PwC's Monthly Tax Update

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

March 2025

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Corporate Tax Update

UPE to private company beneficiary was not a deemed dividend

On 19 February 2025, the Full Federal Court dismissed the Commissioner of Taxation's appeal in Commissioner of Taxation v Bendel [2025] FCAFC 15, finding that an unpaid present entitlement (UPE) arising from a trust's distribution to a private company was not a loan for the purposes of the deemed dividend rules (Division 7A). As this decision is contrary to the position taken by the Australian Taxation Office (ATO) and many private groups over many years, it may be that the Commissioner may seek special leave to appeal to the High Court and/or the Government may decide to amend the law to achieve the desired outcome.

In the meantime, affected trusts should closely consider their options in relation to any distributions that were previously made or expected to be made to a private company beneficiary. For further information, see our Tax Alert.

Distribution not a return of capital

In Cheung and Commissioner of Taxation (Taxation and business) [2024] ARTA 152, the Administrative Review Tribunal (ART) has rejected the taxpayer's contention that a distribution received was a return of capital that was assessable under the capital gains tax (CGT) provisions, finding that the distribution was an assessable dividend.

The taxpayer had argued that since the distribution paid to him as a shareholder was funded from the capital proceeds of the sale of the company's business premises and not out of the company's trading profits, it was a return of capital subject to CGT. The taxpayer's shares were not cancelled following payment of the distribution and there was no change recorded to the share capital account during this time. The sale of the premises was the first step towards winding up the company.

The ART noted that the term 'share capital account' is defined in the tax law and is limited to an account that a company keeps of its share capital or any other account created after 1 July 1998 where the first amount credited was an amount of share capital and the definition clearly did not extend to any account relating to a company's equity. The ART accepted the contents of the company's financial statements, which showed that the distribution was not recorded against the share capital account of the company. The distribution therefore met the definition of 'dividend' for tax purposes and was a dividend paid to the taxpayer out of profits derived by the company and accordingly, assessable.

Strategic examination of R&D

The independent expert panel which has been commissioned by Government to undertake a strategic examination of Australia's research and development (R&D) system has issued a Discussion Paper on which it is seeking feedback (consultation closes 11 April 2025) to help inform potential strategies to optimise our R&D system. The panel is considering opportunities to maximise the value of existing investment in R&D, strengthen linkages between research and industry, support the achievement of national priorities, drive greater R&D investment by industry and boost innovation and uplift Australia's overall R&D intensity.

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Health and wellbeing program activities were not core R&D

In Body by Michael Pty Ltd and Industry Innovation and Science Australia (Taxation and business) [2025] ARTA 44, the ART broadly agreed with Industry Innovation and Science Australia's (IISA) finding that none of the taxpayer's activities could satisfy the core R&D activities definition, with the result that the taxpayer's activities were not entitled to be registered, and that no R&D tax incentive was available.

Broadly, the taxpayer's project involved 'six pillars' (movement, nutrition, breathing, hydration, sleep and mindfulness) on an integrated basis, to develop a holistic approach to enable people to attain health and wellbeing, while also empowering them with knowledge and tools. Alongside the six pillars, there was also an associated application.

Having regard to the facts and the relevant legislation, the Tribunal concluded that none of the company's activities in the 2019 year relating to this project met the definition of core R&D activities for the following reasons:

- the Tribunal was not satisfied that the evidence demonstrates that the outcomes of the activities in the 2019 year 'could not be known in advance based on current knowledge, information or experience'
- although the activities were systematic, the evidence before the Tribunal does not establish a progression of work
- on balance, the work was consistent with the principles of established science
- while there may be a hypothesis broadly relating to comparing isolated and integrated approaches to the six pillars, the Tribunal was not satisfied from the evidence that it was present in the 2019 year. There was no experiment in the 2019 year - although it could be said there was observation, there is little demonstrating how the tests undertaken were evaluated and what led to the information conclusions or why they are logical. As such, the activities did not satisfy the required scientific method, and
- it could not be satisfied that the activities in 2019 were 'conducted for the purpose of generating new knowledge.'

Since the ART concluded that none of the taxpayer's activities in the 2019 year satisfied the definition of core R&D activities, there could also be no supporting R&D activities.

Employment Taxes Update

South Australia: Payroll tax relief for bulk billing medical practices

The Statutes Amendment (Budget Measures) Act 2025 (SA), enacted on 13 February 2025, introduces payroll tax relief for bulk billing medical practices in South Australia (SA), allowing the SA Treasurer to exempt a percentage of wages paid to general practitioners from payroll tax from 1 July 2024, with possible retrospective relief for eligible practices. The stated aim is to enhance affordable healthcare in South Australia, particularly in rural areas.

Trustee company penalised for PAYG withholding non-compliance

In DJG Consulting Pty Ltd ATF David Gerrans Family Trust v FC of T [2025] ARTA 84, the Administrative Review Tribunal (ART) has held that the taxpayer was subject to pay-as-you-go (PAYG) withholding obligations and, as a result of associated non-compliance with this obligation, administrative penalties imposed for false or misleading statements made in business activity statements (BAS) were affirmed.

The primary issue under consideration was whether the taxpayer was responsible for the PAYG withholding obligations (including BAS reporting), given that another entity within the group was the legal employer. Under an arrangement between the taxpayer and the other entity, the taxpayer handled payroll for the other entity's employees. The taxpayer argued that the legal employer was responsible for the PAYG obligations, notwithstanding wages being paid from the taxpayer's bank account. The taxpayer contended that it had followed guidance from the Australian Taxation Office (ATO), including from previous audits, and accordingly did not make false or misleading statements by not including details in its BAS.

The Tribunal held the taxpayer was liable for the PAYG withholding obligations on wages disbursed from its bank accounts, regardless of formal employment status. The ART concluded that the taxpayer did not exercise reasonable care and demonstrated recklessness in its PAYG withholding compliance, observing that the taxpayer's sole shareholder and director was a registered tax agent. Consequently, the administrative penalties imposed by the Commissioner of Taxation were upheld, with some remission granted due to overlapping audits and objections.

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Northern Territory: Payroll tax changes

The Payroll Tax Amendment Act 2024 (NT) has been enacted and amends the payroll tax law in the Northern Territory (NT) with effect from 1 July 2025. Key changes include:

- increase in the tax-free threshold to $2.5m annually
- increase in the rate at which the annual deduction reduces – the reduction being $1 for every $2 in wages exceeding the tax-free threshold, and
- introduction of a payroll tax exemption for wages paid to apprentices and trainees.

Sunsetting of FBT exemption for plug-in hybrid electric vehicles

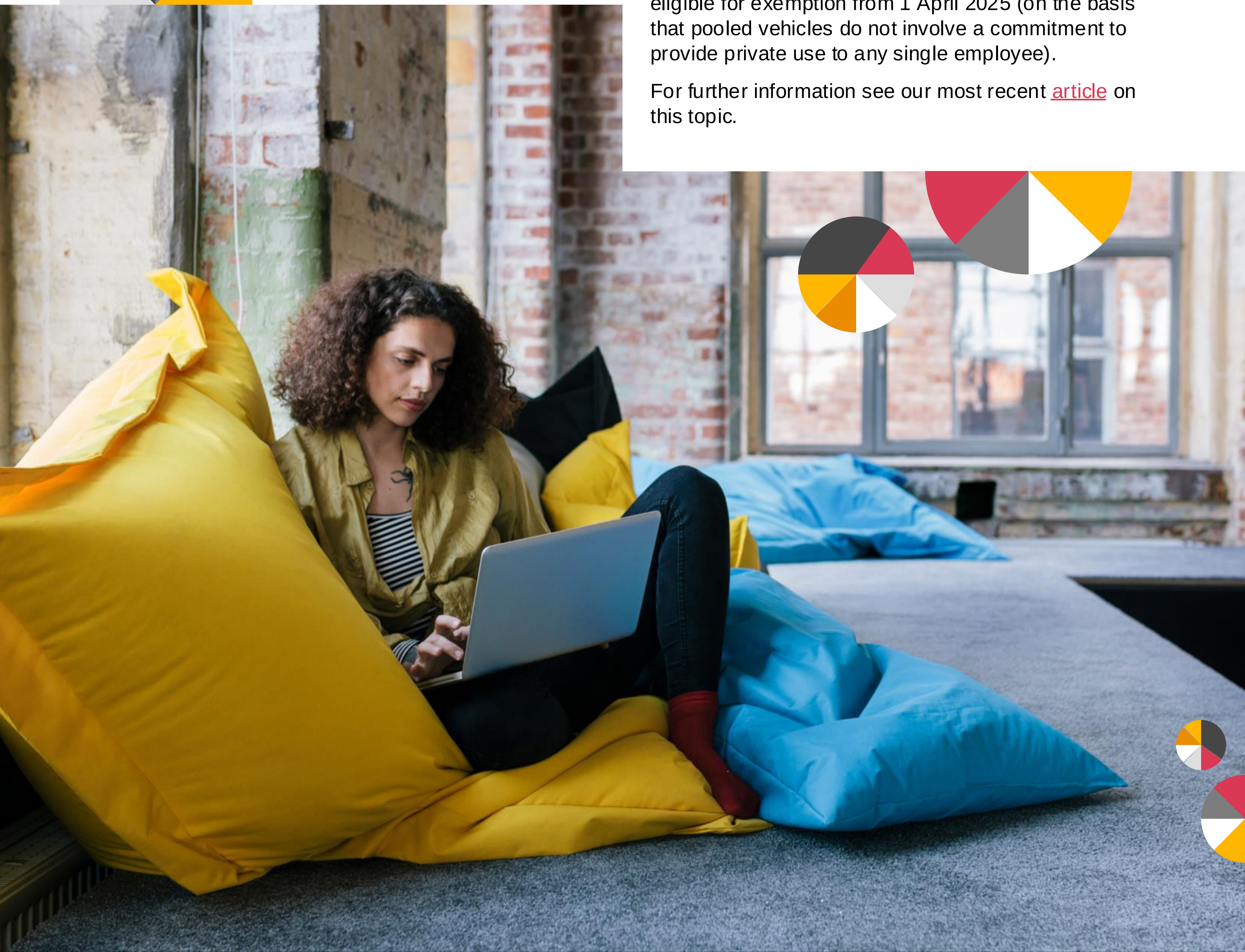
From 1 April 2025, a plug-in hybrid electric vehicle (PHEV) will no longer be considered a zero or low emissions vehicle and will not meet the eligibility criteria for the Fringe Benefits Tax (FBT) exemption for electric cars, except in limited transitional circumstances for those cars with a 'financially binding commitment' established before 1 April 2025.

Broadly, transitional rules will apply to allow the FBT exemption for PHEVs that satisfy the following two criteria:

- use of the PHEV was exempt from FBT before 1 April 2025, and
- there is a financially binding commitment in place before that time to continue providing private use of the vehicle to an employee or their associate on and after 1 April 2025, and that commitment remains in place unaltered.

The ATO has provided guidance on when a financially binding commitment is considered to be altered and includes observations in relation to pooled PHEVs which broadly provide that such vehicles are not eligible for exemption from 1 April 2025 (on the basis that pooled vehicles do not involve a commitment to provide private use to any single employee).

For further information see our most recent article on this topic.



International Tax and Trade Update

ATO guidance on making or revoking a TPDT thin capitalisation choice

The Australian Taxation Office (ATO) has acknowledged that the due date for making a thin capitalisation test choice to use the third party debt test (TPDT) for the 2024 income year will commonly occur prior to finalisation of its ruling TR 2024/D3 and Practical Compliance Guideline PCG 2024/D3 dealing with the TPDT (for further information on the draft Ruling and draft PCG, refer to the February edition of Monthly Tax Update).

Specifically, the ATO has issued general guidance setting out the circumstances in which the ATO will:

- grant a request to revoke a choice made to use the TPDT, and
- grant an extension of time to make the TPDT.

Both of these will need to be sought within six months after the publication date of the final ruling.

Pillar Two registration and notifications

For many jurisdictions, several Pillar Two registration and notification requirement deadlines for the 2024 fiscal year have already passed, with other deadlines coming up in countries that have adopted local Pillar Two compliance obligations. Although there is no registration requirement in Australia, taxpayers operating in other jurisdictions may wish to check and, where relevant, prepare the necessary documentation to meet any overseas registration and notification deadlines. Read more in our Tax Alert.

UN kicks off negotiations on international tax cooperation

The United Nations (UN) is expanding its role in international tax, driven by support from developing economies dissatisfied with the Organisation for Economic Cooperation and Development (OECD)/G20 Inclusive Framework's two-pillar solution.

From 3-6 February 2025, the UN intergovernmental negotiating committee held an organisational session to draft a UN Framework Convention on International Tax Cooperation. Key decisions included the composition of the Committee's bureau, choosing 'prevention and resolution of tax disputes' as the topic for the Convention's second early protocol, and adopting a simple majority decision-making process for the Convention negotiations with a two-thirds majority required for protocols. The UN is seeking to conclude negotiations by 2027.

For more information, see PwC's Global Tax Policy Alert.

Italy removes digital services tax threshold

The Italian 2025 Budget Law has eliminated the €5.5m digital services revenue (local) threshold for the application of the Italian digital services tax (IDST), significantly increasing the number of digital businesses (e.g. social media, marketplaces, transmission of data services providers, targeted advertising services providers) exposed to IDST. For further information, see PwC's Global Alert.

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India Budget 2025: Impact on foreign investors and multinationals

On 1 February 2025, the Indian finance minister presented the Indian Union Budget for 2025-26. The Budget focuses on various development measures that include boosting manufacturing and 'Make in India' enabling employment-led development, investing in people, the economy, and innovation, securing energy supplies, promoting exports, and nurturing innovation. On the tax front, the big news is the proposed introduction of a new and simplified tax law. For more information, refer to our Tax Alert.

US President Trump changes to global tax and trade policy

On the first day of the new Administration in the United States (US), President Trump signed two Executive Orders signaling a clear change in direction on global tax and trade policy. The first takes aim at the OECD's two pillar project and essentially nullifies the US's agreement to the project. The second is a series of directions to implement 'America First Trade Policy' which includes reference to a retaliatory provision of US tax law that, if triggered, could double the tax rate imposed on the US income of companies and individuals of foreign countries whose laws are found to discriminate against US citizens or companies. Read more in our Global Policy Alert.

Subsequently, US President Trump signed executive orders announcing his intent to impose 25% tariffs on the majority of imports from Canada and Mexico, a 10% additional tariff on imports from China and a 25% tariff on all imports of steel and aluminium. For a summary of the proposals and the impact and issues that Australian businesses may need to action, see PwC Australia's Tax Alert.

Sunset date for excise regulation deferred

The Legislation (Deferral of Sunsetting–Excise Regulation) Certificate 2025 defers the sunsetting date of the *Excise Regulation 2015* by 24 months from 1 April 2025 to 1 April 2027. The Excise Regulation sets out provisions in relation to excisable goods such as refunds and remissions, and drawbacks and regulation of duty-free stores and ships stores.

The Certificate defers the sunsetting date to 1 April 2027 to enable Treasury to conduct a review of the Excise Regulation in light of potential changes to the Customs Regulation 2015 following the review of customs laws, which will be required once broader trade reforms have been implemented. The deferral of the Excise Regulation will ensure that review of both the Excise Regulation and the Customs Regulation occurs at the same time so that issues affecting both Regulations are considered together and do not require the Excise Regulation to be remade again after review of the Customs Regulation.

Customs Regulations introduced for renewal of warehouse licences

The Customs Amendment (Renewal of Warehouse Licences) Regulations 2025, registered on 28 January 2025, amends the *Customs Regulation 2015* to remove the provisions setting out payment of the warehouse licence charge in respect of renewal of a warehouse licence.

These amending Regulations are consequential to the *Customs Amendment (Strengthening and Modernising Licensing and Other Measures) Act 2024* which, among other things, amends the *Customs Act 1901 (*Customs Act) and will:

- ensure that the provisions setting out payment of the warehouse licence charge in respect of a renewal of a warehouse licence are removed from the Customs Regulation (now provided in the Customs Act)
- remove the option for a licence holder, when renewing a warehouse licence, to pay the warehouse licence charge by quarterly instalments to align with the administration of depot licences where quarterly instalments are not available, and
- remove obsolete references to the Customs Act.

The amending Regulations do not affect warehouses that store excise-equivalent goods as those warehouses do not attract a licence renewal charge.

Transitional provisions are included for those licence holders who have already elected to pay by instalments in the current financial year.

The amending Regulations commence on 5 March 2025.

Customs and Fiji-Australia defence cooperation agreement

The Customs (International Obligations) Amendment (Australia-Fiji Defence Cooperation Agreement) By Law 2025, registered on 13 February 2025, amends the *Customs (International Obligations) By-Laws 2023* to enable personal effects, furniture and household goods (but not cigarettes, cigars, tobacco, and spirituous liquors) and one motor vehicle imported by a member of a Republic of Fiji Visiting Force, to be eligible for the concessional customs duty rate of 'Free'. This is consistent with Article 9 of the Agreement between the Government of Australia and the Government of the Republic of Fiji on Cooperation in the Field of Defence and the Status of Visiting Forces.

Application for tariff concession order denied

In Orora Ltd and Comptroller-General of Customs [2024] ARTA 48, the Administrative Review Tribunal upheld the Comptroller-General of Customs' decision to refuse a tariff concession order (TCO) application, as the goods could not be classified to a single tariff, as required by the *Customs Act 1901*.

The taxpayer, an Australian company which provides packaging products and services, including beverage cans, lodged an application for a TCO in relation to goods described as a 'Can Conveyance System', being a component of a beverage can production line. The Comptroller-General of Customs refused the application on the basis that the goods were not a single functional unit but comprised multiple sections of machines which would need to be classified separately. Ultimately, the Tribunal agreed that it was not possible to identify a functional unit in the form to which a (single) tariff classification could be applied.

Indirect Tax Update

Sunset provisions for residential care deferred

The [Legislation (Deferral of Sunsetting–A New Tax System (Goods and Services Tax) (GST-free Supply–Residential Care) Instruments) Certificate 2025] defers the sunsetting date of the following instruments by 24 months from 1 April 2025 to 1 April 2027:

- A New Tax System (Goods and Services Tax) (GST-free Supply–Residential Care–Government Funded Supplier) Determination 2015, and
- A New Tax System (Goods and Services Tax) (GST-free Supply–Residential Care–Non-government Funded Supplier) Determination 2015.

These Determinations ensure that the same GST-free supply provisions that apply to residents of Commonwealth funded residential care homes, also apply to those people living in residential care homes which are either funded privately or funded by state or territory governments.

The 24-month deferral will also allow for sufficient time for the commencement of the *Aged Care Act 2024* and the remaking of the Determinations to reflect the new legislative framework.

Updated guidance for collection and recovery of tax-related liabilities

In light of the amendments introduced by the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* the Australian Taxation Office (ATO) has, among other changes, updated PS LA 2011/18 to include guidance on exercising the Commissioner's power to estimate unpaid goods and services tax (GST) liabilities (as well as wine equalisation tax (WET) and luxury car tax (LCT)) and issue director penalty notices for GST liabilities (including WET and LCT). This update expands upon the director penalty notice and estimates sections of the PS LA and updates the list of circumstances where the ATO will not ordinarily withdraw a garnishee.

ATO stamps out misinformation over GST treatment of sunscreen

The ATO has released a statement to clarify that, contrary to recent media reports that had suggested that the ATO is 'cracking down' on manufacturers of skincare and sunscreen products in relation to GST treatment, the ATO has not changed its view on the GST treatment of sunscreen. GST does not apply to products marketed principally as sunscreen and never has.

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To be GST-free, a sunscreen product must be 'marketed principally for use as sunscreen'. If a product is not marketed principally for use as a sunscreen it is subject to GST. Since the introduction of GST, under the law sunscreen products are only GST-free if they:

- are for application to the skin (including the lips)
- have a sun protection factor (SPF) of 15 or more
- are required to be included on the Australian Register of Therapeutic Goods (ARTG), and
- are marketed principally for use as sunscreen.

The ATO's view is that whether a sunscreen product is marketed principally for use as sunscreen is a matter of overall impression involving an objective assessment of all the marketing information. Detailed information is available within the ATO's draft determination GSTD 2024/D2.

Draft law to ensure continuity of supply of disability support services

Treasury has released exposure draft law - Treasury Laws Amendment Bill 2025: Miscellaneous and technical amendments (Autumn 2025) - which proposes to make miscellaneous and technical amendments to various Treasury portfolio legislation. Within those proposed changes are amendments to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to ensure that the supply of disability services funded under the *Disability Services and Inclusion Act 2023* is GST-free.

The amendments ensure that the supply of disability services funded by Commonwealth, state and territory governments continue to be GST-free where the supplier received funding under the former *Disability Services Act 1986* and under the new *Disability Services and Inclusion Act 2023* on or after its application on 1 January 2024. If legislated, these amendments would commence the first quarter after Royal Assent. Comments closed 31 January 2025.

Precious metal materials not classified as silver

In Siltech PMR Pty Limited and Commissioner of Taxation (Taxation and business) [2025] ARTA 26, the Administrative Review Tribunal (ART) has dismissed a taxpayer's appeal, finding that materials in the form of silver bangles/bracelets, silver electrical nodes and silver foil could not be properly characterised as silver, whether or not in an investment form, and as such could not be classified as GST-free.

The taxpayer (a precious metal refiner) purchased materials for their precious metal content from time to time. The ART had to consider whether the items under consideration fell within the definition of 'precious metal' in section 195-1 of the GST Act, and specifically whether they were by definition, 'silver ... in an investment form'.

In its decision, the ART found that it was clear that the materials under consideration had been transformed from silver, and probably other materials, into goods of another character. In the ART's view, it would be unrealistic to characterise bangles/bracelets as 'silver'; their obvious and most natural characterisation was as jewellery or, more specifically, bangles/bracelets. Similar observations applied in respect of the other materials.

Taxpayer not entitled to out of time input tax credits

In Karagounis and Commissioner of Taxation (Taxation and business) [2024] ARTA 80, the ART has dismissed a taxpayer's appeal, finding that there was no discretion to allow an out of time claim for input tax credits.

The taxpayer, who operated a cleaning business, was registered for GST from 1 July 2010 until 2 July 2023 and accounted for GST on a cash basis. For the GST periods from 1 October 2015 to 31 March 2017, the taxpayer filed the GST returns between four and five years late. The reason for the delay related to problems with the taxpayer's then tax agent losing material, and health issues suffered by the taxpayer.

The taxpayer argued that the input tax credits should have been allowed on the basis that the exceptions to the time limit on entitlements to input tax credits (under section 93-10 of the GST Act) applied and that section 93-5 of the GST Act, which denies an entitlement to an input tax credit which has not been taken into account in an assessment of a net amount during the period of four years after the day on which the relevant GST return for the tax period was required to be lodged, did not apply.

The ART stated that the text of section 93-5 of the GST Act could not be clearer. The taxpayer simply ceased to be entitled to the input tax credits. The Tribunal had no discretion to allow otherwise (and noted that, in any event, the conditions of section 93-10 of the GST Act were not satisfied).

Personal Tax Update

Match payments not taxable for Category B WAFL players

The Australian Taxation Office (ATO) has updated a fact sheet that provides guidance on the taxation implications for an individual who plays Australian Rules Football as a 'Category B player' for a club associated with or governed by the West Australian Football League (WAFL).

The guideline confirms that match payments for Category B players are not taxable as their involvement is considered a private recreational pursuit or hobby, rather than an income-producing activity. Similarly, no deduction may be claimed for a Category B player's football expense.

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State Tax Update

Updated Stamp Duty and Land Tax Maps

Following recent changes to the Duties landscape, PwC's Stamp Duty and Land Tax Maps have been updated. These maps provide an overview of the stamp duty and land tax rates for each State and Territory of Australia as of 1 February 2025.

QLD: Revenue Legislation Amendment Bill passed

The Revenue Legislation Amendment Bill 2024 (Qld) has completed its passage through the Queensland (QLD) Parliament with amendments.

The Bill, among other measures, makes various amendments to the *Duties Act 2001 (Qld)* to provide full transfer (stamp) duty relief to eligible first homeowners from 1 May 2025 and introduces rent-a-room relief, which allows recipients of the transfer duty home concessions to rent part of their property from 6 December 2024.

The Bill also amended the *Duties Act 2001 (Qld), Land Tax Act 2010 (Qld)* and *Taxation Administration Act 2001 (Qld)* to ensure the provisions imposing the foreign surcharges (i.e. the additional foreign acquirer duty (AFAD) and the land tax foreign surcharge) in Qld's revenue legislation apply as intended. By way of background, in April 2024, the Australian Government implemented amendments to the *International Tax Agreements Act 1953 (Cth)* to clarify that non-discrimination clauses in double taxation agreements (DTAs) do not apply to taxes other than income tax and fringe benefits tax. The amendments to the Bill aim to align with the Commonwealth law and ensure the intended operation and imposition of the foreign surcharges under Queensland's revenue legislation between 1 January 2018 and 8 April 2024.

NSW: Duties and grant of options to purchase land

Revenue NSW has issued Practice Note CPN 037 which outlines the circumstances in which the Chief Commissioner will consider certain common transactions relating to the grant of an option to purchase land in New South Wales (NSW) to be liable to duty, with the Practice Note effective from 19 May 2022. It also contains some comments on the potential application of the general anti-avoidance provisions to option transactions.

The Practice Note is, however, not an exhaustive guide to all potential dutiable transactions involving an option to purchase land in NSW. It should be read in conjunction with CPN 025: Change in Beneficial Ownership. CPN 037 also does not deal in detail with the duty implications under section 9B or Part 2, Chapter 3 of the *Duties Act 1997 (NSW)* of transactions that involve options that have been granted (such as nominations, assignments or novation transactions).

NSW: Duties and qualified investor guidelines

Revenue NSW has issued DA 001 which explains the process for requesting a particular statutory body be prescribed by regulation as a qualified investor.

Under the *Duties Act 1997 (NSW)*, a person can acquire a greater interest in a Wholesale Unit Trust Scheme or an Imminent Wholesale Unit Trust Scheme (collectively, Registered Trusts) without incurring a liability to landholder duty compared to a private unit trust scheme.

To become a Registered Trust, the responsible entity of the trust must apply to the Chief Commissioner of State Revenue, who must be satisfied that the trust meets the relevant statutory criteria, with one criterion being that the 'qualified investors' must hold at least 80% of the units in the trust.

The guidelines are effective February 2024.

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NSW: Property not eligible for PPR land tax exemption

In the matter of Nishaharan v Chief Commissioner of State Revenue [2025] NSWCATAD 35 the Civil and Administrative Tribunal New South Wales found that NSW land tax was correctly assessed in relation to a property that was unoccupied land albeit intended to be the owners' principal place of residence (PPR).

The taxpayers owned two properties – one which was where they lived until they were able to sell it in April 2024 and the second property which they sought to claim as their principal place of residence. In relation to the second property, the taxpayers intended to demolish the dilapidated building on the block and build a new residence that would become their family home. For this property to qualify for the PPR land tax exemption, it must have been residential land used and occupied as the taxpayer's principal place of residence, and for no other purpose, at the taxing date of 31 December 2023. The facts show that it did not answer that description and as such, the Tribunal concluded that none of the potential land tax concessions applied and as a result the land tax assessment for the 2024 year is correct.

ACT: No relevant acquisition in landholder appeal

In Commissioner for ACT Revenue v GLDT Pty Ltd ACN 607 932 799 as Trustee of the George Lemezina Discretionary Trust; Commissioner for ACT Revenue v Zina Pty Ltd ACN 008 586 016 as Trustee for the Michael Lemezina Discretionary Trust (Appeal) [2025] ACAT 7, the Australian Capital Territory (ACT) Civil and Administrative Tribunal (Appeals Tribunal) has dismissed the Commissioner for ACT Revenue's appeal from the Tribunal at first instance, finding that no relevant acquisition was made for the purposes of the *Duties Act 1999 (ACT)*.

The Commissioner had imposed duty under the landholder provisions of the *Duties Act 1999 (ACT)* on the basis that there was an acquisition of a 'significant interest' in a 'landholder'.

At all material times, two corporate trustees of separate discretionary trusts were the beneficial owners, in equal shares, of all the units in a unit trust which had substantial landholdings in the ACT. Under the terms of the trust deed, the beneficial owners were each entitled to 50% of the property from the unit trust on a winding up, but neither was entitled to an interest in specific property. By a deed of variation and related transaction documents, the assets of the trust were split between the beneficial owners, each acquiring a 100% beneficial interest in specific properties. These specific investments represented 49.82% and 50.18% respectively of all the property of the unit trust available for distribution on a notional winding up.

At first instance, the Tribunal rejected the Commissioner's assertion that these circumstances amounted to the acquisition of a significant interest in a landholder.

The Commissioner's appeal against the decision was dismissed by the Appeals Tribunal. In the Appeals Tribunal's view, what had been acquired was not an interest in the landowner at all. Even if there had been such an acquisition, there had been no increase in the interest in the landholder that could be assessed.

Victoria: Land tax not applicable to owners in capacity as trustee

In Caloutas atf Caloutas Family Trust v Commissioner of State Revenue (Review and Regulation) [2025] VCAT 82 the Victorian Civil and Administrative Tribunal found that in circumstances where both the registered proprietors and the trustees were owners liable to land tax in respect of properties, there was a discretion available to the Commissioner of State Revenue to determine which party to tax and that discretion can and should be re-exercised by the Tribunal on review.

In this case, the Commissioner of State Revenue became aware that, for income tax purposes, the trust was reporting rental income in respect of three properties in the trust rather than in the names of the registered proprietors of those properties. As such the Commissioner reassessed the trustees' land tax liabilities for the 2014, 2015 and 2016 land tax years to include land tax - at the higher rates applicable to land held on trust on the additional properties considered to be owned by the trustees (in that capacity).

The Tribunal found that while neither the tax returns nor the financing documents may be determinative on their own, the combination of those matters are compelling evidence that the trustees have manifested an intention to hold the properties, or at least their interest in the properties, subject to the trust. However, it was the view of the Tribunal to re-exercise the discretion for the choice as to which owner to tax that is vested in the Commissioner 'for the purposes of making the decision under review'. It was not persuaded by the Commissioner's submission that because there might be some additional complexity in recouping any tax paid out, the decision to assess the trustees was the preferable decision.

As such, it concluded in the present case, having regard to the legislative context, the preferable decision would have been to assess the Registered Proprietors and that the reassessment of land tax, in the capacity as trustees for the trust, for the 2014, 2015 and 2016 land tax years be set aside and remitted to the respondent for reconsideration.

Victoria: Charity exemption land tax ruling updated

The Victorian State Revenue Office has issued Ruling LTA-009v2, effective for the 2025 land tax year. The Ruling, which replaces LTA-009, provides the Commissioner's interpretation of the meaning of the charity exemption provided under section 74 of *the Land Tax Act 2005 (Vic)*. The updated Ruling references the exemptions in sections 78B and 78C, which were introduced by the *State Taxation Amendment Act 2024 (Vic)*, as well as the exemption in section 78D introduced by the *State Taxation Further Amendment Act 2024 (Vic)*.

Victoria: PPR land tax exemption not applicable

The Victorian Civil and Administrative Tribunal found in Hu v Commissioner of State Revenue (Review and Regulation) [2025] VCAT 143 that the taxpayers were not entitled to the principal place of residence (PPR) exemption for two land tax years in circumstances where they did not move into those premises until the end of the second land tax year. Furthermore, the Tribunal found that there was no relevant discretion available to be exercised to relieve them from land tax that was assessed on the property.

The Tribunal confirmed that to be entitled to the PPR exemption under section 54 of the *Land Tax Act 2005 (Vic)*, it is ordinarily necessary that a person uses and occupies a property as their principal place of residence from 1 July to 31 December of the year preceding the applicable land tax year or in the case of a property acquired after 1 July of the year, the period of use and occupation need only commence from a later date in the preceding year. In the facts, this was not the case, notwithstanding the taxpayer's intention to use and occupy it as their principal place of residence as soon as they could.

South Australia: Duty relief on certain purchases of new homes and land

The Statutes Amendment (Budget Measures) Act 2025 was enacted on 13 February 2025, and among other things, amends the Stamp Duties Act 1923 (SA) to provide South Australian (SA) duty relief for eligible first home buyers in relation to contracts entered into on or after 6 June 2024 to purchase a new home or vacant land on which a new home will be built.

Additional measures also apply effective for contracts entered into on or after the date of assent to:

- tighten the previous home ownership criteria such that first home buyers (and/or their spouse/domestic partner) who did not occupy the residential property, or occupied it for less than six months, will not be eligible for stamp duty relief, and
- remove relief for first home buyers from the foreign ownership surcharge, i.e. to be eligible for stamp duty relief, at least one owner must be an Australian citizen or a Permanent Resident (refer to the SA Revenue website for further information).

Superannuation Update

SMSF statistical overview 2022-23

The Australian Taxation Office (ATO) has released its self-managed super funds statistical overview for 2022-23 which shows statistics for the self-managed super fund (SMSF) market. Key highlights include that as at 30 June 2024:

- there were over 625,000 SMSFs, an increase of 4.5% from 30 June 2023
- 32,700 SMSFs entered the sector over the year, an increase of 21% from 2022-23
- there were over 1.15m members of SMSFs, and
- SMSFs collectively held $990.4bn in total assets, an increase of $69.2bn, or 7.5% from 30 June 2023.

APRA superannuation statistics 2024

The Australian Prudential Regulatory Authority (APRA) has published its annual superannuation statistics publications for 2024. APRA publishes statistics on individual superannuation funds and their trustees on an annual basis. These statistics contain information on fund profile and structure, financial performance and position, conditions of release, fees and membership. APRA also publishes statistics on superannuation fund expenditure and insurance arrangements. The 2024 annual publications are the first time that fund-level expenditure is included as well as detailed insurance data which will form part of the publications going forward.

Draft legislative instrument for continuity of benefits relating to disability

Treasury has released draft Treasury Laws Amendment Instrument 2025: Miscellaneous and technical amendments (Autumn 2025), which includes draft provisions that propose to amend the *Retirement Savings Account Regulations 1997* (RSA Regulations) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations).

The amendments ensure the continued operation of the provisions in the RSA Regulations and SIS Regulations as intended by inserting certain definitions previously found in the former *Disability Services Act 1986* and to repeal a redundant note. Comments closed 31 January 2025.

Taxpayer liable for excess non-concessional contributions tax

In XGDM and Commissioner of Taxation (Taxation and business) [2025] ARTA 57, the Administrative Review Tribunal (ART) upheld an assessment to excess non-concessional contributions tax, finding that the taxpayer's total superannuation balance was in excess of the $1.7m general transfer balance cap.

Throughout the taxpayer's entire employment, he contributed to the Commonwealth Superannuation Scheme (CSS)—a defined benefit fund—at the mandatory minimum required rate of 5% of his gross salary. The taxpayer received an excess non-concessional contributions tax (ENCCT) determination in respect of his contributions to the fund for the income year ended 30 June 2022, having apparently exceeded the total superannuation balance cap of $1.7m as at 30 June 2021.

Broadly, where a taxpayer's superannuation is in the accumulation phase, their total superannuation balance is equal to or more than the transfer balance cap, and they make non-concessional contributions to their superannuation fund, they will be liable to ENCCT at the rate of 47% of the non-concessional contributions made.

Ultimately, the ART determined that the taxpayer's total superannuation benefit payable was in excess of $1.7m, with the same balance amount reached regardless of whether it was calculated under the Lump Sum Method or the Transfer Balance Method.

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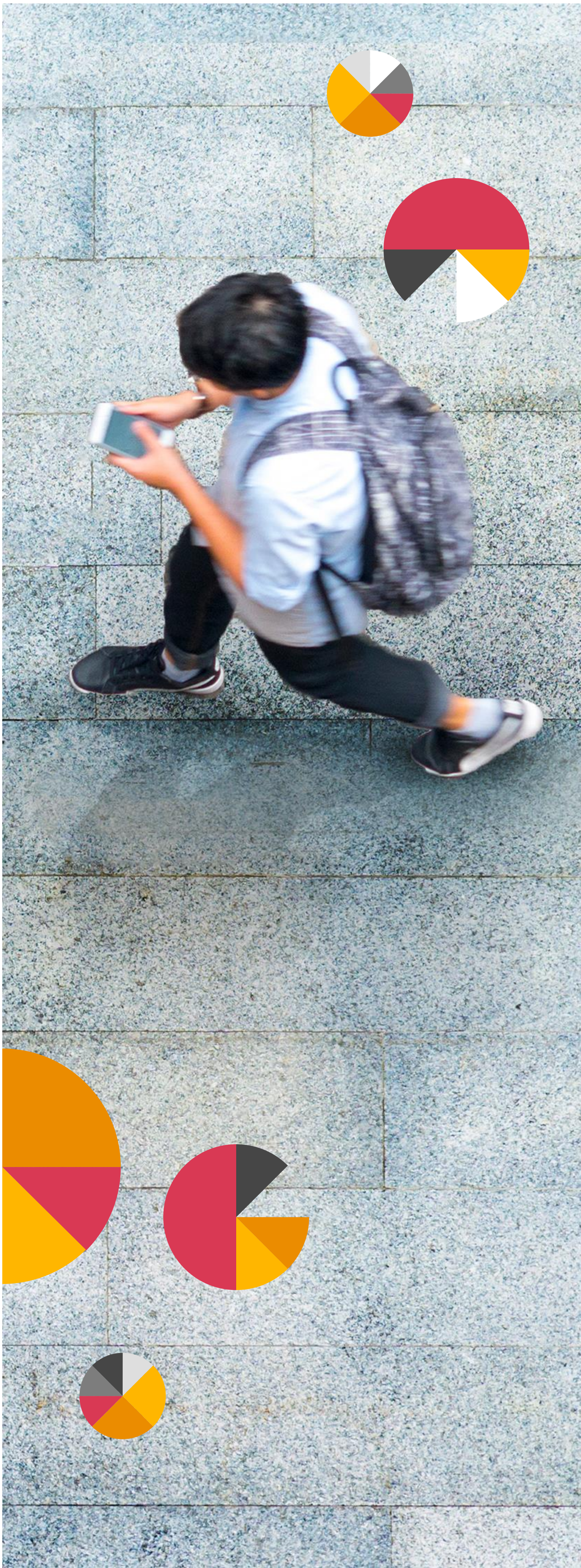
Disability superannuation benefit not eligible for concessional treatment

In QWYN and Commissioner of Taxation (Taxation and business) [2025] ARTA 83, the Administrative Review Tribunal (ART) has dismissed the taxpayer's contention that he was entitled to concessional tax treatment on fortnightly payments from a superannuation benefit received since his retirement on disability grounds.

The central question was whether the payments the taxpayer received should be classified as a lump sum or as a superannuation income stream benefit (as those terms are defined for the purposes of the *Income Tax Assessment Act 1997* (ITAA 1997). The taxpayer contended that he was entitled to concessional tax treatment under section 307-145 of the ITAA 1997 (Modification for disability benefits), while the Commissioner argued that the taxpayer's fortnightly payments did not constitute a 'superannuation lump sum' and therefore did not pass the threshold for access to concessional treatment.

Section 307-65(1) of the ITAA 1997 provides that a superannuation lump sum is a superannuation benefit that is not a superannuation income stream benefit. Ultimately, the ART was satisfied, based on the text of the definition of 'pension' and the context in which it appears in the *Superannuation Industry Supervision Act 1993*, that the definition was an inclusive one, and that the benefit the taxpayer received was a pension as that term is ordinarily understood. In this case, the payment the taxpayer received was a fixed periodical payment in consideration of the injury or loss which he sustained. The sum was paid, not in exchange for work, but to make proper provision for the taxpayer as a result of the disability from which he suffered.

As the payments met the statutory definition of a 'superannuation income stream', they could not be a superannuation lump sum, and so the concessional tax treatment provided for in section 307-145 of the ITAA 1997 was not available. It had no bearing that the taxpayer's benefit was a disability superannuation benefit since concessional treatment under section 307-145 is only available where such a benefit is also a superannuation lump sum.

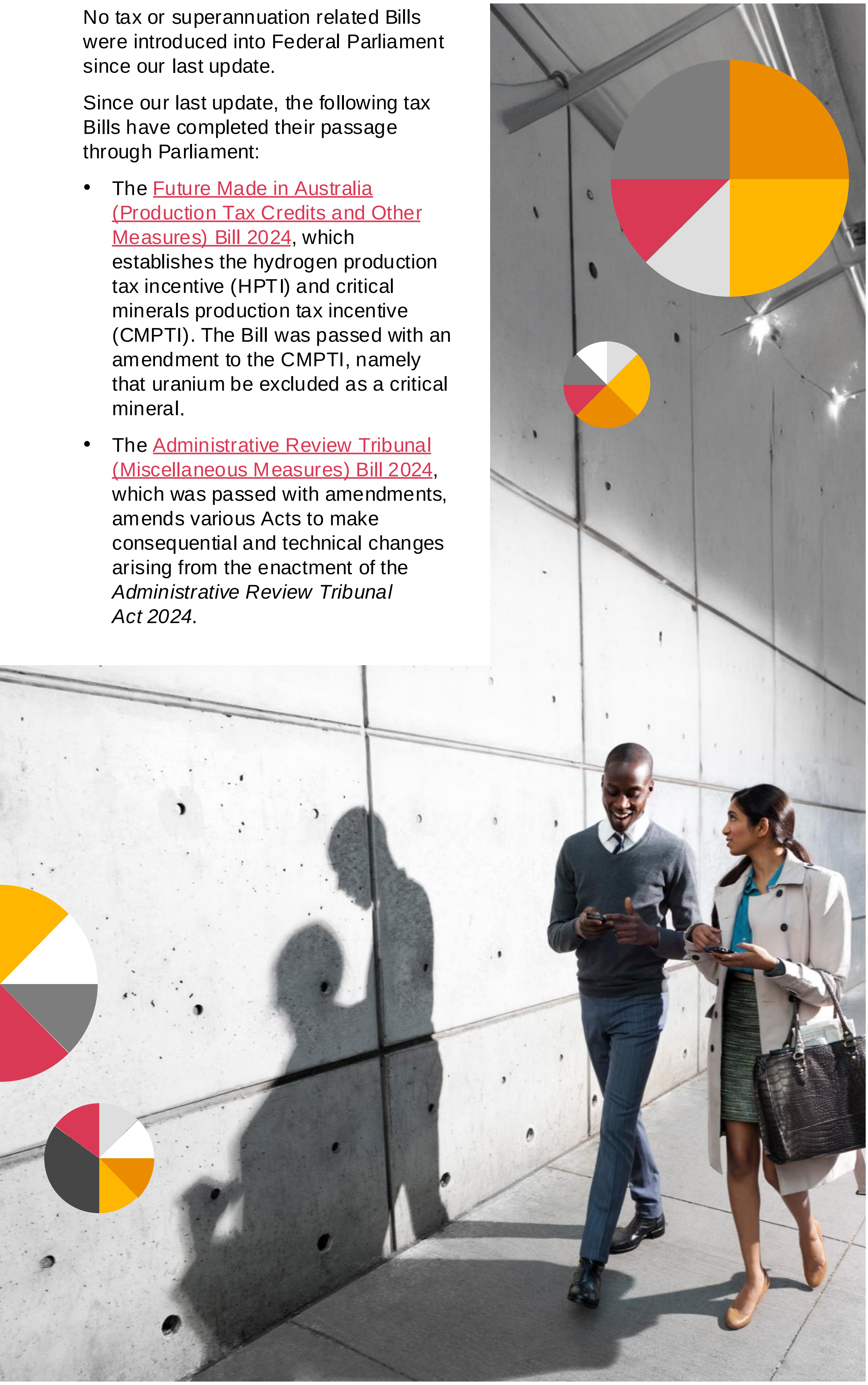


Legislative Update

No tax or superannuation related Bills were introduced into Federal Parliament since our last update.

Since our last update, the following tax Bills have completed their passage through Parliament:

- The Future Made in Australia (Production Tax Credits and Other Measures) Bill 2024, which establishes the hydrogen production tax incentive (HPTI) and critical minerals production tax incentive (CMPTI). The Bill was passed with an amendment to the CMPTI, namely that uranium be excluded as a critical mineral.
- The Administrative Review Tribunal (Miscellaneous Measures) Bill 2024, which was passed with amendments, amends various Acts to make consequential and technical changes arising from the enactment of the *Administrative Review Tribunal Act 2024*.



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

- The Customs (Prohibited Imports) Amendment (Importation of Tobacco Products) Approval 2025, which amends the *Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019* to provide clarity in relation to ongoing approvals for certain tobacco products where it is considered that applying for a case-by-case permission is not necessary.
- The Legislation (Deferral of Sunsetting–A New Tax System (Goods and Services Tax) (GST-free Supply–Residential Care) Instruments) Certificate 2025 defers the sunsetting date of the following instruments by 24 months from 1 April 2025 to 1 April 2027:
  - *A New Tax System (Goods and Services Tax) (GST-free Supply-Residential Care-Government Funded Supplier) Determination 2015*
  - *A New Tax System (Goods and Services Tax) (GST-free Supply-Residential Care-Non-government Funded Supplier) Determination 2015.*
- The Legislation (Deferral of Sunsetting – Privacy (Tax File Number) Rule) Certificate 2025, which defers the sunsetting date of the *Privacy (Tax File Number) Rule 2015* by 24 months from 1 April 2025 to 1 April 2027.
- The Legislation (Deferral of Sunsetting–Excise Regulation) Certificate 2025, which defers the sunsetting date of the *Excise Regulation 2015* by 24 months from 1 April 2025 to 1 April 2027.
- The Customs Amendment (Renewal of Warehouse Licences) Regulations 2025, which amends the *Customs Regulation 2015* to remove the provisions setting out payment of the warehouse licence charge in respect of renewal of a warehouse licence.
- The Customs (International Obligations) Amendment (Australia-Fiji Defence Cooperation Agreement) By Law 2025, which amends the *Customs (International Obligations) By-Laws 2023* to implement customs commitments under Article 9 of the Agreement between the Government of Australia and the Government of the Republic of Fiji on Cooperation in the Field of Defence and the Status of Visiting Forces.

The next scheduled sitting date for Federal Parliament is 25 March 2025 (which is also the scheduled date of the 2025-26 Federal Budget), assuming that the Federal election is not called prior to this time. Once an election is called, Parliament is prorogued and all Bills that are before Parliament will lapse and will need to be reintroduced by the newly formed Government if the measure accords with their policy.

The following key tax and superannuation Bills remain before Parliament at the time of writing:

- 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.

Other News Update

Temporary ban on foreign investor purchases of established homes

The Government has announced a ban on foreign investors from buying established homes from 1 April 2025 until 31 March 2027. A review will be undertaken to determine whether it should be extended beyond this point.

During this period, foreign investors (including temporary residents and foreign-owned companies) will no longer be able to purchase an established dwelling in Australia unless an exception applies. These exceptions will include investments that significantly increase housing supply or support the availability of housing supply, and for the Pacific Australia Labour Mobility (PALM) scheme.

Transactions to acquire more than ten residential premises on one lot are generally not classified as residential land and are unlikely to be caught by these measures. This ban will therefore have a greater impact on smaller investors or where individual premises are being acquired to house staff and are unlikely to impact investors involved in property development.

The Australian Taxation Office's (ATO) foreign investment compliance team will also be bolstered to enforce the ban and enhance screening of foreign investment proposals relating to residential property, with $5.7m of funding to be given over four years from 2025-26. It is possible the ATO may use their newly established Register of Foreign Ownership of Australian Assets as a primary data source for managing compliance so ensuring these registrations are kept up to date is important.

Separately, measures will be implemented to tackle land banking by foreign investors. Foreign investors are subject to development conditions when they acquire vacant land in Australia to ensure that it is put to productive use within reasonable timeframes. The ATO and Treasury will be provided with $8.9m over four years from 2025-26 and $1.9m ongoing from 2029-30 to implement an audit program and enhance their compliance approach.

Foreign investors that have already acquired or are proposing to acquire vacant residential or non-residential land will be subject to heightened scrutiny by the ATO and Treasury to ensure they comply with development conditions.

The ATO and Treasury will publish updated policy guidance prior to the commencement of these changes.

New Payment Times Reporting Scheme – Guidance material and Regulator update

To support the Payment Times Reporting (PTR) Scheme, late last year new guidance material detailing criteria for identifying reporting entities, data aggregation, identifying fast and slow small business payers and to help businesses understand the new reporting format was released. The updated guidance and tools aim to streamline reporting processes, ensuring data accuracy and support entities in meeting their obligations effectively. The PTR Regulator has also published an update setting out its 2025 priorities, which include enhancing reporting quality, increasing awareness and incentivising better payment practices. Read more in our Tax Alert.

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TFN Privacy Rule continued

The Legislation (Deferral of Sunsetting – Privacy (Tax File Number) Rule) Certificate 2025 defers the sunsetting date of the *Privacy (Tax File Number) Rule 2015* by 24 months from 1 April 2025 to 1 April 2027.

The Privacy Rule protects the Tax File Number (TFN) information of individuals and provides a framework that limits the recording, collecting, use or disclosure of TFN information to circumstances where it is permitted under taxation, personal assistance or superannuation law.

The Privacy Rule has not been reviewed since it was first made in 2015. The Office of the Australian Information Commissioner (OAIC) anticipates commencing a review in early 2025, in light of the findings of the Royal Commission into the Robodebt Scheme. A 24-month deferral will allow sufficient time for the review to be conducted and will avoid the need to remake the Privacy Rule in its current form for the short period of time before it is repealed and a replacement instrument is made.

Interaction between TOFA labels and PAYG instalment rates

The ATO has recently published new guidance regarding the interaction of disclosures on its income tax return labels relating to the taxation of financial arrangements (TOFA) and PAYG instalment rates, reminding taxpayers that incorrectly reporting the TOFA gains and losses can result in an inappropriate PAYG instalment rate. The guidance explains how the ATO calculates PAYG instalment rates for both TOFA and non-TOFA entities, and the impact of the TOFA tax return labels on that calculation.

Financing private groups in property and construction

The ATO has recently provided website guidance on inbound related-party financing for private groups in property and construction. The ATO has listed a wide range of risk factors for related-party funding arrangements that attract its attention, ranging from documentation, limited equity (capital) contributions, non-arm's length terms and conditions on debt (including debt quantum and the term of the loan), currency of loans, and refinancing or not repaying loans after a development is sold. Practical scenarios of using funding from an overseas related entity or associate to acquire or develop property show the funding arrangements and behaviours the ATO considers to be low risk and those high-risk scenarios that are more likely to attract ATO compliance activity.

Updated ATO guidance on enforcement measures for debt recovery

The ATO has updated Practice Statement Law Administration PS LA 2011/18, which sets out the guidelines for ATO officers involved in the use of enforcement measures for the collection and recovery of tax-related liabilities and other amounts.

The updates include, among others, clarification of the ATO's position in relation to applications made by taxpayers to set aside a judgment, as well as clarification that the cases referred to the Commonwealth Director of Public Prosecution include tax fraud or crime cases. In terms of garnishees, PS LA 2011/18 has also been updated as to the limitations on the use of garnishees, in order to reflect the amendments to the law brought in by the *Treasury Laws Amendment (2022 Measures No. 2) Act 2022*, and the list of circumstances where the ATO will not ordinarily withdraw a garnishee has also been updated. For indirect tax updates relevant to PS LA 2011/18, see the Indirect Tax section.

Key risk areas for private wealth in 2024-25

The ATO has published the key risk areas that it intends to focus on for Private Wealth in 2024-25.

These key focus areas are based on the risks and issues identified through the ATO's intelligence collection, risk detection and analysis and case work. While the ATO is focused on improving tax performance across all tax and superannuation compliance obligations for the privately owned wealthy groups population, it has also identified foundational, emerging and evolving risks and targeted focus areas where more resources are being invested.

Several foundational issues are highlighted, including registration, lodgment and payment risks including not registering for obligations when required, or failure to lodge returns and pay tax debts on time. Incorrect reporting of returns and ineligible research and development (R&D) expenditure claims, among others, also pose an issue, as do risks and issues around deemed dividend Division 7A compliance, capital gains tax (CGT) (including eligibility for the small business CGT concessions), as well as risks related to property and construction and select international and domestic transactions.

Emerging or evolving risks also target more complex incorrect reporting (such as trusts over-claiming deductions that inappropriately reduce trust net income) as well as emerging or evolving CGT risks, including those around Division 149 (pre-CGT assets). Other emerging areas include inappropriate use of private ancillary funds to hide wealth, offset CGT events, or extract other tax benefits by moving taxable income or assets through not-for-profit vehicles, share buyback arrangements, the thin capitalisation rules, and cryptocurrency-based business models, among others.

Finally, targeted focus areas concern succession planning, private equity, retirement villages, as well as GST focus areas on retail and construction.

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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