



# PwC's Monthly Tax Update

Keeping you up to date on the latest Australian  
and international tax developments

February 2025

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# Corporate Tax Update

## MYEFO updates relating to corporate tax matters

In the [2024-25 Mid-Year Economic and Fiscal Outlook](#) (MYEFO) the Government made the following announcements that relate to corporate tax matters:

- Activities related to gambling and tobacco will be excluded from eligibility for the Research and Development (R&D) tax incentive for income years starting on or after 1 July 2025. However, activities that are solely for the purpose of harm reduction, such as reducing addiction, will remain eligible to receive support.
- The Government will provide \$5.2m over two years from 2026-27 (and further, reduced funding thereafter) to support the production of large budget screen productions to film in Australia, by reducing the minimum qualifying Australian production expenditure threshold from \$20m to \$15m for feature films under the location tax offset.

## New Green Aluminium Production Credit

The Government has [announced](#) a new Green Aluminium Production Credit to provide targeted support to Australian aluminium smelters switching to reliable, renewable electricity before 2036.

## ATO compliance approach on capital raised to fund franked distributions

The Australian Taxation Office (ATO) has issued draft Practical Compliance Guideline [PCG 2024/D4](#), which outlines where the ATO is likely to have cause to apply compliance resources in relation to the integrity measure in section 207-159 of the *Income Tax Assessment Act 1997* which operates to deny franking credits attached to certain distributions associated with a capital raising.

The draft PCG sets out the ATO's the framework for assessing the level of compliance risk present enabling taxpayers to make informed decisions about the likelihood that they will be subject to compliance action, and the features of arrangements that the ATO consider present greater compliance risk, and the types of documentation that it considers to be relevant when assessing the compliance risk associated with the capital raising arrangement. The draft PCG particularly sets out examples that fall within the green zone (i.e. where no ATO compliance resources will be applied).

Once finalised, the Guideline is proposed to apply to distributions made on or after 28 November 2023. Comments closed 31 January 2025.

## Division 7A and interposed entities and guarantee arrangements

The ATO has issued the following which considers issues arising under Division 7A of the *Income Tax Assessment Act 1936* (Cth) (deemed dividend rules) in respect of private company guarantee arrangements:

- Taxpayer Alert [TA 2024/2](#), which confirms that the ATO is currently reviewing arrangements under which:
  - A private company (the first company) guarantees a loan made by a financial institution to a related private company that has no or minimal distributable surplus.
  - The related company on-lends (or pays) some or all of the amount borrowed from the financial institution to the first company's shareholders (or their associates) on terms that do not comply with the requirements of Division 7A.

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The Alert applies to arrangements which, when viewed objectively, involve a series of steps that are intended to circumvent the operation of Division 7A.

- Draft Taxation Determination [TD 2024/D3](#), which deals with the issue of whether the first interposed entity (that is, the entity to whom the guarantee is given) needs to be a private company in order for section 109U, which can deem another private company to make a payment to a shareholder or associate of a shareholder ('target entity'), to apply.

The ATO's view is that the requirement in paragraph 109U(1)(a) that a private company guarantees a loan made by the 'first interposed entity' does not contain any restrictions on the type of entity the first interposed entity must be. The first interposed entity need not be a private company and may be any entity. However, while any entity (including a public company) can be the recipient of a guarantee, the entity making the ultimate payment or loan to the 'target entity' must be a private company.

The draft Determination also documents the Commissioner's proposed compliance approach to section 109U more broadly. In recognition that it is common for banks and other financial institutions to seek guarantees from related entities when providing loans to private companies, the ATO indicates that it will only apply compliance resources concerning the application of section 109U to high-risk arrangements that display clearly artificial or contrived elements. For example, this will be the case where, on an objective assessment, one or more of the private companies involved in the arrangement entered into or carried out the arrangement with a view to circumventing Division 7A, including through the exploitation of one or more private companies with no distributable surplus (such as flagged in the associated [Taxpayer Alert](#)).

Once finalised, the draft Determination is proposed to apply to years of income commencing both before and after its date of issue. Comments closed 31 January 2025.

## Strategic examination of R&D

The Government has [released](#) its [Terms of Reference for the Strategic Examination of R&D](#). The strategic examination, which will conclude by the end of 2025, is expected to find ways to get more value from investment in research across universities, industry and government, harness and grow business investment in R&D, and leverage scientific strengths to help address national priorities and foster new industries. An expert panel has been appointed to consult publicly on a discussion paper (yet to be released at time of writing) about how to optimise the R&D system and deliver an action plan of recommendations to the Government.

For a wider overview of key developments and new guidance issued in respect of the R&D tax incentive, see our 2024 round up [Tax Alert](#).

## R&D tax incentive did not apply

The Federal Court dismissed the taxpayer's appeal in [Active Sports Management Pty Ltd v Industry Innovation and Science Australia \[2024\] FCA 1346](#) such that the taxpayer was correctly denied the R&D tax incentive for costs associated with the development of a basketball shoe.

The AAT found the activities lacked systematic scientific progression and did not generate new knowledge, merely adapting existing designs based on subjective feedback. The taxpayer argued the AAT failed to consider their submissions and misapplied legal standards. The Court upheld the AAT's decision, noting it independently evaluated the case and applied the correct legal framework, emphasising that subjective outcomes do not meet the scientific method required for eligible core R&D activities for the purposes of the *Income Tax Assessment Act 1997*.

For further details, refer to our [Tax Alert](#).





## Amounts subject to PRRT

In [Commissioner of Taxation v Esso Australia Resources Pty Ltd \[2024\] FCAFC 151](#), the Full Federal Court has allowed the Commissioner's appeal (with costs) against the Federal Court's decision in [Esso Australia Resources Pty Ltd v FC of T \[2024\] FCA 87](#), in which the Federal Court found that 'monthly reservation fees' and a settlement sum receivable pursuant to a Deed of Amendment, Restatement and Release under a gas processing agreement were neither assessable tolling receipts nor assessable property receipts under the *Petroleum Resource Rent Tax Assessment Act 1987* (Cth).

The Full Federal Court found that both the monthly reservation fees and the settlement sum were 'assessable tolling receipts' as defined by section 24A. The monthly reservation fees were earned when the monthly statements were issued, with the Full Federal Court noting that it did not matter that the processing services to which they related were not to be provided until later. Similarly, the settlement sum was held to be derived when it was received by the taxpayer and not when the processing services were performed.

## ASIC highlights focus areas for 31 December 2024 financial reports

The Australian Securities and Investments Commission (ASIC) is urging directors, preparers of financial reports and auditors to be aware of its [enduring and ongoing focus areas](#) for financial reports for the year ending 31 December 2024. Areas of focus include impairment and asset values, provisions, events after year end and before completing the financial report, and disclosures in the financial report and Operating and Financial Review. This is the first financial year for December year-end public entities to prepare and lodge a consolidated entity disclosure statement (CEDs) and ASIC will be monitoring for compliance with this requirement.



# Employment Taxes Update

## Victorian payroll tax: Victorian State Taxation Further Amendment Bill 2024 receives Royal Assent

On 3 December 2024, the [State Taxation Further Amendment Act 2024](#) which makes a range of duty, land tax and payroll tax amendments, received Royal Assent. From a payroll tax perspective, this Act:

- provides a partial payroll tax exemption for wages related to general practice medical businesses that bulk bill, starting 1 July 2025, to support these practices; and
- extends the period in which the Commissioner of State Revenue may reassess an employer's payroll tax liability in certain circumstances.

## New South Wales payroll tax: Relief for medical centres

Revenue NSW has issued updated guidance in [CPN 036v2](#) on payroll tax relief for medical centres engaging contractor general practitioners (GPs). The updates reflect the *Revenue Legislation Amendment Act 2024* (NSW) which amended the *Payroll Tax Act 2007* (NSW) to provide an exemption for unpaid payroll tax on relevant GP wages prior to 4 September 2024, whilst also providing a subsequent rebate on payroll tax paid by medical centres on GP contractors in certain circumstance.

More specifically, from 4 September 2024, medical centres can claim a rebate on payroll tax for wages paid to GP contractors under specific billing arrangements (i.e. a required percentage of services are delivered under prescribed billing arrangements (80% in Metropolitan Sydney, 70% elsewhere). The term 'bulk billing arrangements' has been updated to 'prescribed billing arrangements' to include veteran arrangements. Employers must maintain detailed records of services and payroll calculations to support rebate claims.

## Queensland payroll tax: Exemption for GP wages

On 6 December 2024, the Queensland (QLD) Revenue Office (QRO) issued Public Ruling [PTAQ014.1.1](#), effective from 1 December 2024, which outlines an administrative arrangement exempting wages paid by medical practices to GPs from payroll tax and the mental health levy. This ruling supersedes previous private rulings and advice from the QRO on this topic.

Under the *Payroll Tax Act 1971* (QLD), payroll tax is generally imposed on wages exceeding a certain threshold. However, this ruling specifies that wages paid to GPs are exempt if the GP is registered in the speciality of general practice under the *Health Practitioner Regulation National Law* (Queensland) or as specified in the *Health Insurance (General Medical Services Table) Regulations 2021*. The exemption applies to wages paid by businesses providing medical services, excluding hospitals, regardless of whether services are offered on-site or remotely.

Additionally, on 12 December 2024, [Revenue Legislation Amendment Bill 2024](#) was introduced into the QLD Parliament and aims to give legislative effect to the above administrative arrangement. This Bill will formally incorporate the concepts of 'medical practice' and 'general practitioner' into the *Payroll Tax Act 1971* (QLD) for the purposes of the exemption, and, if passed, will apply from 1 December 2024.

Finally, the QRO has released updated guidance on the application of relevant contract provisions in the *Payroll Tax Act 1971* (Qld) to entities conducting medical centre businesses. [Public Ruling PTQ000.6.4](#), effective from 1 December 2024, explains how these provisions apply to contracts between medical centres and practitioners engaged to serve patients on behalf of the medical centre.

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For the purposes of this ruling, a medical centre includes dental clinics, physiotherapy practices, radiology centres, and similar healthcare providers that engage medical, dental, and other practitioners.

## Updated ATO guidance on who is an employee for superannuation purposes

On 11 December 2024, the Australian Taxation Office (ATO) finalised its update to Taxation Ruling [TR 2023/4](#). As outlined in Appendix 2 of the Ruling, the ATO provides guidance on when a person will be considered to be an employee under section 12 of the *Superannuation Guarantee (Administration) Act 1992* (SGAA). The finalised updated Ruling maintains the core guidance of its draft version, with minor adjustments and clarifications based on feedback received.

The ATO has also published a [Compendium](#) to the Ruling which provides its responses to comments received in relation to the draft ruling. Of note, this includes commentary on director payment arrangements with Personal Services Entities, the relevant factors for the 'wholly or principally for labour' test under section 12(3) of the SGAA, the application section 12(8) which further expands the meaning of employee, and tenant-doctor arrangements.

TR 2023/4 applies retroactively and prospectively from its date of issue, effectively replacing the previous Superannuation Guarantee Ruling SGR 2005/1.

## ATO: SG compliance results for 2023-24 financial year

The ATO has released the [highlights](#) of its superannuation guarantee compliance activity for 2023-24. Key findings relevant to employer obligations administered by the ATO include:

- Employers are paying more than 92.4% of the SG they are required to, without intervention from us.
- A total of \$1.91bn in superannuation guarantee charge (SGC) liabilities was collected through ATO compliance, proactive reminders and prompts, and employer voluntary disclosures of unpaid SG, for over 1.13 million employees.
- \$932m was distributed to employee funds and individuals from liabilities raised for current and prior financial years, for 797,000 employees.
- Approximately 23,600 SG cases were finalised, resulting in \$659m superannuation guarantee charge (SGC) liabilities and \$300m in Part 7 penalties being raised.
- 167,000 employers received the ATO's proactive actions including reminders and prompts to check their obligations, raising \$240m in SGC liabilities.
  - The ATO sent 100,000 reminders to employers
- The ATO sent 67,000 prompts to employers
- Employers made voluntary disclosures of unpaid super, resulting in around \$539m in SGC liabilities being raised.

[Further statistics](#) and case studies on [director personal liabilities](#) are also available.

## NSW Payroll Tax: Parliamentary inquiry into the application of the contractor and employment agency provisions

On 26 November 2024, an [inquiry](#) was established to investigate, and report on, the application of the contractor and employment agent provisions in the *Payroll Tax Act 2007* (NSW).

The inquiry will also consider:

- revenue rulings and Commissioner's practice notes issued by Revenue NSW addressing the contractor and employment agencies provisions
- decisions of courts in cases involving the application of the contractor and employment agencies provisions; and
- the applicability of the contractor and employment agent provisions on particular industries including the on-demand and gig economy.

The closing date for submissions is 7 February 2025.

## FBT: Proposed exemption for small businesses' meal and entertainment

On 20 January 2025, Opposition Leader Peter Dutton [announced](#) that if elected, a Dutton Coalition Government would introduce a new tax deduction for small businesses' meal and entertainment expenses.

Small businesses with an annual turnover of up to \$10m would be eligible for the tax deduction, capped at \$20,000, for business-related meal and entertainment expenses. This policy would include expenditure on dining and entertainment provided to clients, vendors, and employees. However, alcohol expenditure is understood to be excluded from this policy. It is proposed that eligible expenses would also be exempt from Fringe Benefits Tax (FBT).

If implemented, this measure is proposed to run for an initial two years.

The [Australian Small Business and Family Enterprise Ombudsman](#) estimates that this policy would apply to 97.2% of all Australian businesses.



# International Tax and Trade

## Australia's Pillar Two rules registered

Australia's Pillar Two legislation which establishes the framework for which Australia will apply Pillar Two top-up tax, namely Australian Domestic Minimum Tax (DMT) and Australian Income Inclusion Rule (IIR) tax with effect for income years commencing on or after 1 January 2024, completed its passage through Federal Parliament.

The [Taxation \(Multinational – Global and Domestic Minimum Tax\) Rules 2024](#) augment the practical application of Australia's Pillar Two legislation with detailed definitions and top-up tax computations was registered 23 December 2024. Registration of the Rules now means that all aspects of Australia's Pillar Two domestic and global minimum tax is now substantively enacted. Specifically, the Rules include details on:

- computing and allocating GloBE Income or Loss
- computing and allocating Adjusted Covered Taxes
- application to investment and Tax Transparent Entities
- safe harbour provisions; and
- transitional provisions for MNE Groups.

The Rules apply retrospectively in respect of fiscal years commencing on and after 1 January 2024.

## Thin capitalisation: ATO draft guidance on third party debt test and restructures

The Australian Taxation Office (ATO) has released draft guidance on key aspects of the thin capitalisation third party debt test, and additional draft guidance on restructures undertaken as a result of the new rules.

Draft Taxation Ruling [TR 2024/D3](#) provides interpretative guidance on aspects of the third party debt test (TPDT) and focuses on the 'third party debt conditions', which are the critical conditions an entity must meet in order to satisfy the new third party debt test in the thin capitalisation provisions.

The ATO's draft Ruling is detailed and considers various aspects of each condition of the TPDT including the relevant test time, how the condition applies to debt that is on issue for only part of the year, and the interpretation of key terms. In many cases it also provides examples to illustrate the ATO's position. The draft Ruling does not address the conduit financing rules associated with the TPDT.

In conjunction with TR 2024/D3, the ATO has updated draft Practical Compliance Guideline [PCG 2024/D3](#) to now include new Schedules 3 and 4. Schedule 3 outlines the ATO's targeted compliance approach in relation to certain matters arising under the TPDT, while Schedule 4 explains the ATO's compliance approach to certain restructures in response to the new thin capitalisation rules.

While the ATO's commentary in TR 2024/D3 favours a narrow interpretation of the TPDT conditions, in contrast, many taxpayers will welcome the ATO's TPDT compliance approach within Schedule 3 of PCG 2024/D3. Acknowledging the late enactment of the new thin capitalisation rules and that taxpayers require time to restructure their arrangements, this Schedule sets specific types of restructures that can be undertaken to comply with certain TPDT conditions and prescribes time limits for undertaking those restructures in order to benefit from the ATO's compliance approach.

Comments on both TR 2024/D3 and PCG 2024/D3 close 7 February 2025.

For further information, refer to our [Tax Alert](#).

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## Australia's public country by country reporting laws

Public country by country (CBC) reporting obligations now apply in Australia with effect for reporting periods commencing on or after 1 July 2024. Under this new obligation, the CBC reporting parent of a large multinational group with an Australian presence is required to submit data on their global financial and tax footprint to the ATO, which will be made available publicly.

[Taxation Administration \(Country by Country Reporting Jurisdictions\) Determination 2024](#), registered on 17 December 2024, specifies the jurisdictions for which the required information will need to be reported separately on a CBC basis if the CBC reporting group operates in that jurisdiction.

This new obligation will apply in addition to the existing confidential CBC reporting obligations and any other public CBC reporting regime to which a multinational group may be subject (e.g. the European Union regime). Read more in our [Tax Alert](#).

## Country by country reporting – local file short form instructions

The ATO has s [updated version](#) of the local file/master file (LCMSF) which will impact country by country reporting entities (CBCREs) for reporting periods starting on or after 1 January 2024.

Following consultation over recent months, the ATO has finalised its [instructions](#) for completing the local file. The changes to the short form local file include additional disclosures about local Australian entities and operations covering main business lines or functions and key competitors, organisational reporting structure and overseas reporting arrangements and significant restructures and new arrangements involving transfer, licence, or creation of intangibles.

For further information, refer to our [Tax Alert](#).

## ATO's simplified transfer pricing record keeping options

The ATO has updated its Practical Compliance Guideline [PCG 2017/2](#) on the simplified transfer pricing record-keeping options to reflect, among other minor changes, the maximum and minimum interest rates for low level inbound and outbound loans for the 2024-25 year. For both loans, the PCG provides that the interest rate be no more than 5.61% in the 2024-25 income year to qualify for the simplified option.

Where a qualifying taxpayer applies one or more of the options in the Guideline, the ATO will generally not allocate compliance resources to review the covered transactions or arrangements specified in that option for transfer pricing purposes, beyond reviewing eligibility to use the option applied.

## MYEFO update relating to international matters

In the 2024-25 Mid-Year Economic and Fiscal Outlook (MYEFO), the main measure [announced](#) that relates to international tax and trade issues concerned foreign bail-in bonds.

Bail-in bonds are financial instruments that are subject to conditions imposed by a prudential regulator that allow the regulator to convert the instrument into equity in a period of financial distress.

Specifically, the Government announced that it would clarify the law to ensure continuity of established ATO administrative treatment on foreign bail-in bonds. This will allow bail-in bonds for Australian branches of foreign banks to continue to be treated as debt for tax purposes, enabling deductibility of interest payments. This will align with the treatment currently applying to bail-in bonds issued domestically by Australian banks. This measure will apply retrospectively.

## Pillar One update from the Co-Chairs of the Inclusive Framework on BEPS

The Co-Chairs of the Inclusive Framework on BEPS have issued a [statement](#) on the progress made by the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) in the development of a final package for Pillar One of the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.

In relation to Amount A, which will introduce a system for a coordinated allocation of taxing rights to market jurisdictions with respect to a defined portion of the residual profits of the largest and most profitable multinationals, the text of the revised Multilateral Convention was agreed by all but one member, and remains stable with the negotiations having been focused on resolving the outstanding issues with the Amount B Framework. Significant work has been undertaken on the detailed parameters of the Amount B Framework, which is a simplified and streamlined approach to the application of the arm's length principle to baseline marketing and distribution activities, now with only a few outstanding issues remaining amongst certain jurisdictions.



## OECD publishes Pillar Two GloBE administrative guidance package

The Organisation for Economic Cooperation and Development (OECD) has released additional Pillar Two Administrative Guidance on the Global Anti-Base Erosion (GloBE) Model Rules and several related documents aimed at streamlining the administration of the global minimum tax. This includes guidance on transition rules on deferred tax assets, a list of countries that have (temporary) 'qualified' Pillar Two rules, an updated GloBE Information Return (GIR) and related Commentary, and a Multilateral Competent Authority Agreement to facilitate central filing and exchange of the GIR.

For more information, refer to our [Global Policy Alert](#).

## Harmful Tax Practices report

The OECD has issued its [Harmful Tax Practices – 2023 Peer Review Reports on the Exchange of Information on Tax Rulings](#) which reports the outcome of the eighth annual peer review of the implementation of the BEPS Action 5 minimum standard dealing with the transparency framework for compulsory spontaneous exchange of information on certain tax rulings.

Key findings include that:

- As at 31 December 2023, over 26,000 tax rulings in scope of the transparency framework had cumulatively been issued by the jurisdictions being reviewed.
- Over 58,000 exchanges of information had cumulatively taken place by 31 December 2023.
- 104 jurisdictions (including Australia) did not receive any recommendations, as they have all met the terms of reference, with a further nine jurisdictions receiving only one recommendation.
- In a number of cases, the peer review process has assisted jurisdictions in identifying areas where improvement is required, and jurisdictions have been able to take action to implement changes over 2024 while the peer review was ongoing.

## Other OECD updates

Since our last update, the following OECD reports have been released:

- The [OECD Secretary-General Tax Report to G20 Leaders](#) (G20 Brazil, November 2024), which sets out recent developments in international tax reform, including on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. It also covers progress made on the implementation of the BEPS minimum standards and tax transparency, as well as updates on tax policy, tax and inequality and tax administration.

- [Consumption Tax Trends 2024](#), which provides information on value added taxes (VAT)/Goods and Services Taxes and excise duty rates in OECD member countries. It reports that, among other matters, VAT continues to be the largest category of consumption taxes, generating almost four times as much tax revenue as excise duties that form the bulk of taxes on specific goods and services, accounting for 5.6% of total tax revenue in 2022 on average.

## MLI updates

The ATO has published the synthesised text of the double tax agreements, as amended by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI), that Australia has with the following jurisdictions:

- [Mexico](#); and
- [Papua New Guinea](#).

## Germany publishes final anti-hybrid rules guidance

The German Federal Ministry of Finance recently published the final decree on its interpretation of the German anti-hybrid rules. The decree includes statements regarding the impact of foreign controlled foreign corporation (CFC) regimes on the German anti-hybrid rules. Multinational companies with German subsidiaries should analyse the decree's impact on the deductibility of expenses in Germany, also noting the documentation requirements. Read more in our [Global Alert](#).

## UK joins Trans-Pacific Partnership

The Protocol on the Accession of the United Kingdom (UK) and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which provides for the UK to accede to the CPTPP – one of the world's most comprehensive free trade agreements - [entered into force](#) for Australia on 24 December 2024. The CPTPP was originally signed by 11 countries in March 2018, including Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam.



## New US administration signals need for business to prepare for global trade shifts

The Trump administration now in place in the United States has laid out an activist trade policy agenda focused on increasing [US tariffs](#). This strategy aims to reshape US trade relations, promote fair trade practices, address socioeconomic issues, and encourage domestic manufacturing. However, this approach may also lead to considerable disruption and uncertainty for US importers and multinationals.

The potential Trump tariff policies significantly expand the scope of products, industries and countries subject to punitive tariffs compared to previous administrations. Each multinational corporation, including those not currently subject to tariffs, must assess the pre/post impact of the potential tariffs.

## Suspension and reduction of preferential rates of customs duty

On 1 January 2025, preferential rates of customs duty under the following free trade agreements are [reduced](#):

- India-Australia Economic Cooperation and Trade Agreement (ECTA)
- Regional Comprehensive Economic Partnership Agreement (RCEP); and
- Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland (A-UKFTA).

Under the ECTA, the preferential rates of customs duty for certain iron, steel and aluminium goods are reduced from 2% to 1%. Preferential rates of customs duty for certain goods under RCEP, such as certain types of beverages, wood, paper or textile products and other manufactured articles, are reduced to 3%. Under the A-UKFTA, the preferential rates of customs duty for certain cheese and curd products are reduced to \$0.61 per kg and goods of iron and steel are reduced to 2%.

Separately, from 24 December 2024, the Customs Tariff (Suspension of Preferential Tariffs for Certain UK Originating Goods) Notice 2024 suspends the preferential rates of customs duty for steel goods of 74 tariff headings and subheadings within the *Customs Tariff Act 1995*. The scope of goods for which preferential rates are suspended has been expanded to align with the list of headings and subheadings to which the UK has applied a global safeguard. The goods classified to the headings and subheadings in the notice will be subject to a customs duty rate of 5% until the end of 30 June 2026.



# Indirect Tax Update

## Time limits for claiming an input tax or fuel tax credit

The Australian Taxation Office (ATO) has published Miscellaneous Taxation Ruling [MT 2024/1](#), which sets out the Commissioner's view on time limits applying to the entitlement to an input tax or fuel tax credit set out in:

- Subsection 93-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999*; and
- Subsection 47-5(1) of the *Fuel Tax Act 2006* (together, the 'limiting provisions').

The limiting provisions provide that a taxpayer's entitlement to a tax credit ceases (unless an exception applies) to the extent that the tax credit has not been taken into account in an assessment during the four-year entitlement period.

MT 2024/1 explains when and the extent to which a tax credit (namely, an input tax credit or fuel tax credit) has been taken into account in an assessment, when the four-year entitlement period ends and the exceptions to the limiting provisions. The Ruling also explains when an objection to an assessment may preserve a taxpayer's entitlement to a tax credit and the interaction between the limiting provisions and private ruling and amendment requests.

The Ruling applies both before and after its date of issue.

## GST on supply of burial right in a public cemetery

The ATO has issued Goods and Services Tax (GST) Determination [GSTD 2024/2](#) which explains how the law operates to exempt the supply and renewal of a burial right in a public cemetery made by an Australian government agency from GST. The Determination considers the GST consequences of the:

- supply by an Australian government agency of the permission required to exercise a burial right in a public cemetery
- renewal by an Australian government agency of a burial right and the recording of the granting or transfer of a burial right in a public cemetery
- supply of other goods and services in relation to a burial or cremation, including memorial plaques and gravedigging services; and
- supply of a burial right in a public cemetery where a funeral director arranges for the supply, including as an agent for the public cemetery operator or as an agent for the purchaser of the burial right.

The Determination applies on and after 4 December 2024, being the date of its issue.

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## Windfall gain if excess GST were refunded

In [SFQV and Commissioner of Taxation \(Taxation\) \[2024\] ARTA 9](#), the newly-established Administrative Review Tribunal (ART) rejected a taxpayer's contention that assessments of GST made by the Commissioner were excessive.

The taxpayer acquired land and, in addition to paying an amount of monetary consideration for the acquisition, it provided non-monetary consideration in undertaking to develop the land, including by building residential apartments on it. The provision of these development services resulted in a number of GST issues, including whether the taxpayer had passed on excess GST to purchasers of residential units at the development when calculating its GST under the margin scheme and, if so, whether it should be refunded by the Commissioner.

One of the issues considered related to the concept of a 'windfall gain' under section 142-15 of *A New Tax System (Goods and Services Tax) Act 1999*. Generally, refunding an amount of GST to a taxpayer who has passed on the burden of that amount to another entity will result in the taxpayer having a windfall gain. In this case, the ART did not accept that the taxpayer expected, nor could have reasonably held the expectation, that it would be entitled to a refund of excess GST which it had passed on to its purchasers but had not reimbursed. In particular, it found that the taxpayer failed to prove that it did not pass on excess GST to the purchasers of its residential units and had not established any basis on which an exercise of discretion in section 142-15 would be warranted.

## GST areas of focus for small business taxpayers

In a [speech](#) to the Institute of Public Accountants (IPA) National Congress 2024, ATO Deputy Commissioner for Small Business, Will Day, noted, a number of issues and matters to better support small businesses in relation to GST and other tax matters.

Its [current areas of focus](#) for small businesses in relation to GST include 'Operating outside the system' - with the microscope on GST registrations and payment of tax in ride-sourcing.

For drivers in the ride-sourcing sector (i.e. the provision of taxi, limousine or ride-sourcing services), there is an obligation to register for GST, regardless of turnover. From February 2025, where the ATO's records indicate that a ride-sourcing driver may not be complying with their tax obligations, the ATO will contact them, or their tax professional, to provide support and request that they check their tax affairs are correct. Stronger action will be sought against those who do not respond.

It was also mentioned that the ATO is working towards the [OECD's Tax Administration 3.0 vision](#) which creates an experience where it will be easier and more seamless for small businesses to meet their tax obligations correctly from the start and on time. The ATO aims to encourage and move more small businesses from quarterly to monthly Business Activity Statement (BAS) lodgment.

## MYEFO and the Indirect Tax Concession Scheme

It was announced in the [2024-25 Mid-Year Economic and Fiscal Outlook](#) (MYEFO) that the Government has extended refunds of indirect tax (including GST, fuel and alcohol taxes) under the Indirect Tax Concession Scheme (ITCS). New access to refunds has been provided to France and Bangladesh relating to the construction and renovation of their current and future diplomatic missions and consular posts.

In addition, further to the MYEFO announcement, Oman has also had ITCS access extended for its Embassy and applicable accredited staff, following registration of the [Diplomatic Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Oman\) Determination 2024](#).



# Personal Tax Update

## Taxpayer Alert for early-stage investor tax offset

The Australian Taxation Office (ATO) is currently reviewing cases where individuals have claimed the early stage investor tax offset on shares acquired through circular financing arrangements.

In Taxpayer Alert [TA 2024/1](#), the ATO outlines its concern that individual taxpayers may be entering into these arrangements under the mistaken belief that they are entitled to the early-stage investor tax offset benefits claimed. Individuals will similarly not be entitled to capital gains tax exemptions when they dispose of their shares where they were not entitled to the tax offset.

The Alert does not apply to arrangements where the individual makes a genuine investment for the full amount of shares acquired in a start-up that qualifies as an early-stage innovation company (ESIC) and the money invested is genuinely used by the ESIC.

## Rental bond data matching program

The ATO will acquire [rental bond data](#) from state and territory rental bond regulators bi-annually for the 2023-24 through to the 2025-26 financial years.

The data collected will include:

- individual client details
- managing agent identification details; and
- rental bond transaction details.

The aim of this data matching program is to help the ATO identify taxpayers who own an income producing property, and taxpayers who have sold an income producing property, who may not be meeting their reporting, lodgment or payment obligations.

It also helps in identifying foreign residents owning residential property who may not be complying with foreign investment laws, such as those relating to:

- conditions imposed on foreign investment approvals
- use of a dwelling; and
- vacancy fees.

## Substantial family gifts not assessable

In [Cheung v Commissioner of Taxation \[2024\] FCA 1370](#), the Federal Court has found that a taxpayer was not assessable to some \$33m in receipts from bank accounts in Vanuatu between the 2005 and 2015 income years, finding that the amounts were gifts from the taxpayer's wider family.

The taxpayer's sister, and her wider family, owned a successful supermarket business in Vanuatu, where the taxpayer had worked as a general manager before retiring to Australia in 2000. In considering whether the amounts received were income according to ordinary concepts, the Federal Court found that the amounts were not income in the taxpayer's hands in any sense, i.e they were not returns in respect of an ownership interest in the business, they were not in the nature of a return for services rendered or in nature of a pension for past services and were not payments in the nature of rent. Rather, they were gifts of capital voluntarily made by a sister who has an acute sense of family loyalty and responsibility.

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## Identification and management of financial abuse within the tax system

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) is conducting a [review](#) that will examine concerns raised through its complaint investigation service and by key stakeholders to seek to identify improvements in detecting and managing instances of financial abuse within the tax system. Importantly it will examine best practice approaches to assist the ATO to design products and processes that effectively support victim-survivors of financial abuse and minimise the risk of further victimisation within the tax system.

The final report is expected to be delivered in March 2025.





# State Tax Update

## Upcoming dates for 2025-26 State and Territory Budgets

The following dates are expected to apply for the 2025-26 State and Territory Budgets:

State/Territory	2025-26 Budget Date
Victoria	Tuesday, 6 May 2025
Northern Territory	Tuesday, 13 May 2025
Tasmania	Thursday, 29 May 2025
South Australia	Thursday, 5 June 2025
New South Wales	Tuesday, 24 June 2025 (to be confirmed)
Queensland	Tuesday, 24 June 2025
Australian Capital Territory	Tuesday, 24 June 2025 (to be confirmed)

The date of the Western Australian 2025-26 Budget will be confirmed by the incoming government following the result of the State election to be held on 8 March 2025.

## NSW: Revenue Legislation Further Amendment Bill 2024 passed

The [Revenue Legislation Further Amendment Bill 2024 \(NSW\)](#) has completed its passage through the New South Wales (NSW) Parliament and received Royal Assent on 2 December 2024. The Bill has made miscellaneous amendments to various Acts, including the *Duties Act 1997 (NSW)*, the *Land Tax Management Act 1956 (NSW)*, the *Taxation Administration Act 1996 (NSW)* and the *Payroll Tax Act 2007 (NSW)*. For further details, refer to our [November 2024](#) edition of Monthly Tax Update.

## NSW: New duties guidance on sale and transfers of land

Revenue NSW has released a new guide dealing with '[Contracts for sale of land and transfers](#)', which provides detailed information on assessing transfer duty for contracts and transfers, along with a practical checklist to ensure all important factors are considered when making an assessment of duties, including the surcharge purchaser duty.

A new '[Surcharge purchaser duty tool](#)' has also been made available, which offers a simple, easy to follow series of questions to help determine if a purchaser or transferee is considered a foreign person and liable for surcharge purchaser duty.

## NSW: Land tax rulings on low-cost accommodation and boarding houses

Revenue NSW has issued the following land tax [revenue rulings](#) that specify the maximum tariffs/rents that may be charged during 2025 to qualify for the applicable land tax exemptions:

- [Exemption – Land Used and Occupied Primarily for a Boarding House](#)
- [Exemption – Land Used and Occupied Primarily for Low Cost Accommodation](#)

## NSW: Surcharge land tax assessment upheld for discretionary trust

In [Jemag Pty Ltd ATF The Nawar Family Trust v Chief Commissioner of State Revenue \[2024\] NSWCATAD 392](#), the New South Wales Civil and Administrative Tribunal has upheld an assessment to surcharge land tax, finding that foreign persons had not been excluded as a beneficiary under the terms of the trust deed.

The Trust was established in July 2012, with the trust deed providing that the trustee may decide, in its absolute discretion, what part of the income or capital of the trust was to be distributed to a beneficiary or class of beneficiary.

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Under section 5D of the *Land Tax Act 1956 (NSW)*, the trustee of a discretionary trust is deemed to be a foreign person for the purposes of the surcharge land tax liability unless two conditions are satisfied - namely, that no potential beneficiary of the trust is a foreign person and that the terms of the trust are not capable of amendment in a manner that would result in there being a potential beneficiary of the trust who is a foreign person.

As the Tribunal noted, the trust failed to satisfy the 'no foreign beneficiary' requirement. The family of the director of the trustee company included many relatives in Egypt and were included within the classes of eligible beneficiaries under the trust deed. Although the trust had never made any distributions to those beneficiaries, they are potential beneficiaries of the trust for surcharge land tax purposes as the trustee has a discretion to distribute income or capital of the trust fund to or for the benefit of those beneficiaries.

### NSW: Primary production exemptions denied

The New South Wales Civil and Administrative Tribunal has found that the primary production land tax exemption was unavailable in the following cases:

- [Wylarah Pastoral Co Pty Ltd ATF Tallong Family Trust v Chief Commissioner of State Revenue \[2024\] NSWCATAD 366](#) - the taxpayer failed to show that the 'dominant use' of the land was that of primary production, with weight given to the fact that the only income derived from the use of the land in the relevant period was rental income from the residence on that land.
- [T & A Skills Care Service Pty Ltd v Chief Commissioner of State Revenue \[2025\] NSWCATAD 18](#) - the taxpayer failed to discharge its onus of proof that the requirements of section 10AA(3)(a) or (b) of the *Land Tax Management Act 1956 (NSW)* had been met in respect of various categories of land use, including a 'goat breeding' business and 'bamboo timber business'. As a result, there could be no 'dominant use' of the land for such purposes in the relevant years.

### Victoria: State Taxation Further Amendment Bill 2024 passed

Since our last update, the [State Taxation Further Amendment Bill 2024 \(Vic\)](#) has completed its passage through the Victorian Parliament and received Royal Assent on 3 December 2024. For further details on the Bill, which makes a range of duty, land tax and payroll tax amendments, see our [December 2024](#) edition of Monthly Tax Update.

### Victoria: Duties and extension of voluntary disclosure program

At the request of industry, the Victorian Commissioner of State Revenue has [extended](#) the [voluntary disclosure program and penalty tax amnesty](#) on capital raisings in landholders to include requests for private rulings where a taxpayer is unsure whether their capital raising is subject to duty as an associated transaction following the decision in *Oliver Hume Property Funds (Broad Gully Rd) Diamond Creek Pty Ltd v Commissioner of State Revenue [2024] VSCA 175*. In this case, the Court unanimously found that the acquisitions made in the applicant landholder pursuant to a conditional capital raising were subject to duty as an associated transaction notwithstanding that the acquirers were not acquainted with each other. If the ruling confirms the capital raising is liable for duty, the penalty tax amnesty will apply.

The voluntary disclosure program and penalty tax amnesty end 31 March 2025.

### Victoria: Vacant residential land tax confirmed

In [Zheng v Commissioner of State Revenue \(Review and Regulation\) \[2024\] VCAT 1173](#), the Victorian Civil and Administrative Tribunal (VCAT) confirmed an assessment of vacant residential land tax (VRLT), notwithstanding that, for a period, the electricity and gas supply to the property was disconnected.

The only issue in dispute was whether the land was residential land, which in turn raised the issue of when the status of land should be tested for the purposes of the VRLT regime. The VCAT noted that, while the VRLT may seem to be a tax in its own right, it is clearly a species of land tax. Accordingly, it is to be assessed in the same way as any other land tax, with the tax for a given land tax year based on the 'total taxable value of all taxable land' held at midnight of the *preceding* 31 December.

In this case, the property was rented out as at the relevant previous 31 December and accordingly was 'residential land' as at that date, but it was 'vacant' between 1 January and 30 September, a period of more than six months, which means that the VRLT was correctly imposed. It was irrelevant whether the land was or was not residential between April and September (i.e. when the gas and electricity were disconnected).

## Queensland: Election commitments Bill introduced

The [Revenue Legislation Amendment Bill 2024 \(Qld\)](#) was introduced into the Queensland (QLD) Parliament on 12 December 2024. The Bill, which implements revenue-related commitments made during the 2024 State election campaign, [amends](#) the *Duties Act 2001 (Qld)* to:

- provide full transfer (stamp) duty relief to eligible first home owners entering into eligible transactions to purchase a new home to live in or vacant land on which they will build a home to live in, from 1 May 2025; and
- enable recipients of the transfer duty home concessions to rent part of their property during the one-year occupation period and retain the full benefit of this relief, from 6 December 2024 (the 'rent-a-room measure').

The rent-a-room measure will be provided under administrative arrangements, pending legislative amendment (see below).

The Bill also amends the *Payroll Tax Act 1971* – see Employment Taxes for further information.

## Queensland: Rulings updated for 'rent a room' duty concession

Following the 'rent-a-room measure' announced by the QLD Government during the 2024 State election campaign (see above), public ruling [DA000.20.2](#) has been updated to reflect the position that, from 6 December 2024, the Commissioner will not reassess the home duty concessions solely because the recipient leases or grants exclusive possession of part of the property to another person within one year of moving into the property.

Public Ruling [DA000.18.3](#) has similarly been updated to provide details of when the Commissioner will not reassess the home duty concessions or the additional foreign acquirer duty (AFAD) exemption for specified foreign retirees where the lease or grant of exclusive possession of part of the property occurs between 10 September 2024 and 5 December 2024 (inclusive).

For the avoidance of doubt, these administrative arrangements do not affect any other requirements in the Duties Act regarding the home concessions.

## Western Australia: Duty guidance when consideration is reduced

The Western Australian (WA) Commissioner of State Revenue has updated Practice [DA 28.4](#), which provides guidance on how the WA Commissioner will assess or reassess the duty payable on a dutiable transaction where the consideration was reduced after the agreement was entered into.





# Superannuation Update

## MYEFO and legacy superannuation retirement product conversions and reserves

In the [2024-25 Mid-Year Economic and Fiscal Outlook](#) (MYEFO) the Government announced that it will enable individuals to exit certain legacy retirement products, together with any associated reserves – making it easier for individuals to shift to more contemporary retirement products. Specifically, the Government is seeking make the following changes:

- extend the take up period to five years
- broaden eligibility to also allow the exit of products converted from a previous pension that commenced prior to 2007 and was one of the specified legacy retirement products
- expand the flexible reserves treatment to all superannuation reserves; and
- no longer apply a flat 15% tax to allocations.

Allocations of a reserve from participating pension exits will be exempt from contribution caps when they are made back to the pension recipient. All other allocations will count towards the non-concessional contributions cap.

As previously announced, social security treatment will not be preserved for those who elect to take advantage of the conversion. However, conversions will not be subject to reassessment of social security treatment for the period before conversion.

This measure will have effect from the financial year in which enabling regulations are registered.

## Updated rulings on non-arm's length income and expenditure

As a result of recent amendments made by the *Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024* that modified the calculation of the 'non-arm's length component' for small complying superannuation funds, the ATO has issued a draft update to its Law Companion Ruling [LCR 2021/2DC](#).

This Ruling clarifies how the amendments operate in a scheme where the parties do not deal with each other at arm's length and the trustee of a small complying superannuation fund incurs non-arm's length expenditure (or where expenditure is not incurred) in gaining or producing ordinary or statutory income.

Alongside additional guidance and updated examples, the draft Ruling also confirms the removal of the compliance approaches that are currently included in LCR 2021/2 upon finalisation of the draft update, given that the 2024 amendments have excluded large APRA funds from the operation of the non-arm's length expenditure rules, and have limited the tax impact for a small complying fund of a finding that general fund expenses are non-arm's length.

When finalised, the draft Ruling is proposed to remain effective from 1 July 2018.

Separately, an update to draft Taxation Ruling [TR 2010/1DC2](#) has also been issued to explain the interactions between the non-arm's length income (NALI) provisions and the rules concerning superannuation contributions. It also contains changes to reflect the removal of the maximum earnings test for the purpose of deducting personal contributions, which commenced from 1 July 2017. When finalised, Part A of the Ruling which considers the ordinary meaning of contribution and when an how a contribution is made, is proposed to apply both before and after its date of issue, while Part B which explains some aspects of Division 290 that apply to an employee or personal superannuation contribution will apply to the 2007-8 and later income years.

Comments for both draft Rulings closed 24 January 2025.

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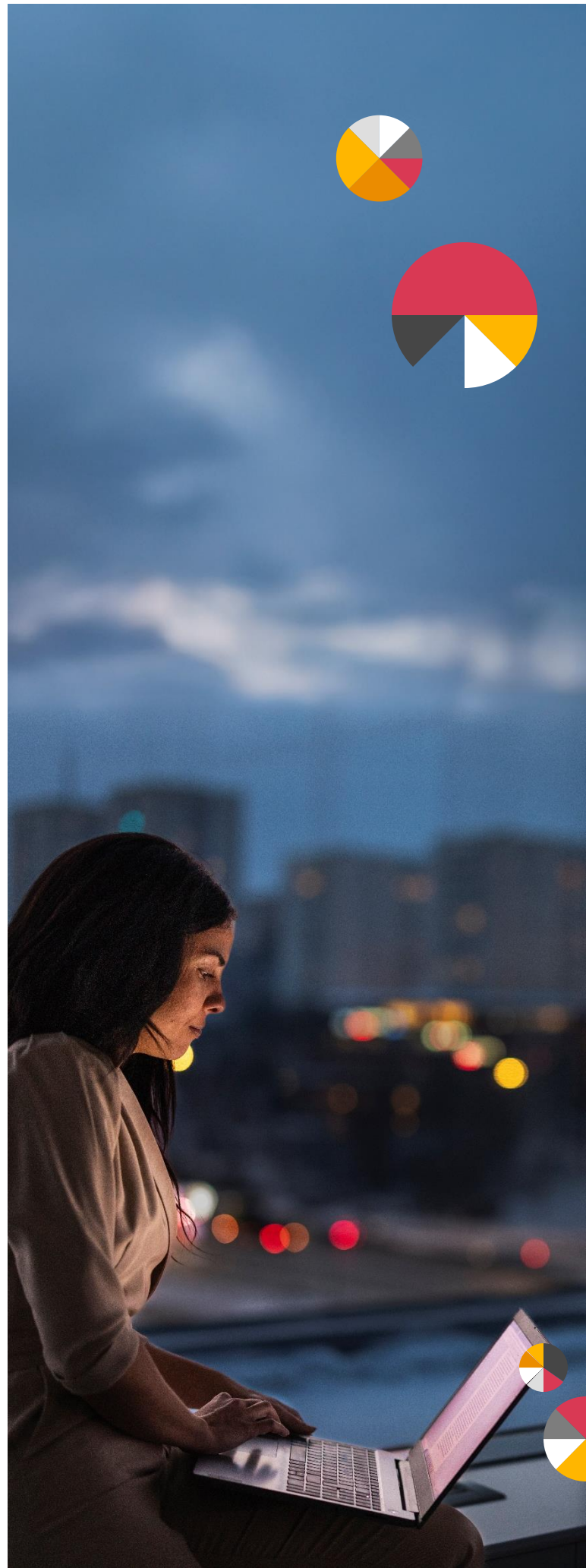
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## Draft compliance approach for funds paying members' financial advice fees

Following recent amendments to the *Superannuation Industry (Supervision) Act 1993* (SISA) and the *Income Tax Assessment Act 1997* (ITAA 1997) to clarify the legal basis for and the associated income tax consequences of the payment by a superannuation fund of financial advice fees which are paid from or charged to members' superannuation interests, the ATO has issued draft Practical Compliance Guideline [PCG 2025/D1](#), which sets out:

- A methodology that superannuation funds (other than self-managed superannuation funds (SMSFs)) can choose to use to determine the extent to which payments of financial advice fees satisfy paragraph (d) of table item 5, subsection 295-490(1) of the ITAA 1997. Funds that choose to use the methodology can be confident that the ATO will not have cause to apply compliance resources to review whether it satisfies the legislative requirements, other than to verify compliance with this Guideline. When finalised, this part of the Guideline is proposed to apply for the 2019-20 and later income years.
- The ATO's compliance approach in relation to a superannuation fund's pay as you go (PAYG) withholding obligations for personal financial advice fees paid in the income years prior to 1 July 2019, including SMSFs. This part of the Guideline, once finalised, will not apply to income years later than the 2018-19 income year.

Comments on the draft PCG close 14 February 2025.



# Legislative Update

No tax or superannuation related Bills have been introduced nor completed their passage through Federal Parliament since our last edition of Monthly Tax Update.

The following Commonwealth revenue measures were registered as a legislative instrument since our last update:

- The [Income Tax Assessment \(Build to Rent Developments\) Determination 2024](#), which outlines the requirements for a dwelling to be an affordable dwelling for the purposes of applying the build to rent development tax concessions (see Other News section for mor information).
- The [Taxation \(Multinational–Global and Domestic Minimum Tax\) Rules 2024](#), which augment the practical application of Australia's Pillar Two legislation with detailed definitions and detailed calculations to arrive at a liability to top-up tax. For further details, see the International Tax and Trade section.
- The [Taxation Administration \(Country by Country Reporting Jurisdictions\) Determination 2024](#), which specifies the jurisdictions for which the country by country (CBC) reporting parent must publish selected tax information on a CBC basis, if the CBC reporting group operates in that jurisdiction.
- The [Excise \(Concessional Spirits – Class of Persons\) Determination 2024](#), which allows a person belonging to certain classes (health care practitioners, veterinary practitioners, medical institutions, government related entities and education institutions) to use a specified quantity of spirit in a calendar year free of duty, provided the spirit is used for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. The instrument commenced 1 January 2025 and replaces the Excise (Concessional spirits – class of persons) Determination 2014 (No. 1).



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- The [Diplomatic Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Oman\) Determination 2024](#), which commenced 7 January 2024, creates new Indirect Tax Concession Scheme (ITCS) packages for Oman by providing indirect tax concessions to their diplomatic missions in Australia and accredited staff.
- The [Customs Tariff \(Suspension of Preferential Tariffs for Trans-Pacific Partnership Originating Goods\) Notice 2024](#) and the [Customs Tariff \(Suspension of Preferential Tariffs for Certain UK Originating Goods\) Notice 2024](#), which maintain the general rate of customs duty in relation to equivalent goods covered by the United Kingdom (UK) Steel Safeguard. The Notice remains in effect while the UK's safeguard is in effect (until 30 June 2026). For further information, see the International Tax and Trade section.
- The [Treasury Laws Amendment \(Tax Incentives and Integrity\) Bill 2024](#), which proposes a range of amendments including amendments to the application of the luxury car tax rules, denial of deductions for the general interest charge (GIC) and shortfall interest charge (SIC) and to extend the period within which the Commissioner must notify a taxpayer of the decision to retain a refund amount arising from a Business Activity Statement (BAS).
- the [Superannuation \(Better Targeted Superannuation Concessions\) Imposition Bill 2023](#) and the [Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) Bill 2023](#) that propose to impose a tax of 15% on certain earnings of a superannuation fund to those individuals who have total superannuation balances in excess of \$3m.

The next scheduled sitting date for Federal Parliament is 4 February 2025.

By way of recap, the following key tax and superannuation Bills are before Parliament as at the start of the 2025 calendar year:

- [Future Made in Australia \(Production Tax Credits and Other Measures\) Bill 2024](#), which proposes to establish the hydrogen production tax incentive (HPTI) and critical minerals production tax incentive (CMPTI).



# Other News Update

## Mid-Year Economic and Fiscal Outlook (MYEFO) 2024-25

The Treasurer, Jim Chalmers, and Minister for Finance, Katy Gallagher, released the [2024-25 Mid-Year Economic and Fiscal Outlook](#) (MYEFO), a mid-year budget report which provides updated information on the Government's fiscal position and also takes account of all decisions made since the release of the 2024-25 Federal Budget.

In addition to the tax, trade and superannuation measures reported in other sections of this Update, the following general tax measures were announced as part of the MYEFO (these can be found in Appendix A of the report):

- The current tax penalty regime will be strengthened by:
  - ensuring tax scheme penalties apply where taxpayers are in a loss position, from 1 July 2026
  - penalising large taxpayers that mischaracterise or undervalue interest or dividend payments, to which withholding tax would otherwise apply, starting from 1 July 2026; and
  - extending the application of the Shortfall Interest Charge to repayments of overclaimed refundable offsets to disincentivise overclaiming, starting from the first day of the first quarter after enactment of the *Future Made in Australia (Production Tax Credit and Other Measures) Bill 2024*.
- Funding of \$76m will be provided over four years from 2024-25 to the Australian Taxation Office (ATO) to modernise income tax reporting systems from 1 July 2026, including the enabling of prefill of trust income for beneficiaries by amending the law to require trustees to report the tax file numbers of beneficiaries on the trust income tax return's Statement of Distribution when they have an entitlement. This amendment will commence on the first day of the next quarter after Royal Assent.

- Funding is provided for the ATO and Services Australia to stop passing on debit card surcharges from 1 January 2025.
- Further reforms will be implemented as part of the Government's commitment to double philanthropic giving by 2030, which include removing the condition that a gift to a deductible gift recipient be valued at \$2 or more before the donor may claim a tax deduction. This will apply to gifts made from 1 July 2024.
- Funding of \$66.9m and \$1.1m will be provided to the ATO and the Australian Securities and Investments Commission, respectively, to extend and enhance the Phoenix Compliance Program for two years from 1 July 2025. Separately, the Government will also boost the Shadow Economy Compliance Program from 1 January 2025 to 30 June 2028.

## Top 500 findings report

The ATO has published its [Findings Report](#) for the Top 500 Private Groups Tax Performance Program for the 2023-24 financial year.

The ATO's Top 500 population consists of Australia's largest family, or closely controlled, private groups. The criteria for inclusion requires the private group to have one of the following:

- over \$250m turnover, regardless of net asset value
- over \$500m net assets, regardless of turnover
- over \$100m turnover and over \$250m net assets; or
- be a market leader or group of specific interest.

## Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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- The Report notes that over one-third of Top 500 groups have implemented some level of documented tax governance. This proportion is increasing, with a 20% increase in the number of groups with tax governance across trading, non-trading and wealth extraction activities compared to the previous year.

Specific tax issues that attracted the ATO's attention during the year ended 30 June 2024 included 'business as usual' income and deductions, compliance with Division 7A (private companies and deemed dividend rules), Family Trust Distribution Tax exposure, private ancillary funds, and capital gains tax.

The ATO's audits and reviews in progress also reflect the complex arrangements, tax risks and potential non-compliance among some Top 500 groups. This reinforces the importance of maintaining adequate records to substantiate positions taken, and transparency in dealings with the ATO, to resolve compliance matters quickly.

The Report also notes that the Top 500 program is being reviewed, with changes being considered to better align the ATO's approach with the objectives of the program. The review is looking at updating the Top 500 program criteria, how to support and encourage groups to achieve justified trust and reassessing the form of future engagements for certain groups that are fully tax assured.

### Next 5,000 findings report

The ATO has released its [Findings Report](#) for the Next 5,000 Tax Performance Program for the 2023-24 financial year.

The Next 5,000 program covers privately owned and wealthy groups including entities linked to Australian resident individuals who, together with their associates, control wealth of more than \$50m.

During the 2024 financial year, the ATO completed over 320 streamlined assurance reviews and 55 comprehensive risk reviews.

Key ATO observations of Next 5,000 groups reviewed to date are that:

- a high proportion have governance processes and procedures, but most are not documented
- clearly documented roles and responsibilities lead to good tax governance
- documentation of the tax return preparation, review process and identification of material transactions helps groups to recognise tax risks and issues to avoid errors; and
- private groups that seek tax advice for material risks and issues are more likely to make correct disclosures and adopt correct tax treatments.





Reported key priority areas which will continue under this program in 2024-25 include:

- groups that are experiencing rapid growth
- groups that are expanding offshore or entering into cross-border transactions with related parties
- intra-group domestic transactions which may result in the transfer of wealth
- succession planning; and
- wealth extraction by use of private equity funds.

## Non-resident trusts and section 99B

Section 99B of the *Income Tax Assessment Act 1936* requires an Australian tax resident beneficiary to include in their assessable income an amount representing trust property that is paid to, or applied for their benefit (for example, a distribution of income or capital), subject to certain legislated exceptions.

The ATO has issued the following final guidance on the ATO's approach to the application of section 99B in relation to arrangements where the property of a non-resident trust is paid to or applied for the benefit of a resident beneficiary.

- Taxation Determination [TD 2024/9](#), which outlines the ATO's current view on the application of the 'hypothetical resident taxpayer' tests in section 99B and whether the following are relevant in applying the hypothetical resident taxpayer tests:
  - characteristics of the hypothetical taxpayer other than residency
  - in determining whether an amount would be assessable, the circumstances that gave rise to the relevant amount in the hands of the trustee; and
  - the source of the amount paid or applied to the beneficiary.
- Practical Compliance Guideline [PCG 2024/3](#) which aims to provide clarity on where section 99B may need to be considered; the practical aspects of record keeping and evidencing that an exception in section 99B(2) applies; and the ATO's compliance approach to distributions and benefits which it considers to be low risk.

Importantly, PCG 2024/3 includes common scenarios in which section 99B may need to be considered, while also outlining the ATO's compliance approach in respect of two common scenarios where section 99B may apply that are considered low risk - namely in respect of deceased estates and the provision of trust property on commercial terms.

Where the arrangement does not meet the outlined criteria to be considered low risk, the ATO may engage with the taxpayer to better understand the arrangement, including whether an exception to section 99B applies.

Both TD 2024/9 and PCG 2024/3 apply to arrangements both before and after their date of issue.

For further information, refer to our [Tax Alert](#).

## Draft update on CGT event K6

The ATO has released an update to draft Taxation Ruling [TR 2004/18DC](#) that revises aspects of the ATO's view on how to calculate the capital gain when CGT event K6 occurs. CGT event K6 arises when there is a disposal of pre-CGT shares in a 'private' company or pre-CGT interests in a 'private' trust where the market value of its post-CGT property is at least 75% of its net value. In particular, the draft update reflects the view that only one capital gain can arise under CGT event K6, and clarifies which property is taken into account in working out the amount of the capital gain.

When finalised, the updated Ruling will apply both before and after its date of issue. Comments close 14 February 2025.

## Areas of focus for small business taxpayers


In a [speech](#) to the Institute of Public Accountants (IPA) National Congress 2024, ATO Deputy Commissioner for Small Business, Will Day, noted, a number of issues and matters to better support small businesses in relation to GST and other tax matters.

The [current areas of focus](#) for small businesses are reported as:

- 'Business income is not personal income' - with a particular focus on Division 7A (deemed dividend rules for private companies)
- 'Don't game your deductions and concessions' – focusing on non-commercial losses and capital gains tax concession risks
- 'Operating outside the system'.

It was also mentioned that the ATO is working towards the [OECD's Tax Administration 3.0 vision](#) which creates an experience where it will be easier and more seamless for small businesses to meet their tax obligations correctly from the start and on time. Incremental advancements the ATO expects to make this year include:

- encouraging and moving more small businesses from quarterly to monthly Business Activity Statement (BAS) lodgment
- providing small businesses with greater assurance they are getting their obligations right through embedding rules and guidance into the natural systems they use.



This includes a pilot to embed a pay as you go instalment calculation methodology into accounting software and exploring how the ATO could embed information such as its small business benchmarks and risk rules into digital solutions; and

- assessing how the ATO can best use third-party data to support sole traders prepare and finalise their income tax returns.

### Tax regulatory secrecy exceptions review

Treasury has released a [consultation paper](#) that seeks views and feedback on whether there are circumstances, beyond those currently permitted, in which it would be in the public interest for information obtained by the ATO, or the Tax Practitioners Board to be shared with a specified body or agency for a specified non-tax purpose.

Comments close 28 February 2025.

### Latest on build to rent tax concessions

Following the enactment of the [build to rent](#) (BTR) development tax incentives, owners and investors in eligible BTR developments can now access:

- an accelerated deduction of 4% for capital works relating to eligible BTR projects that began after 7.30pm (ACT time) 9 May 2023; and
- a concessional final withholding tax rate of 15% on eligible fund payments (amounts referable to rental income and capital gains from the BTR development) made to a foreign resident of an [information exchange country](#) from a managed investment trust (MIT).

To access these incentives, the BTR owner must first notify their choice for the development to be an active BTR development by lodging the *Build to rent development – notice of events* (NAT 75663) approved form, for which the ATO has recently issued [guidance](#). The approved form must be used to notify the ATO of the following events within 28 days after the event:

- a BTR development commences to be an active BTR development
- an active BTR development you own expands
- change in ownership interest in an active BTR development; and
- a BTR development ceases to be an active BTR development.

Additionally, the [Income Tax Assessment \(Build to Rent Developments\) Determination 2024](#) has been registered as a legislative instrument and sets out the eligibility criteria for a dwelling to qualify as an affordable dwelling under the BTR concessions.

For further information, see our report, [Build to rent in Australia – An evolving landscape](#).



## Editorial

PwC's Monthly Tax Update is produced by the PwC's Tax and Legal Marketing and Communications team, with technical oversight provided by PwC's Tax Markets & Knowledge team.

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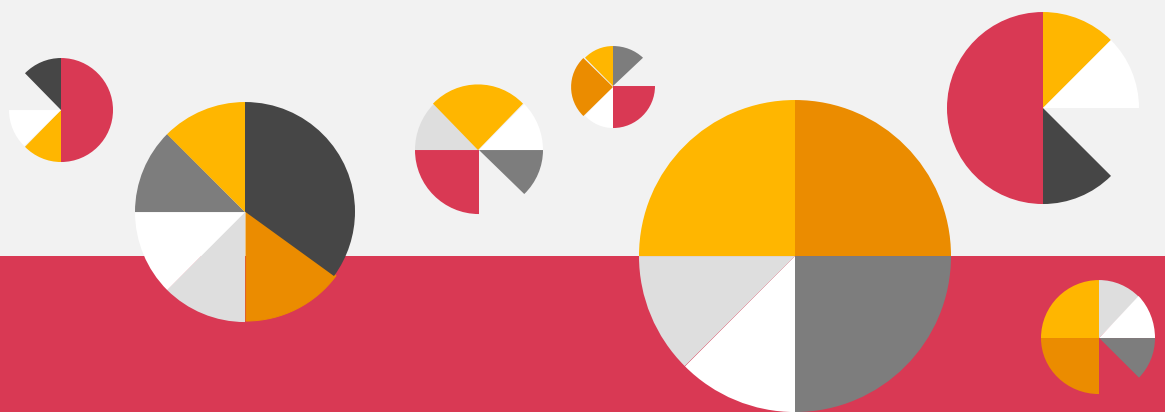
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