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PwC's Monthly Tax Update

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

March 2022



Corporate Tax Update

Patent Box measures introduced into Federal Parliament

The [Treasury Laws Amendment \(Tax Concession for Australian Medical Innovations\) Bill 2022](#), which proposes to introduce a concessional tax regime ('patent box') for medical and biotechnology patents, has been introduced into Federal Parliament. Under the proposal, income derived from exploiting an eligible patent that was developed by an eligible taxpayer will be made partially non-assessable non-exempt income to achieve an effective tax rate of 17 per cent.

The concession broadly will be available to a corporate taxpayer that is an Australian resident, or a resident of another country who carries on business at or through a permanent establishment in Australia, and is the legal owner of a qualifying medical or biotechnology patent. To be covered, the patent must be linked to a therapeutic good that is included on the Australian Register of Therapeutic Goods.

The benefits under the proposed regime decrease where the taxpayer does not conduct the research & development (R&D) itself, but either outsources R&D activities to a related party overseas or acquires intellectual property developed by another party. Where the patent is acquired from another entity, the benefit of the regime is limited to improvements made to the patented invention.

Eligible entities must make an irrevocable election to apply the regime, which will then apply to all medical and biotechnology patents on a prospective basis. The election must be made before or at the time the taxpayer is required to lodge their income tax return for the relevant income year.

The measures are proposed to apply to patents granted after 11 May 2021 and first apply to income years commencing on or after 1 July 2022.

Extension of loss carry back offset passes Parliament

The [Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021](#), which contains the amendments to extend the loss carry back measure by one year, has been passed by the Federal Parliament. This means eligible corporate tax entities will be able to claim a loss carry back tax offset in the 2022-23 income year. For further information regarding the loss carry back tax offset, see our earlier [Tax Alert](#).

ATO issues new draft guidance on Division 7A

The Australian Taxation Office (ATO) has issued draft Taxation Determination [TD 2022/D1](#) regarding the treatment of unpaid present entitlements (UPEs) and sub-trust arrangements under the deemed dividend rules in Division 7A of the *Income Tax Assessment Act 1936* (ITAA 1936).

The Draft Determination the ATO's proposed new compliance approach with respect to the application of Division 7A to these arrangements, and includes examples of how a private company beneficiary and trustee can implement complying loan agreements (including the timing requirements), so that the provision of financial accommodation does not give rise to a deemed dividend.

Once finalised, the Determination is proposed to apply to trust entitlements arising on or after 1 July 2022. It is proposed that Taxation Ruling [TR 2010/3](#) *Income tax: Division 7A loans: trust entitlements* and [PS LA 2010/4](#) *Division 7A: trust entitlements* will be withdrawn with effect from 1 July 2022 for trust entitlements arising on or after that time.

Read more in our [short analysis](#) of the draft guidance.

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Employment Taxes Update

High Court decisions on employee v contractor

The High Court has released its decisions in the following cases where the question of whether an individual was an employee or independent contractor was considered:

- [CFMEU & Anor v Personnel Contracting Pty Ltd \[2022\] HCA 1](#) where an employee-employer relationship was present between a backpacker on a working holiday visa (engaged as a contractor) and a labour-hire company, and
- [ZG Operations Australia Pty Ltd & Anor v Jamsek & Ors \[2022\] HCA 2](#) where “contractor” truck drivers providing services through partnerships were found not to be employees of the principal company. A question on the extended definition of employee for superannuation guarantee purposes was remitted to the Full Federal Court.

Both judgments emphasised the primacy of contractual terms setting out the rights and obligations of each party when characterising an employment relationship, noting that the traditional approach of evaluating the subsequent conduct of the parties should be limited to specific circumstances. However, it is also important to ensure that the terms of written contracts reflect the actual intended working relationship.

These decisions are likely to have a significant impact on the way in which contracting relationships – and the consequential obligations of each party – are evaluated. For further details, read more in PwC's Tax Alert.

COVID-19 tests to be deductible and exempt from FBT

The Government has [announced](#) that it will introduce legislation to ensure that work-related COVID-19 testing expenses (including Polymerase Chain Reaction and Rapid Antigen tests) are tax deductible. In addition, relief from fringe benefits tax (FBT) will be available for employers providing COVID-19 tests to their employees for work-related purposes. These measures will apply from the beginning of the 2021-22 income year and will be permanent. Read more in PwC's [Tax Alert](#).

It is not yet known when the legislation will be introduced into Parliament. The ATO has [indicated](#) that it will provide advice and guidance on this measure once enacted and in the meantime, employers and employees should maintain a record of expenses incurred in relation to COVID-19 testing.

Queensland payroll tax rulings

Queensland Treasury has issued [Public Ruling PTA038.2](#) on determining whether a worker is an employee and provides employers with information to assist with determining whether a worker is a common law employee and discusses legal principles and examples. PTA 038.2 updates a previous ruling to clarify that payments made through an interposed entity may still give rise to an employment relationship with payments made through the interposed entity being considered wages paid to the employee. It is likely that this guidance will require further review, in light of the recent High Court decisions of CFMEU & Anor v

Personnel Contracting Pty Ltd [2022] HCA 1 and ZG Operations Australia Pty Ltd & Anor v Jamsek & Ors [2022] HCA 2.

Public Ruling [PTA 031.3](#) was also issued, updating a previous ruling on the discretion to exclude an employer from a group for payroll tax purposes. PTA 031.3 provides that the Commissioner of State Revenue will consider the nature and extent of dealings between the employer and other members of the group and sets out a series of factors to be considered.

ATO provides de-identified information on JobKeeper recipients

The Australian Taxation Office (ATO) has provided [de-identified data](#) in response to a Senate request for information about JobKeeper recipients including:

- the total amount of JobKeeper payments received by the employers with turnover of greater than \$10 million
- the peak number of employees for which the employer claimed JobKeeper payments
- the voluntary repayments made by the employer in relation to JobKeeper, and
- totals reported based on the Australian and New Zealand Standard Industrial Classification code reported to the ATO.

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Global Tax and Trade Update

OECD consultation on draft rules for Pillar One

On 4 February 2022, the Organisation for Economic Cooperation and Development (OECD) released, for public consultation, [draft Rules](#) with respect to nexus and revenue sourcing under Pillar One of the two-pillar solution to address the tax challenges of digitalisation of the economy. The purpose of the revenue sourcing rules is to allow in-scope multinational enterprises to identify the relevant market jurisdictions from which revenue is derived, and to apply the revenue-based allocation key. To do this, the revenue sourcing rules provide the detail that is necessary to identify the end market for specific categories of transactions. By providing different rules for different categories of transactions, the rules seek to take the relevant commercial context into account, and ensure that

the rules are complete so that they can be applied to all types of multinationals. Read more in PwC's [Tax Policy Alert](#).

This was followed on 18 February 2022 with the release, for public consultation, of [draft Rules](#) for Tax Base Determinations under Amount A of Pillar One. The purpose of the tax base determinations rules is to establish the profit (or loss) of an in-scope multinational that will be used for the Amount A calculations to reallocate a portion of its profits to market jurisdictions. The rules determine that profit (or loss) will be calculated on the basis of the consolidated group financial accounts, while making a limited number of book-to-tax adjustments. The rules also include provisions for the carry-forward of losses. Further details are in PwC's [Tax Policy Alert](#).

Both of these form part of a [series of draft rules](#) that the OECD is expected to release over the coming months, with short comment periods, as part of a 'rolling consultation' on Pillars One and Two.

With respect to Pillar Two – the Global Anti-Base Erosion (GloBE) Rules – the OECD intends to release an implementation framework, and a draft model provision on the Subject to Tax Rule (STTR), in March 2022.

OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors

The OECD has published the [OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors](#) providing an overview of the latest developments in the OECD's international tax agenda. The report discusses the ongoing work to meet the 2023 implementation deadline for the Two Pillar Solution, including the aim to finalise a Multilateral Convention to Implement Pillar One by July 2022. The Commentary on the Pillar Two's GloBE rules is now being finalised. In addition, work is ongoing to release a public discussion draft on the development of a multilateral instrument to facilitate the implementation of the STTR.

The report also discusses other ongoing work of the OECD including explicit and implicit carbon pricing, gender equality, development, transparency and other aspects of the OECD's base erosion and profit shifting program.

OECD MAP peer review reports

The Base Erosion and Profit Shifting (BEPS) Action 14 Minimum Standard seeks to improve the resolution of tax-related disputes between jurisdictions. The OECD is [continuing](#) its work on the stage 2 monitoring process on the Action 14 mutual agreement procedure (MAP) peer review to have compliance with the minimum standard reviewed and monitored. As of January 2022, 60 stage 2 monitoring reports have now been published showing how specific recommendations are being implemented by each jurisdiction, with many jurisdictions making tangible progress. The ratification of the MLI by a number of these jurisdictions addressed recommendations to bring tax treaties in line with the standard. A majority of jurisdictions are now close to meeting the 24 month average timeframe to close MAP cases.

First meeting of the Asia Initiative

The [first meeting](#) of the Asia Initiative, aiming to promote the implementation of international standards on transparency and exchange of tax information to tackle tax evasion and illicit financial flows, was held on 16 February 2022. The

[statement of outcomes](#) notes that participants shared experiences relating to tax transparency and cooperation and approved the governance of the Asia Initiative, appointing Mr Suryo Utomo, Director General of the Directorate General of Taxes of Indonesia as the 2022 Chairperson.

China issues Q&A on the impact of COVID-19 and transfer pricing

The State Taxation Administration of China has issued "Questions and Answers on Anti-Tax Avoidance During Pandemic Prevention and Control" providing instructions for tax authorities and multinational enterprises on transfer pricing during the COVID-19 pandemic. This follows transfer pricing guidance issued by the OECD and a number of jurisdictions including Australia during a time of economic uncertainty in the Asia-Pacific.

The Q&A issued by the International Tax Department of the STA responds to the most common questions in day-to-day transfer pricing management and provides principled guidance. It encourages enterprises to strengthen their transfer pricing compliance, actively manage their transfer pricing risks, and actively communicate with tax authorities to strengthen and sustain transfer pricing services during periods of economic uncertainty caused by the COVID-19 pandemic. Read more in PwC's [Tax Insight](#).

2022-23 Indian Union Budget

The 2022-23 [Indian Union Budget](#) was presented by the Indian Finance Minister on 1 February 2022. The Budget focused on infrastructure spending with the aim of boosting growth, as well as on the digital economy, climate change and the clean energy transition. The Finance Minister has continued with the underlying theme of seeking to provide a stable and predictable tax regime to promote voluntary compliance, to reduce litigation, while keeping the overall tax structure unchanged. There are a number of proposals relevant for multinational entities and foreign investors doing business in India. For more information, read PwC's [summary for foreign investors and multinationals](#), visit PwC India's [Union Budget 2022-23 website](#), and watch a replay of the PwC India [Budget webcast](#).

Regulations on import of electromagnetic weapons

The [Customs \(Prohibited Imports\) Amendment \(Electromagnetic Weapons\) Regulations 2022](#), which commenced on 10 February 2022, updates the *Customs (Prohibited Imports) Regulations 1956* to include electromagnetic weapons and parts of electromagnetic weapons in import controls. Under the amended regulations, the importation of specified weapons is prohibited unless permission

has been granted by the Minister or an authorised person. The amendments also confine importation of electromagnetic weapons and their parts to government end users or circumstances where the import is in the national interest.

Anti-dumping decision

The Full Federal Court, in the decision of [Wilson Transformer Company Pty Ltd v Anti-Dumping Review Panel \[2022\] FCAFC 4](#) has affirmed the termination of anti-dumping investigations in relation to power transformers imported from China. The decision concerned the correct standard for determining whether transactions were considered arm's length transactions and requirements of procedural fairness. The Court found that the Anti-Dumping Review Panel's review of the

Commissioner's decision and reasons for its determination, when read fairly and as a whole, did not reveal any reviewable error involving misconstruction or misapplication of the relevant statutory provision.

Regional Comprehensive Economic Partnership Agreement

The Assistant Minister for Customs, Community Safety and Multicultural Affairs has [published](#) a notice indicating that the Regional Comprehensive Economic Partnership (RCEP) will enter into force for Malaysia on 18 March 2022. The RCEP is a regional free trade agreement between 15 Indo-Pacific Countries, which entered into force for Australia and 9 other countries on 1 January 2022.

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Indirect Tax Update

ATO's future engagement under the Top 100 GST Program

The Australian Taxation Office (ATO) has [published](#) a document setting out how it will approach future engagement with taxpayers in its Top 100 Goods & Services Tax (GST) Program after the initial assurance review.

The document states that taxpayers that have received in the ATO's initial review an overall high assurance rating that the taxpayer pays and reports the right amount of GST will be subject to further review at least once every four years. Taxpayers in this category are expected to proactively engage with the ATO and make disclosures of material business changes, changes in GST positions taken, and any new or significant transactions. A list of the

types of disclosures the ATO expects to be disclosed on a real time basis is set out at Appendix A of the document.

Taxpayers that received an overall medium assurance will be subject to a periodic assurance review at least once every four years, with possible targeted assurance activities during the intervening period on areas of concern. Where the initial review contained recommended next steps for the taxpayer, the ATO will review what action has been taken in relation to these steps during the next review.

The ATO states that overall low assurance taxpayers will be comprehensively and intensely reviewed through an annual justified trust assurance review using a whole of business approach.

Top 100 Annual Compliance Arrangement (ACA) taxpayers that achieve overall high or medium assurance will revert to an annual ACA review.

GST administration annual performance report 2020–21

The ATO has released the [2020-21 GST administration annual performance report](#).

According to the report, the net GST gap calculated for 2019-20, is estimated to be 7.8 per cent, resulting in the ATO receiving over 92 per cent of the GST revenue that was expected to be collected.

In other highlights, as the economy recovered from COVID-19 in 2020-21, AUD 73.1 billion was raised in GST cash collections. This included AUD 1.0 billion in GST for supplies of digital products and services, and low value imported goods and AUD 2.3 billion in liabilities through client engagement activities including compliance and lodgment

enforcement activities and high-risk refund case work.

Indirect tax concession scheme extended to Albania and Lithuania

The Government has made the [Consular Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Albania and Lithuania\) Determination 2022](#) and [Diplomatic Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Albania and Lithuania\) Determination 2022](#) that grant indirect tax concession scheme access to Albania and Lithuania and for the benefit of their respective consular posts in Australia and staff accredited to those posts. The legislative determinations provide access to refunds of indirect tax (such as GST, fuel and alcohol taxes) to diplomatic and consular representation of Albania and Lithuania.

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Personal Tax Update

Gains from exchange of shares assessable on revenue account

The Administrative Appeals Tribunal (AAT) has held in [Whiddon v Federal Commissioner of Taxation \[2022\] AATA 197](#) that a gain made by the taxpayer on the exchange of shares as part of a complex commercial arrangement was assessable to the taxpayer, who was also found to be an Australian tax resident, was assessable as a revenue gain.

Despite the taxpayer's contention that the shares were to be held for the long term and on capital account, the AAT found that the significant increase in value of the shares was an obvious and contemplated outcome of the transaction and the taxpayer had a not insignificant purpose of obtaining a profit. Accordingly, the increase in value from the exchange of the shares was found to be a gain made on revenue account.

The Tribunal rejected the taxpayer's argument that he was not a resident of Australia at the time the gain was made. There was nothing to suggest the taxpayer was not a resident of Australia where he had spent much of the relevant period; where his family lived and where he usually lived with them when in Australia; and where he intended to reside on his return from his overseas commitments.

Redirected director fees assessable

The AAT has also found in [Mobbs v Federal Commissioner of Taxation \[2022\] AATA 201](#) that director fees paid to a taxpayer's consultancy company were assessable income of the taxpayer. In the case, the taxpayer provided consulting and director services to various companies for which his consulting company issued invoices and received fees paid by the various companies. The AAT found

that the fees were assessable income to the taxpayer and paid at his direction to his consulting company on the basis that there was no contemporaneous documentation of any agreement. The taxpayer had contended that an oral agreement was in place, however the AAT did not find this credible given there was no other corroborating evidence.

ATO's draft guidance on trust reimbursement agreements

The Australian Taxation Office (ATO) has issued the following draft guidance products on its views on the application of section 100A of the *Income Tax Assessment Act 1936* (ITAA 1936) which deals with trust "reimbursement agreements":

- Draft Taxation Ruling [TR 2022/D1](#), which sets out the ATO's views on the four basic requirements for section 100A to apply, including

the exception for "ordinary family and commercial dealings"

- Practical Compliance Guideline [PCG 2022/D1](#), which provides a risk assessment framework that allows taxpayers and their advisers to assess the level of risk regarding their trust distribution arrangements, and
- Taxpayer Alert [TA 2022/1](#), which highlights section 100A as one possible anti-avoidance rule that can apply where parents benefit from trust entitlements of their children over 18 years of age. It also highlights that these types of arrangements may attract other rules, including the general anti-avoidance provisions in Part IVA of the ITAA 1936.

Read more in our [analysis](#) of the draft guidance.

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State Taxes Update

NSW COVID-19 support

The New South Wales (NSW) Government has [announced](#) additional COVID-19 support measures. The support package includes a Small Business Support Program with a lump sum payment of 20 per cent of weekly payroll for the month of February 2022 with a minimum of \$750 and maximum of \$5,000 per week for employing businesses and \$500 per week for non-employing businesses. The payment is available for eligible businesses with aggregated annual turnover between \$75,000 and \$50 million, that have experienced a decline in turnover of 40 per cent or more due to COVID-19 during January 2022 and between 1 and 14 February 2022 (as compared to the equivalent period in 2021 or 2020) and that maintain their employee headcount. Applications for the payment may be made through Service NSW.

The NSW Government has also increased the small business fees, charges and Rapid Antigen Test (RAT) rebate to \$3,000. The rebate can be used to cover half of the cost of RATs, as well as other

government fees and charges such as licences, event fees, council rates and road user tolls.

Support for commercial landlords has been extended through the Commercial Landlord Hardship Grant with grants of up to \$3,000 per month, per property for eligible landlords that provide rental relief to commercial tenants. Protections under the [Retail and Other Commercial Leases \(COVID-19\) Regulation 2021](#) have also been extended until 13 March 2022, prohibiting landlords from taking certain actions without first renegotiating rent or attempting mediation.

A performing arts package has also been made available for eligible venues, producers of performances or promoters of performances that were staged between 19 September 2021 to 30 April 2022. Payments will be calculated by reference to the average ticket price and number of tickets available for sale up to a maximum of \$12.5 million.

SA COVID-19 support

The South Australian (SA) Government [announced](#) further COVID-19 business support measures including cash grants payable to eligible businesses who have been impacted by recent declines in turnover and also for major events that are cancelled or postponed due to density restrictions has been extended to include events to be held up to 31 March 2022. A new round of Great State vouchers will also be made available to support accommodation and tourism operators.

Payroll tax liabilities for tourism and hospitality, gyms and other businesses impacted by density restrictions may also be deferred following an application to Revenue SA.

Applications for these support measures opened on 14 February 2022 with automatic payments commencing from 4 February 2022.

Victorian corporate reconstruction relief

The Supreme Court of Victoria has held in [VER Custodian Pty Ltd \(as trustee for VER Trust\) v Commissioner of State Revenue \(Vic\) \[2022\] VSC 33](#) that the allocation (but not allotment) of securities to institutional investors prior to a transfer of land occurring did not cause that land transfer to be ineligible for the corporate restructure stamp duty exemption.

The relevant transactions were part of a restructure whereby land would be transferred from a corporate subsidiary of the applicant to a trust with the intention of listing the stapled securities of the company and trust on the Australian Securities Exchange. As part of the restructure, the units and shares were stapled so that they must be dealt with as a single security and could not be transferred separately.

The Court found that the Commissioner's letter to the trustee prior to the transactions being finalised was a valid grant of the corporate reconstruction exemption. There was nothing in the letter to suggest it was merely indicative and was responsive to requests for the grant of the exemption. Although the transaction documents submitted to the Commissioner were not in their final form, the only condition imposed was to the effect that certain documents when executed be submitted to the State Revenue Office (SRO) for stamping together with a copy of the final version of the associated product disclosure statement.

The Court held that the allocation of securities did not confer a right of beneficial ownership to the third party investors so that the land transfer was an

eligible transaction for relief at the time that it occurred. Specifically, since the shares did not come into existence until the Allotment Date, the investors did not have any beneficial ownership of, or rights or interests in, the units under the Scheme Deed until the Allotment Date.

Victorian land tax ruling on exemption for charitable institutions

The State Revenue Office of Victoria has issued draft land tax ruling [LTA-009](#) in relation to the land tax exemption available for charitable institutions. The draft ruling explains concepts related to the exemption such as 'used exclusively for a charitable purpose', discusses related concepts such as the vacant land charity exemption and outdoor leasing charity exemption. The ruling also discusses documentation and evidence that should be maintained to support these exemptions. Comments can be made on the draft by 15 March 2022.

South Australian duty and student accommodation

The Supreme Court of South Australia has held in [Perpetual Corporate Trust Ltd v Commissioner of State Taxation \(SA\) \[2022\] SASC 7](#) that a purpose built student accommodation facility was not used predominantly for residential purposes and was therefore not subject to stamp duty (i.e. it was qualifying land for the purposes of section 105A of the Stamp Duties Act 1923 (SA)).

By way of background, residential land used for the commercial purpose of providing long-term accommodation does not constitute qualifying land and is ineligible for a stamp duty reduction (and can therefore be subject to the foreign ownership surcharge, if applicable). Examples include retirement villages, aged care facilities, student accommodation and other residential premises. In contrast and as outlined in Revenue SA's [Information Circular No: 103](#), the provision of short-term accommodation on a commercial basis in hostels, hotels, motels, serviced apartments and other short-term unit accommodation is considered to be qualifying land for stamp duty purposes, and is therefore eligible for a stamp duty reduction.

The accommodation was found to be not residential on the basis that it was short term and transitory in nature, similar to hostels, hotels and other short term accommodation. Residential property would imply a permanent or long term commitment under the ordinary usage of the word residential.

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Superannuation Update

APRA consultation on publication of super data

The Australian Prudential Regulation Agency (APRA) has [issued a discussion paper](#) for consultation on expanding the breadth and detail of information that it publishes about the superannuation data it obtains. Under the consultation paper, APRA proposes to treat most of the data it collects under Phase 1 of the Superannuation Data Transformation as non-confidential and able to be published. APRA also intends to publish two separate datasets, one containing key metrics and the other containing granular data, for users to access in a way that can be interpreted by their own reporting tools. Comments on the consultation paper are due by 15 April 2022 with APRA intending to publish final determinations on the confidentiality of information in June 2022. The first publication of statistical data will follow soon after that.

Registrable super entities – Disallowance of proxy advice regulations

The Australian Senate has [disallowed the Treasury Laws Amendment \(Greater Transparency of Proxy Advice\) Regulations 2021](#) that were made in December 2021. The regulations would have expanded the information required to be disclosed by registrable superannuation entities relating to the exercise of voting rights in listed companies.

Remake of co-contribution regulations

The [Superannuation \(Government Co-contribution for Low Income Earners\) Regulations 2022](#) have

been registered that remake the [Superannuation \(Government Co-contribution for Low Income Earners\) Regulations 2004](#) which would have expired on 1 April 2022. No substantive changes have been made to the regulations, however redundant provisions have been omitted and the regulations simplified with simpler language and restructuring and renumbering of provisions for ease of navigation. The new regulations commence from 1 April 2022 to ensure the continued operation of the Government's super co-contribution for low or middle income earners.

SMSF statistics

The Australian Taxation Office (ATO) has released the 12th edition of its [annual statistical overview](#) on self-managed super funds (SMSFs). The overview provides key statistics and analysis of Australia's SMSF sector for the 2019-20 financial year. Key highlights include:

- SMSFs had assets of over AUD 1.3 million on average in 2019–20, an increase of 20 per cent over five years.
- 598,000 SMSFs hold AUD 822 billion in assets, with more than 1.1 million SMSF members as at 30 June 2021.
- The median age of all SMSF members was 61 years as at 30 June 2021.
- The average member balance for females increased by 23 per cent over the five years to 2019-20, and the average balance for males increased by 19 per cent over the same period.

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Legislative Update

Federal Parliament resumed sittings for the 2022 calendar year on 8 February 2022. Since our last update, the following new tax and superannuation Bills have been introduced into Parliament:

- [Treasury Laws Amendment \(Enhancing Tax Integrity and Supporting Business Investment\) Bill 2022](#), introduced into the House of Representatives on 9 February 2022, proposes to, amongst other things:
 - allow taxpayers to self-assess the effective life of certain intangible depreciating assets for tax purposes
 - empower the Commissioner of Taxation to direct an entity to complete an approved record keeping course where the Commissioner reasonably believes the entity has failed to comply with its tax-related record-keeping obligations as an alternative to a financial penalty
 - provide an income tax exemption for the International Federation of Association Football (FIFA) and its Australian subsidiary for the 2023 FIFA Women's World Cup
 - reduce the effective tax rate of foreign resident workers under the Australian Agriculture Worker Program or Pacific Australia Mobility Scheme, and
 - make recovery grants in relation to Cyclone Seroja non assessable non-exempt income for tax purposes.
- [Treasury Laws Amendment \(Tax Concession for Australian Medical Innovations\) Bill 2022](#), introduced into the House of Representatives on 10 February 2022, proposes to implement the patent box regime for medical and biotechnology patents that was announced in the 2021-22 Federal Budget.

- [Treasury Laws Amendment \(Streamlining and Improving Economic Outcomes for Australians\) Bill 2022](#), introduced into the House of Representatives on 17 February 2022, proposes, amongst other things to:
 - extend financial reporting requirements contained in the Corporations Act 2001 to registrable superannuation entities from 1 July 2023, and
 - enable small business entities to apply to the Administrative Appeals Tribunal (AAT) for an order staying or affecting debt recovery actions where a decision of the Australian Taxation Office is under review by the AAT.
- [Treasury Laws Amendment \(Modernising Business Communications\) Bill 2022](#), introduced into the House of Representatives on 17 February 2022, proposes to modernise publication requirements in various laws by replacing provisions that required notices to be published in newspapers with technology neutral laws, including those contained in various tax laws.

Since our last update, the following legislation has received Royal Assent and is now law:

- [Treasury Laws Amendment \(Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest\) Act 2022](#) which extended the Temporary Full Expensing measure for an additional 12 months until 30 June 2023, and made a range of changes to superannuation laws including:
 - removing the \$450 a month threshold for superannuation guarantee
 - increasing the limit on the maximum amount of voluntary contributions able to be released under the First Home Super Save Scheme

- reducing the eligibility age for downsizer contributions, and
- reforms to the work test.
- [Corporate Collective Investment Vehicle Framework and Other Measures Act 2022](#) which:
 - establishes the tax and regulatory framework for the corporate collective investment vehicles
 - extends the loss carry back tax offset measure for an additional year to allow the offset to be claimed in the 2022-23 income year
 - lists additional deductible gift recipients
 - makes minor and technical amendments to treasury laws
 - inserts a new covenant requiring registrable superannuation entities to develop a retirement income strategy for beneficiaries approach retirement, and
 - removes the cessation of employment as a taxing point for employee share scheme interests.
- the [Superannuation \(Government Co-contribution for Low Income Earners\) Regulations 2022](#) that remakes and simplifies the [Superannuation \(Government Co-contribution for Low Income Earners\) Regulations 2004](#) which would have expired on 1 April 2022
- the [Customs \(Prohibited Imports\) Amendment \(Electromagnetic Weapons\) Regulations 2022](#) that include electromagnetic weapons and parts of electromagnetic weapons in import control measures
- the [Legislation \(Shipping Reform \(Tax Incentives\) Instruments\) Sunset-altering Declaration 2022](#) that extends the sunset date of the [Shipping Reform \(Tax Incentives\) Regulation 2012](#) to 1 October 2023
- the [Consular Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Albania and Lithuania\) Determination 2022](#) and [Diplomatic Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Albania and Lithuania\) Determination 2022](#) that grant indirect tax concession scheme access to Albania and Lithuania and for the benefit of their respective consular posts in Australia and staff accredited to those posts.

Since our last update, the following Commonwealth revenue measures were registered as legislative instruments:

Federal Parliament will next sit on 29 March 2022, which is also the date of the 2022-23 Federal Budget.

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Other News

ATO guidance for Top 1,000 taxpayers

The Australian Taxation Office (ATO) has [published](#) guidance for Top 1,000 taxpayers on income tax risk management and governance frameworks as this is a key area of focus under the justified trust methodology of combined assurance reviews. The guidance outlines examples of good practice for different types of entities based on size, complexity, history and corporate culture.

Consultation on electronic surveillance powers

The Australian Department of Home Affairs has released a discussion paper on the [reform of Australia's electronic surveillance framework](#) with background information and questions on a proposed new legislative framework governing electronic surveillance. The discussion paper includes a proposal to provide the ATO with the power to access telecommunications data in serious financial crimes. Submissions in response to the discussion paper were due by 11 February 2022.

Debt forgiveness ruling finalised

The ATO has finalised [Taxation Determination TD 2022/1](#) on the exclusion to the debt forgiveness rules for debts forgiven for reasons of natural love and affection. TD 2022/1 clarifies that the creditor must be a natural person in order for the exclusion to be available as the natural love and affection must arise from ordinary human interaction. However there is no requirement for the debtor to be a natural person.

As the Determination takes a different view to ATO Interpretative Decision ATO ID 2003/589, the Commissioner has indicated that he will not devote compliance resources to apply the views expressed in the Determination in relation to debts forgiven prior to 6 February 2019 that would have been covered by ATO ID.

Extension of temporary full expensing passes Parliament

The temporary full expensing stimulus measure has been extended until the 2022-23 income year after the [Treasury Laws Amendment \(Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest\) Bill 2021](#) passed Federal Parliament.

Draft effective life determinations

The ATO has published draft effective lives for the following:

- depreciating assets used in the [casino operation industry](#) – comments were due by 18 February 2022
- [electric bicycles and electric scooters](#) – comments were due by 25 February 2022; and
- assets used in the [salt manufacturing and refining industry](#) – comments due by 18 March 2022.

Once finalised, these effective life determinations are expected to apply to assets purchased or first used or installed on or after 1 July 2022.

Proposed third party reporting exemptions

The ATO has published the following draft legislative determinations which propose exemptions to certain entities and certain transactions from third party reporting:

- TPRE 2022/D1 [Taxation Administration Deferral of Third Party Reports by Eligible Community Housing Providers for the 2020-21 Financial Year Determination 2022](#) which proposes to defer third party reporting for the 2020-21 financial year until 1 August 2022 for certain community housing providers. Eligible Community Housing Providers had been exempted from the requirement to provide an annual report for income years 2018-19 and 2019-20. The extended deadline to report is being granted for the 2020-21 year in recognition that additional time is needed for relevant entities to understand and prepare for the changes to the affordable housing reporting obligations. Comments are due by 1 March 2022.
- TPRE 2022/D2 [Taxation Administration: Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2022](#) which proposes to exempt administrators of payment systems from reporting particular classes of transactions. The draft determination will commence with retrospective effect from 1 March 2021. Comments are due by 4 March 2022.
- TPRE 2022/D3 [Taxation Administration Excluded Classes of Transactions and Entities for Third Party Reports on Shares and Units Determination 2022](#) which proposes to exempt certain companies and trusts from reporting on certain transactions that change the composition of assets held by that company or trust. The

determination also proposes to clarify that if a company is listed on both an Australian and foreign financial market (i.e. dual listed), only off-market transactions related to shares listed for quotation on an Australian financial market are required to be reported. The draft determination will have retrospective effect and apply from 1 July 2017. Comments are due by 14 March 2022.

Shipping tax incentive regulations extended

The Federal Government has made the [Legislation \(Shipping Reform \(Tax Incentives\) Instruments\) Sunset-altering Declaration 2022](#) that extends the sunset date of the [Shipping Reform \(Tax Incentives\) Regulation 2012](#) to 1 October 2023. The regulations specify certain requirements to be eligible for tax incentives relating to Australian shipping operators under the [Shipping Reforms \(Tax Incentives\) Act 2012](#) (Cth).

Draft notices for lodgement of 2021-22 tax returns

The ATO has released for consultation the following draft legislative instruments setting out the Commissioner of Taxation's proposed requirements for taxpayers to lodge income tax returns for the 2021 income year:

- [Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2022](#), and
- [Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2022](#).

Comments on the draft legislative instruments are due by 4 March 2022.

Payment times reporting

With less than 5 weeks to go until the July to December Payment Times Report (PTR) is due, we would like to share our insights on the many and varied challenges faced in meeting this reporting obligation and provide a PTR update. Some of the challenges include:

- Some accounting systems do not readily produce the data that is required for reporting purposes, for example credit notes offsetting invoices.
- Definitions for reporting entities are unique to Payment Times Reporting, creating misunderstanding and potential non-compliance.
- Access to the Payment Times Reporting Portal is limited to reporting entities, preventing advisors from providing full assistance to help clients meet their PTR obligations.
- PTR has not been well publicised resulting in reporting entities being unaware of their obligation to report.

Update

The 12 month transition period for penalties ended on 31 December. The penalties for false and misleading statements are up to 0.6% of total income and the penalties for failure to retain records of up to 0.2% of total income.

The *Payment Times Reporting Act 2020 (PTR Act)* allows an extension of time to report to be requested in writing prior. For an extension to be granted the Regulator must be satisfied that the circumstances that have resulted in the need for further time were exceptional or were outside the entity's control. The *Payment Times Reporting Rules 2020* prevent the Regulator from allowing an entity additional time to report if the application is made after the due date. That is, for PTR reports due on 31 March, any application for an extension of time to lodge must be made before 31 March.

Detail on key challenges

We have set out below further details on each of the key challenges faced in meeting the PTR obligations.

Producing PTR data

In our experience accounting systems do not readily produce information that meets the requirements for PTR. Notably, systems reports do not manage the following:

- **Credit notes** – PTR requires credit notes to be matched against invoices, which impacts both the number and value of small business invoices for reporting purposes. Generally accounting systems record both invoices and separately any credit notes. It is not always possible to readily match a credit note to an invoice or even multiple invoices. While there is a process that can be adopted for PTR purposes, in our experience, this is not automatically generated by accounting systems.
- **Excluding non trade credit payments** – PTR is only concerned with reporting trade credit payments. It is therefore necessary to exclude any non-trade credit payments from any transaction listing when preparing the report.
- **Foreign exchange transactions** – For PTR purposes the value of any invoices in foreign currency must be converted based on the payment date which may not be the same as the conversion date in the accounting system.
- **Supply chain finance arrangements** – To meet the PTR requirements the information in transaction reports may need to be updated to reflect the payment date and invoice amount in accordance with the PTR requirements. For PTR purposes, the payment date on supply chain finance arrangements needs to be updated to reflect the payment date in absence of any supply chain finance arrangements. The payment amount should be the amount invoiced by the

vendor and not the discounted amount (unless this is the amount shown on the invoice).

- **Credit card payments** – for reporting entities that make trade credit payments by credit card, the systems that record the underlying payments to vendors often do not record the ABN or the invoice date, being two of the key items required for PTR purposes.

Payment Times Reporting Definitions

The definitions within the PTR Act are largely unique to PTR, resulting in misunderstanding and potentially lack of compliance. By way of example, the definition of constitutionally covered entity excludes Australian trusts and partnerships that do not carry on an enterprise in a Territory. This definition is unique to PTR.

When determining whether an entity is a reporting entity, the group income test only applies to corporate entities and not trusts or partnerships. Again this is unique to PTR, often resulting in confusion.

Many entities report for both accounting and tax purposes on a consolidated basis, however, for PTR purposes there is no concept of consolidation. When calculating total income for the purposes of determining whether a controlling corporation group is required to report, it is necessary to sum the total income for each group member. Where there are intercompany payments, this results in a different amount to the total income reported on a consolidated basis. This has resulted in incorrect calculation of total income for PTR purposes and entities failing to realise that they have a PTR reporting obligation.

Restricted access to the PTR Portal

According to the Regulator access to the PTR portal was limited to reporting entities, based on consultation prior to implementation of the PTR Act. However, in practice many reporting entities have found accessing the PTR Portal challenging. Unlike

other processes such as preparing or lodging tax returns, or updating the Australian Business Register, the PTR Portal cannot be accessed by tax agents. This has prevented reporting entities from outsourcing their PTR obligation to their advisors.

For businesses that do not have Australian resident finance or administration teams, access to the PTR Portal can be extremely difficult. For some it is simply not possible as the only Australian resident is a public officer and the requirements for a public officer do not align with the requirements for a standard strength myGovID (being the first step to get access to the PTR Portal). The differences are subtle but important. To be a public officer you must simply be resident in Australia. A person who is resident in Australia does not necessarily have **two Australian** identity documents that meet the requirements for a standard strength myGovID, being:

- driver's licence or learner's permit
- passport (not more than three years expired)
- birth certificate
- visa (using your foreign passport)
- citizenship certificate
- ImmiCard
- Medicare card.

The Regulator has overcome this for the first reporting period by allowing entities in these circumstances to lodge their PTR by email. However, the Regulator has indicated that this will not be available in subsequent periods. What is not clear is how reporting entities in these circumstances will be able to report for the second and subsequent periods.

If you have any questions, would like our help with understanding your PTR obligations, preparing the PTR report or a review of your PTR processes and controls, please reach out to your usual PwC contact or [Alison Marshall](#). For further information, please visit our [website](#).

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PwC's Monthly Tax Update

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