a surviving spouse) and, on that person’s death, ownership of the asset reverts to “remaindermen” (eg, children of the spouse);
- if an asset is transferred out of a trust to a beneficiary in satisfaction of their entitlement to that asset, then there are CGT implications for both the trustee and the beneficiary and these implications are specifically set out in the CGT legislation;
- if an asset is held by trust “absolutely” for a beneficiary, so that the beneficiary has an “indefeasible” right to it, then any actions of the trust in relation to the asset are taken to be those of the beneficiary;

- where a person dies, their assets are vested in a trust for the purposes of administering the estate for beneficiaries, and as you may be aware the rules that apply can be complex, especially in relation to an inherited family home where a lot of tax-free capital gains may be at stake.

Finally, of course, if a family trust makes a capital gain from any dealing with a CGT asset, and the trust wishes to stream that capital to a beneficiary of the trust so that it retains its character as a concessional tax capital gain in the beneficiary’s hands, then there are very complex rules which must be followed.

LIABILITY FOR SUPER GUARANTEE PAYMENTS



By Andrew Goldman

There has been a string of recent cases before the Courts and the tribunals about whether someone who pays an amount to another person for services of some kind is liable to make superannuation guarantee charge (SGC) payments in respect of the amount paid to that person.

One of the more prominent, and unusual ones, has been a decision of the Tribunal that found that the Australian Turf Club was liable for SGC in respect of race day payments it made to jockeys at various racetracks.

The AAT made its decision based on a provision in the Superannuation Guarantee legislation which provides that, for SGC liability purposes, persons such as artists, musicians and sportspeople who are “paid to perform” are deemed to be employees of the person who is liable to make the payment to them.

That decision does illustrate that if you are liable to make a payment to an artist or a sportsperson for their “performance” you will be liable for SGC.

On the other side of the ledger was a more recent decision of the AAT in which it was held that a plumber engaged by a plumbing firm was not an employee for SGC purposes because he was in fact running his own business, and was operating as an independent contractor.

In this case, it was significant that the degree of control exercised over the plumber’s work by the plumbing firm which made the payment to him was not sufficient to warrant him being classified as an employee for SGC purposes.

In particular, it was relevant that the plumber was expected to perform tasks at his own discretion and without supervision and that he advertised his services outside his relationship with the plumbing firm and performed jobs for other clients away from the plumbing firm.

However, several prior cases before that decision found that the key matter in determining whether a person was an independent contractor was whether they had a “right to delegate” their work under the contractual arrangement with the payer.

This was the case whether or not the right to delegate was an express or implied term in the contract or if that right to delegate had ever been exercised.

As with everything related to tax law and tax obligations, it will also come down to all the facts of the situation and the circumstances in which the payment is made.

You should speak with us if you are in any doubt about your responsibilities in this area or want a double check things are being done correctly.





SELLING A PROPERTY WITH MIXED RENTAL AND RESIDENTIAL USE



By Ivan Yeung

Selling a property that may have been used for mixed rental and residence purposes has capital gain tax (CGT) implications. These cases require exercising good judgment as to how to best use the relevant CGT concessions.

By way of example, if you retain your original home and rent it after you have purchased your new home, you need to decide whether you want to retain a full CGT exemption on the original home (or maximise it, at least) or whether you want the full exemption to apply to the new home.

On the other hand, where you rent a property first and then afterwards live in it, then various concessions that may help reduce your CGT liability may not be fully available.

Further, there are important CGT rules and concessions that apply to a home that has been used for such mixed use where the owner dies and then it is later sold by beneficiaries. These can be complex, but if applied with good planning can have good outcomes.

Of course, there is the issue of how you calculate any partial capital gain (or loss) in respect of a property that has been used as both a rental and a residence in circumstances where it is not possible to get a full exemption.

These calculation issues can involve determining whether you can use a market value cost at any time in the process and how you can account for any non-deductible mortgage interest or other non-deductible costs.

Crucially, there is also the issue of whether any partial capital gain can qualify for the very generous 50% CGT discount.

It goes without saying that there are a lot of planning issues surrounding a property that you purchase with mixed intentions of both wanting to live in it and rent it. There are an array of CGT issues surrounding the selling of a property used for mixed rental and residence use, including the need to determine how to best use and choose various concessions to minimise any potential CGT liability.

THE DANGERS OF FAILING TO DECLARE INCOME OR LODGE RETURNS



By Philip Gruchy

There are many adverse consequences associated with failing to lodge income tax returns or omitting income from those returns if the ATO finds out.

The ATO has increasingly sophisticated technology to track such matters and catch people out, including data matching programs where it compulsorily obtains masses of information from authorities such as banks, insurance companies, real estate bond boards and state vehicle registration bodies.

If the ATO does catch you out for omitting income or overstating deductions and raises amended assessments or default assessments and you decide to challenge the assessments, then you may well face an uphill battle in doing so.

This is because in any matter before the tribunals or courts, the onus will be on you to not only prove that the assessments are wrong or excessive but also what the correct amount of taxable income should be.

In many cases, this will be an almost insurmountable task – if only because you may no longer have the relevant records to prove your claim or dispute the inclusion of additional income.

For example, in a recent case where the tribunal found that the ATO had been “careless” in the way it arrived at the amount of the alleged omitted income, the tribunal still said it was “duty bound” to find that the taxpayer had failed in its onus of proving the assessment was excessive because they could not disprove the ATO’s position.

Furthermore, the Commissioner has the power to impose harsh penalties for failing to lodge returns or declare income, and again, the onus would be on you, the taxpayer, to show that the penalties are excessive and should be reduced or remitted.

Likewise, the ATO has the power to issue amended or default assessments many years after the income year in which they were due or income was omitted if it believes there has been “fraud or evasion” on your part.

So, you should be speaking with us to make sure you do not omit assessable income or fail to lodge a return and seek our advice to address any instances where you believe you may have done so, unwittingly or otherwise.



MAKING SUPER CONTRIBUTIONS LATER IN LIFE

By Kerry Taylor

Superannuation laws have been simplified over recent years to allow older Australians more flexibility to top up their superannuation. Below is a summary of what you need to know when it comes to making superannuation contributions.

Adding to super

The two main types of contributions that can be made to superannuation are called concessional contributions and non-concessional contributions.

Concessional contributions are taxed at 15% within your fund. This is the most common type of contribution individuals receive as it includes superannuation guarantee payments your employer makes into your fund on your behalf. Other types of concessional contributions include salary sacrifice contributions and tax-deductible personal contributions. The government sets limits on how much money you can add to your superannuation each year. Currently, the annual concessional contribution cap is \$30,000.

Non-concessional contributions are voluntary contributions you can make which are not tax-deductible. Currently, the annual non-concessional contribution cap is \$120,000 but there is the ability to bring forward a number of years worth of these contributions in certain circumstances.

Super contribution options for people under 75

If you're under 75, you can make and receive various types of contributions to your superannuation fund, such as:

- Compulsory superannuation guarantee contributions
- Salary sacrifice contributions
- Personal non-concessional contributions
- Contributions from your spouse
- Downsizer contributions from selling your home
- Personal tax-deductible contributions

Work test rule relaxed

After age 67, you'll need to meet the "work test" or qualify for a "work-test exemption" to make personal tax-deductible contributions. To satisfy the work test, you must work at least 40 hours during a consecutive 30-day period each financial year. Prior to 1 July 2022, the work test applied to most contributions made by individuals aged between 67 to 75, but now it only needs to be met for personal tax-deductible contributions. The good news is that you don't need to meet the work test for other types of contributions, so being retired won't stop you from contributing to superannuation.

If you don't meet the work test condition, you can use the "work test exemption" on a one-off basis if your total superannuation balance on the previous 30 June was less than \$300,000, you satisfied the work test requirements last financial year and you did not use the work test exemption in a previous financial year.

Super contribution options for people over 75

Once you turn 75, most superannuation contributions are no longer allowed. The only exceptions are compulsory superannuation guarantee contributions from your employer (if you're still working) and downsizer contributions from selling your home.

If you're about to turn 75 or have just passed that milestone, you still have one final chance to make or receive other contributions. Superannuation funds can accept contributions for up to 28 days after the month you turn 75. For example, if you turn age 75 in October, the contribution must be received by your superannuation fund by 28 November.

Final word

Changes to the contribution rules now allow more flexibility for people in their 60s and 70s to add to their superannuation. So, whether you are still working or retired, you can continue to make superannuation contributions to benefit you in retirement and beyond.



THE IMPORTANCE OF "TAX RESIDENCY"

By Andrew Goldman

Whether you are a resident of Australia or non-resident of Australia for tax purposes has significant consequences for you.

Primarily, if you are a resident of Australia for tax purposes you will be liable for tax in Australia on income you derive from all sources, including of course from overseas (e.g. an overseas bank account, rental property, an interest in a foreign business etc).

On the other hand, if you are a non-resident of Australia for tax purposes, you will only be liable for tax on income that is sourced in Australia including capital gains on certain property such as real estate in Australia.

And while there may be difficulty in determining the source of income in some cases, if you are a resident for tax purposes, the principle of liability for tax in Australia on income from all sources remains clear.

Resident of Australia for tax purposes

So, what does it mean to be a resident of Australia for tax purposes?

Well, broadly, it means you "reside" in Australia (as commonly understood), unless the Commissioner is satisfied that your permanent place of abode is outside Australia.

However, a recent decision of the Federal Court has shed some light on this matter – especially the often-misunderstood



presumption that “connections with Australia” is all that counts.

“Connections with Australia”

The Federal Court case involved a mechanical engineer who was posted to Dubai for a period of six years, followed by a posting to Thailand, but who had continuous family ties to Australia, in that he financially supported his wife and daughters who were living in Perth.

Originally, the taxpayer was found to be a resident of Australia for tax purposes essentially because of his continuous ties to Australia and the fact that he did not establish personal ties overseas while he was living there.

However, the Court found that “connections with Australia” was not the key test but rather the key matter was where one intended to treat as home for the time being, but not necessarily forever, ie, not necessarily “permanently”.

Likewise, it said that the matter of residency is worked out on income year by income year basis (ie, one particular year of income at a time) and it doesn't mean a person has to have the intention of living in a particular location forever.

Among other things, the case may have implications for people who work overseas on a contract basis for periods of time, but still maintain family ties to Australia.

It may also mean that closer scrutiny will have to be paid to determine a person's residency on a year-by-year basis and not just “locking” them into a residency or non-residency status from the beginning of any relevant change in their circumstances.

And of course, there is also the key issue of when in fact your residency status may change.



CGT & FOREIGN RESIDENTS: COMPLEX RULES APPLY!

By Ivan Yeung

A person who is not a resident of Australia for tax purposes is nevertheless liable for capital gains tax (CGT) on certain assets located in Australia. And these assets are assets which have a “fundamental” connection with Australia – and are broadly as follows:

- real property (ie, land) located in Australia – including leases over such land;
- certain interests in Australian “land rich” companies or unit trusts;
- business assets used in carrying on a business in Australia through a “permanent establishment”; and
- options or rights over such property.

This means that such assets will be subject to CGT in Australia regardless of the owner's tax residency status.

Importantly, in relation to real property, this also includes a home that the foreign resident may have owned in Australia. This home will not be entitled to the CGT exemption for a home if the owner is a foreign resident when they sell or otherwise dispose of it.

Furthermore, a purchaser of property from a foreign resident will be subject to a withholding tax requirement, whereby they must remit a certain percentage of the purchase price to the ATO as an “advance payment” in respect of the foreign resident's CGT liability.

Importantly, a foreign resident will generally not be entitled to the 50% CGT

discount on any capital gain that is liable to CGT in Australia – subject to an adjustment for any periods when they owned the asset when they were a resident of Australia.

In relation to a foreign resident's liability for CGT on certain interests in Australian “land rich” companies or unit trusts, this rule broadly requires the foreign resident to:

- own at least 10% of the interest in the company or trust at the time of selling the interest (or at any time in the prior two years); and
- at the time of sale, more than 50% of the assets of the company or trust (by market value) are attributable to land in Australia.

This means that interests owned by foreign residents in private companies and unit trusts can potentially be caught by these rules.

Moreover, the application of these rules can be very difficult, particularly as a foreign resident can be caught by them at certain times and not others.

It is also worth noting that if someone ceases to be an Australian resident and becomes a foreign resident for tax purposes, then they will generally be deemed to have sold such interests at that time and be liable for CGT on them. However, this is subject to the right to opt out of this deemed sale rule – but this “opt-out” has other important CGT consequences.

The application of Australia's CGT rules to foreign residents can be very complex – especially given the variable nature of some of the rules. Therefore, it is vital to speak with us if you have a foreign residency issue.



SUCCESSION PLANNING FOR FAMILY BUSINESSES

By Andrew Goldman

For most family businesses, succession planning (sometimes known as transition planning) involves considerations around the eventual sale of your business or the passing of control of it to other family members when you retire. Depending on your circumstances, this may include realising assets and making other changes to ownership but is certainly linked with retirement planning and estate planning.

Adopting a sound tax governance framework can help you manage tax issues around succession planning before they present a problem. Though succession planning may not have an immediate tax impact, it's important to include tax considerations in your plan. This will avoid unexpected tax issues arising down the track when you implement your plan.

Transferring control of your business to family members may involve restructuring your business operations – changes to share structure, changes to the trustee and appointor of a trust, changes to partnership structures or transferring assets to family members via the creation of trusts or other entities. Remember that these sorts of events can have legal and tax implications that need to be carefully considered.

For example, when you dispose of or transfer your business assets there will likely be capital gains tax (CGT) consequences. The sale of a business can also trigger liabilities in relation to GST.

Where pre-CGT assets are involved, you should also understand and document the tax consequences for you and your beneficiaries. Issues for consideration include whether changes in the business operations may affect the pre-CGT status of the assets or shares and the availability of carried-forward losses.

Any significant changes to your business structures or operations (including any asset disposals) should be fully

documented, along with their tax impact. Ensure information on your assets (such as acquisition dates and cost base) is properly documented. This will also ensure that any subsequent disposal of the assets can be treated correctly for tax purposes. Different strategies will have different tax consequences for the owner and beneficiaries. Consider each strategy and identify (and keep records of) significant transactions.

For example, say, as the owner of a successful family business, you prepared a basic succession plan many years ago, but since then your business has expanded and your children have grown up. One of them may work with you in the business and you would like to see them take over when you retire. The consideration here is how best to transfer the business and make the transition to retirement.

How you structure your business activities can have a real impact on succession planning options. We can explain the tax consequences of various options and how they work in practical terms.



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