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Tax News and Updates May 2025

By **Vincent Licciardi**, Partner, HWL Ebsworth Lawyers

No.	Article	Link
1.	**Pre-CGT assets on the radar: why reporting exempt disposals matters** For tax professionals navigating the ever-evolving compliance landscape, even exempt capital gains events require a proactive approach. A prime example is the disposal of pre-CGT assets, those acquired before 20 September 1985. While these assets are exempt from CGT, the ATO advises practitioners to report these disposals in client tax returns to avoid unnecessary scrutiny. **What's the rule?** Pre-CGT assets are generally exempt from CGT. However, when your clients dispose of them, the event should still be included in the tax return under the CGT exemptions and rollovers question, specifically selecting: *Option J: Capital gains disregarded as a result of the sale of a pre-CGT asset* **Why report if it's exempt?**	**List of CGT assets and exemptions | Australian Taxation Office**

	Even though no CGT is payable, the ATO's increasing use of data matching and transaction reporting means unreported disposals, especially of high-value assets, can trigger compliance alerts. Including these events in the return: • prevents unnecessary reviews or follow-ups; • demonstrates good record-keeping and transparency; and • reinforces your client's compliance history. **Key takeaways** • always check the acquisition date of disposed assets; • confirm whether the asset is pre-CGT; • report the disposal using Option J; and • keep clear records of supporting documentation. The ATO isn't just focused on what tax is payable, they're watching for what's not being reported at all. Stay ahead by reporting exempt pre-CGT disposals and helping your clients stay off the review radar.	
2.	**ATO maintains stance on Bendel case amid High Court appeal** Deputy Commissioner Louise Clarke has addressed recent developments concerning the Bendel case, emphasising the ATO's current position on unpaid present entitlements (**UPEs**) and their classification under Division 7A. The Full Federal Court's decision in February 2025 contradicted the ATO's longstanding view, prompting the Commissioner to seek special leave to appeal to the High Court. Until the High Court's decision, the ATO maintains its position as outlined in Taxation Determination TD 2022/11, which treats certain UPEs as loans under Division 7A. Clarke advises taxpayers to review the ATO's Interim Decision Impact Statement and consult with their tax agents to understand the implications for their specific circumstances. The ATO has indicated that it will not grant blanket deferrals for tax return lodgments related to this issue. However, the Commissioner may exercise his discretion under section 109RB to disregard deemed dividends in cases of honest mistakes or inadvertent omissions, should the High Court rule in the ATO's favour.	**Deputy Commissioner Louise Clarke discusses Bendel decision | Australian Taxation Office**
3.	**Mandatory breach reporting: A guide for tax practitioners**	**Significant breach reporting | Tax Practitioners Board**

	Since 1 July 2024, registered tax practitioners in Australia are required to report significant breaches of the Code of Professional Conduct under the *Tax Agent Services Act 2009* (**TASA**). This obligation applies to both self-reporting and reporting breaches by other registered tax practitioners. As at 28 February 2025, the TPB had received 53 reports, including 38 reports about other practitioners and 15 self-reports. **What constitutes a significant breach** A breach is considered significant if it: • constitutes an indictable offence or an offence involving dishonesty under Australian law; • results, or is likely to result, in material loss or damage to another entity, including the Commonwealth; and • is otherwise significant, considering factors such as the number or frequency of similar breaches, the impact on the practitioner's ability to provide services, or the adequacy of arrangements to ensure compliance with the Code. Determining if a breach is significant will depend on the specific facts and circumstances of each case. **Reporting requirements** Breaches must be reported to the TPB and, where applicable, the relevant Recognised Professional Association in writing within 30 days of the day the practitioner first has, or ought to have, reasonable grounds to believe that a significant breach has occurred.	
4.	**Unregistered tax preparer jailed for 12 months** The Federal Court has sentenced a Perth woman Jessa Dabalos, to 12 months in prison for acting as an unregistered tax preparer in contempt of a permanent injunction. Despite earlier penalties of $230,000 and a court order to stop, Ms Dabalos continued to unlawfully lodge tax returns and provide poor advice to hundreds of clients. The Court found her conduct criminal and a serious threat to public confidence in the tax system. The Tax Practitioners Board (**TPB**) welcomed the ruling, warning that unregistered preparers face significant penalties, including jail. Taxpayers are urged to check the TPB register to ensure their tax adviser is properly registered.	**Unregistered tax preparer receives 12 months jail sentence | Tax Practitioners Board**

5.	**Important dates** • **15 May 2025** Final due date for income tax returns for most entities not required to lodge earlier and not eligible for the 5 June concession. • **21 May 2025** Due date for lodgment of Fringe Benefits Tax (FBT) annual returns if lodging by paper. • **28 May 2025** Payment for all FBT annual returns is due, and this is the due date for lodgment and payment of Superannuation Guarantee Charge for the March 2025 quarter, if required.	
6.	**Managing your business' day-to-day transactions: Essential tips for small business owners** The ATO offers practical advice to help small business owners streamline their operations and stay on top of their financial duties. These include: 1. staying organised with regular record-keeping; 2. setting aside funds for tax obligations; 3. preparing and lodge your BAS promptly; and 4. seeking professional assistance when needed.	**Manage your business' day-to-day transactions? | Australian Taxation Office**
7.	**ATO targets in-house SMSF audits** The ATO has intensified its focus on audits performed by auditors working for firms that also provide accounting or administration services to the same SMSF clients. Since 1 January 2020, the ATO has prohibited such audits unless strict conditions are met, including ensuring no management role is assumed and services are routine and mechanical. A recent ATO review revealed that around 800 auditors may still be performing in-house audits, despite these restrictions. In the 2024 review, the ATO investigated 30 auditors, resulting in: • 14 referrals to ASIC for further action; • 6 voluntary de-registrations; • 8 auditors receiving education on compliance; and • 2 auditors found compliant.	**In-house audit review results | Australian Taxation Office**

	Since 1 July 2021, the ATO has referred 42 auditors to ASIC, representing 32% of all referrals. Tax professionals must ensure their clients' SMSF audits comply with the ATO's independence requirements. Key steps include: • Maintaining clear separation between audit and other SMSF services. • Documenting compliance with the "routine and mechanical" test. • Diversifying revenue streams to avoid conflicts of interest. Failing to meet these standards can result in penalties, deregistration, and reputational damage. Firms must stay updated on regulatory changes to protect both themselves and their clients.	
8.	**Get ready for 12% super from 1 July 2025** The superannuation guarantee rate increases from 11.5% to 12% from 1 July 2025. Make sure your clients and their systems are ready, so that staff receive their correct rate of super and they aren't inadvertently underpaid.	**Super guarantee | Australian Taxation Office**
9.	**Sale of developed land: size doesn't matter** In the case of *Morton v FCT [2025] FCA 336*, the Federal Court held that a farming family on the outskirts of Melbourne who sold sub-divided lots of land can treat those sales as tax-free because they were sales of pre-CGT land. This is a significant case because over 1,600 lots were developed and sold on capital account, rather than as profit-making undertaking, trading stock, etc.	**Morton v Commissioner of Taxation [2025] FCA 336 (11 April 2025)**

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