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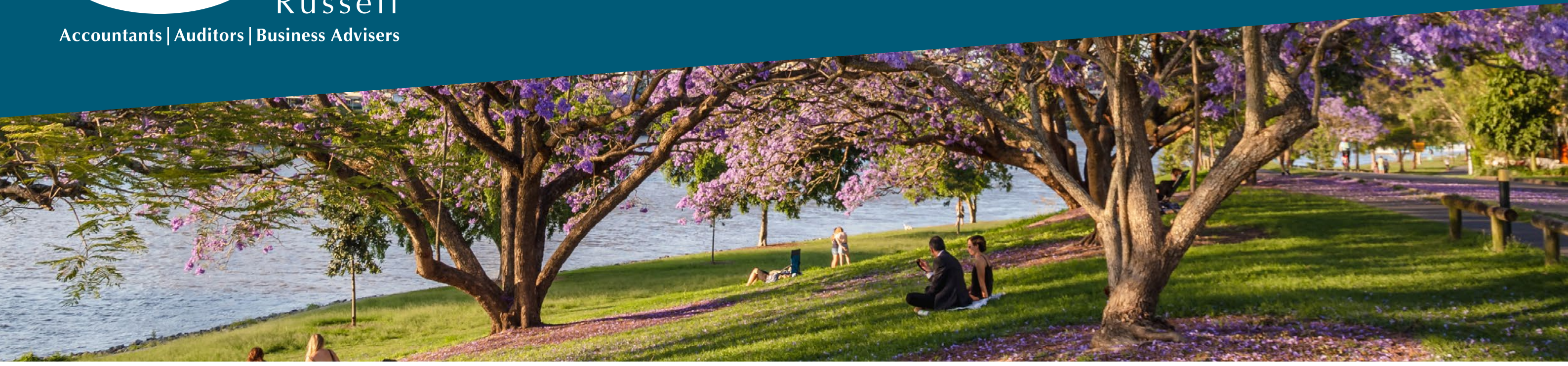

TAX ALERT - OCTOBER 2022

BONUS DEDUCTION FOR EMPLOYEE TRAINING PROPOSAL

As a part of its strategy to address the current skills shortage and future-proof Australia's workforce by building better trained and more productive workers, the Federal Government has proposed to implement a temporary "skills and training boost" initiative. This initiative proposes to give small businesses access to a bonus deduction equal to 20% of eligible expenditure on certain training for employees, both existing and new, between 29 March 2022 and 30 June 2024.

The bonus deduction would be available to all entities that meet the definition of a small business entity (ie those with an aggregated annual turnover of less than $50 million) in the income year in which the eligible expenditure is incurred.

Under the proposed measure, eligible expenditure would need to satisfy a range of criteria, including that the money must be spent with a registered training provider on training employees (either in-person in Australia, or online) and it must be an expense already deductible under taxation law and incurred within the specified period.

This initiative is only intended to cover employees, so the bonus deduction would not be available for training non-employee business owners, such as sole traders, partners in a partnership and independent contractors who are not employees of the business within the ordinary meaning. The costs of in-house or on-the-job training would not be eligible for the bonus deduction. According to the government, this is because the bonus deduction is not intended to cover general business operating costs.

This proposal is currently in the draft stage and undergoing consultation, and as such the bonus deduction will not be available until the measure becomes law.

CRYPTO REFORMS: CHANGE IN CONSULTATION APPROACH

According to the latest Australian Security and Investments Commission (ASIC) report into retail investment, the uptake in cryptocurrency has skyrocketed among Australian retail investors. The regulator found that 44% of those surveyed reported holding cryptocurrency, making it the second most common product type held after Australian shares. At the same time, a quarter of the surveyed investors who held cryptocurrency also indicated that cryptocurrency was the only investment they held.

With this increase in the uptake of cryptocurrency and other related blockchain technology, coupled with the lack of regulation which has allowed scams to proliferate, it will perhaps come as no surprise to learn that the Australian Competition and Consumer Commission (ACCC) estimates that more than $100 million has been reported lost to cryptocurrency investment scams just in the first half of 2022.

In a bid to stamp out these scams, the then Coalition government had commissioned the Board of Taxation to conduct a review into the appropriate policy framework for the taxation of digital transactions and assets in Australia. The Board is due to report back by the end of 2022.

However, the Labor Government has recently criticised the previous government for "prematurely jump[ing] straight to options without first understanding what was being regulated" and said it is now seeking to take a "more serious approach to work out what is in the ecosystem and what risks needs to be looked at first". Treasury will prioritise "token mapping" work as a first step, aiming to identify how cryptocurrency assets and related services should be regulated. The next steps will be to identify notable gaps in the regulatory framework, progress a licensing framework, review innovative organisational structures, look at custody obligations for third-party custodians of cryptocurrency assets and provide additional consumer safeguards.

SALE OF PRINCIPAL HOME: EXTENSION OF EXEMPTION

In a bid to support pensioners and in conjunction with the announcement of its intention to reduce the eligibility age for downsizer super contributions, the government has introduced a measure to extend the existing assets test exemption under social security for principal home sale proceeds which a person intends to use to purchase a new principal home.

Under the social security system, the level of income support received by individuals depends on their income and assets. For example, for an individual to receive the age pension, Services Australia (Centrelink) will assess the individual's and their partner's income from all sources, including financial assets such as superannuation, using deeming. Deeming assumes that a financial asset earns a set rate of income regardless of the actual income generated. Applicants for the age pension also need to pass the assets test, the limits of which change depending on whether they own their own home and whether they are single or in a couple.

Currently, when an age pensioner or other eligible income support recipient sells their principal home to either purchase or build another home, those proceeds are exempt from the assets test for up to 12 months. However, the proceeds will still be subject to deeming. An additional 12-month extension may be granted where the income support recipient has demonstrated a continued intention to apply the sale proceeds to the purchase, build, rebuild, repair or renovation of a new principal home.

The Bill introduced by the government would automatically extend the existing assets test exemption from 12 to 24 months. An additional 12-month extension may also be available in particular circumstances, taking the maximum exemption period to 36 months in total. The Bill also seeks to apply a lower deeming rate to the principal home sale proceeds when calculating deemed income for the period during which the proceeds are exempt from the assets test.

ASIC'S FOCUS ON SUPER COMPLAINTS HANDLING

The Australian Securities and Investments Commission (ASIC) is the body responsible for overseeing the operation of Australia's financial services dispute resolution framework, including the internal dispute resolution (IDR) systems of superannuation trustees and other financial firms. Together with the Australian Financial Complaints Authority (AFCA), it forms the key consumer protection mechanism to ensure all complaints are resolved in a fair and timely manner.

Recently, to gauge the degree of superannuation trustees' compliance with the IDR requirements, ASIC collected and analysed data from a selection of 35 trustees of 38 funds, covering 49,029 complaints received between October 2021 and February 2022. This initial surveillance found indicators of significant compliance issues and areas that need to be strengthened.

According to ASIC, 10% of the funds recorded significantly fewer complaints than the expected average, which may be a result of trustees either failing to record all member complaints or using an inappropriately narrow definition of "complaint".

ASIC also reported concerns about the time super trustees take to respond to complaints, and failure by some trustees to notify complainants of delays and their rights to go to AFCA when a written response is not sent within 45 days. In fact, nearly 50% of complainants weren't notified of delays or their rights, and one in three trustees advised ASIC of varying failures in their IDR processes, including failure to capture complaints, the omission of mandatory content from response letters or failure to send out responses to complainants.

In the next stage of its surveillance, ASIC will be checking how trustees are addressing the concerns identified thus far, and will closely examine a smaller subset of trustees. It will consider regulatory action where appropriate.

COMPLIANCE WITH SUPER LAWS: ATO'S APPROACH

When it comes to legal compliance by self managed superannuation fund (SMSF) trustees, the ATO's main focus is on encouraging trustees to comply with the super laws. However, there are occasions when stronger responses are required.

The following courses of action are available to the ATO to deal with SMSF trustees who have not complied with super laws:

- *Education direction* – the ATO may give an SMSF trustee a written direction to undertake a course of education when they have been found to have contravened super laws. The trustee will need to provide evidence they have completed the course and sign a declaration confirming they understand their obligations.

- *Enforceable undertaking* – an SMSF trustee may initiate a written undertaking to rectify a contravention. The ATO will decide whether to accept the undertaking, taking into account the compliance history of the trustee, the nature of the contravention and the strategies to prevent the contravention from recurring.

- *Rectification direction* – the ATO may give a trustee a written direction to rectify a contravention of the super laws.
- *Administrative penalties* – individual trustees and directors of corporate trustees are personally liable to pay an administrative penalty for breaches of the super laws. Penalties cannot be paid or reimbursed from the assets of the fund.
- *Disqualification of a trustee* – the ATO may disqualify an individual from acting as a trustee or director of a corporate trustee if they have contravened super laws or if the ATO is concerned about the individual's actions or suitability to be a trustee.
- *Civil and criminal penalties* – these may apply where an SMSF trustee has contravened certain provisions of the super laws.
- *Notice of non-compliance* – serious contraventions of the super laws may result in an SMSF being issued with a notice of non-compliance. In this case, the fund remains non-compliant until it receives a notice of compliance.
- *Allowing the SMSF to be wound up* – following a contravention, the trustee may decide to wind up the SMSF and roll over any remaining benefits to an APRA regulated fund. However, the ATO may continue to issue the SMSF with a notice of non-compliance or apply other compliance treatments.
- *Freezing the SMSF's assets* – the ATO may give a trustee or investment manager a notice to freeze an SMSF's assets where it appears that conduct by the trustees or investment manager is likely to adversely affect the interests of the beneficiaries to a significant extent. This is particularly important when the preservation of benefits is at risk.

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