PwC's Monthly Tax Update

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

November 2024

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Corporate Tax Update

First R&D tax transparency report released

The Australian Taxation Office (ATO) has published its first research and development (R&D) report of data about R&D tax incentive entities. The report includes R&D entities that claimed the R&D tax incentive in their 2022 company tax return, and whose income year commenced on or after 1 July 2021.

The report, which will be published on an annual basis, contains data limited to the disclosures of the following as provided in a company tax return:

- name of the R&D entity claiming the R&D tax concession
- entity's Australian business number (ABN) or Australian company number (ACN); and
- 'Total R&D expenditure' – total notional deductions claimed (label Z in Part A of the R&D Schedule) less any feedstock adjustments (label B in Part B of the Schedule).

Where an R&D entity has amended its company tax return, both the original information provided and the last lodged client-initiated amendment – including any voluntary disclosures provided – will be reported.

Proposed technical amendment to PRRT law

As part of a package of miscellaneous and technical amendments designed to correct drafting errors, repeal inoperative provisions, address unintended outcomes and make other technical changes, Treasury has released for consultation, proposed amendments that will amend a provision in the *Petroleum Resource Rent Tax Assessment Act 1987 (Cth)* (PRRTA Act). Specifically, the proposal is to clarify that no apportionment of the amount of assessable petroleum receipts derived by a person in relation to a petroleum project worked out in accordance with the regulations in relation to certain sales gas produced from the project is required under section 26 of the PRRTA Act.

The amendments, once enacted, will apply in relation to a year of tax beginning on or after 1 July 2024. Comments on the draft law closed 11 October 2024.

Insufficient activities to make a film resulted in no producer tax offset

In Fragmentary Pty Ltd and Screen Australia (Taxation) [2024] AATA 3316, the Administrative Appeals Tribunal (AAT) confirmed that the taxpayer was not entitled to the producer tax offset because it did not carry out, or make the arrangements for the carrying out of, all activities necessary for the making of a film.

The film in question – a horror/thriller feature film – was theatrically released in Australia. However, the final certificate for the producer tax offset was not issued by the relevant film authority on the basis that the company did not satisfy the conditions within paragraph 376-65(1)(a) of the *Income Tax Assessment Act 1997 (ITAA 1997)*, i.e. that the company either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the making of the film.

The corporate taxpayer argued that the first cut of the film (made by the sole director and shareholder of the company) prior to the registration of the company was merely pre-shot footage licensed to the company. The AAT found that the evidence did not support such a contention – the work undertaken prior to the taxpayer's incorporation was 'more than a mere frolic or running around with a camera' and could not be said to be anything other than the development, pre-production and production of 'making the Film'. Significant activities were undertaken by the shareholder to get the film to a point of 85% completion and to a format able to be screened to the public (albeit not commercially).

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Employment Taxes Update

Changing approach to ATO debt collection of unpaid PAYG withholding and superannuation

On 23 October 2024 the Australian Taxation Office (ATO) announced that is adopting a deliberate and targeted approach to collect unpaid tax and superannuation, focussing on businesses that ignore engagement attempts. For businesses that do not engage with the ATO or set up payment plans for unpaid goods and services tax (GST), Pay-As-You-Go (PAYG) withholding or employee superannuation, the ATO will issue Director Penalty Notices (DPNs) and garnishee orders to recover the outstanding amounts.

Directors of multiple companies with unpaid tax liabilities can expect holistic debt assessments and DPNs that cover all related entities. If no action is taken by the directors, the ATO has the authority to recover the unpaid amounts directly from the directors, putting their personal assets at risk.

Superannuation guarantee: Contracted plumber not an employee

On 26 September 2024, in the case of Trustee for Peter Hatfield Trust v FC of T [2024] AATA 3428 the Administrative Appeals Tribunal (AAT) set aside superannuation guarantee charge (SGC) assessments, finding that a plumber who worked for a plumbing business for over 10 years was not an employee under the extended definition of an employee per section 12(3) of the *Superannuation Guarantee (Administration) Act* (SGAA). The section aims to capture those engaged wholly or principally for their labour.

The plumber, a licensed professional, worked independently, invoiced based on hours worked, paid GST, lodged Business Activity Statements, owned his tools, and operated his own business. In 2021, he lodged a complaint with the ATO regarding unpaid superannuation contributions from 2010 to 2020. The Commissioner of Taxation deemed him an employee under the SGAA and issued SGC assessments to which the applicant objected, arguing that the plumber was a contractor.

The AAT found that the contracts were for specific plumbing jobs rather than primarily for the plumber's labour. The plumber was skilled, paid per job, had the right to refuse work, and was not supervised by the business, which supported his status as an independent contractor rather than an employee.

Superannuation guarantee: Updates to ATO guidance on remission of additional SGC

The ATO has updated Practice Statement Law Administration 2021/3 which provides guidance in relation to the remission of penalties imposed under Part 7 of the SGAA, with several significant changes:

- Detailed guidelines, including a comprehensive four-step penalty remission process to assist taxpayers in understanding how to seek remission of additional superannuation guarantee charge penalties.
- New sections on "Penalty Relief" and "Interaction with Other Administrative Penalties," providing clarity on how penalty relief can be obtained and how these penalties interact with other administrative penalties imposed by the ATO.
- Consideration of late payments, SG statements, compliance history, and mitigating circumstances, offering a more nuanced approach to penalty remission based on individual taxpayer circumstances.
- A high threshold for exceptional circumstances with illustrative examples, setting a clearer standard for what constitutes exceptional circumstances that may warrant penalty remission.

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- Clearer guidelines on the remission of penalties for historical quarters, ensuring taxpayers understand how penalties for past periods are handled.
- New examples and scenarios, including those related to natural disasters and the COVID-19 pandemic, to provide practical guidance on how these situations are treated under the updated guidelines.
- Thorough guidance on the interaction of Part 7 penalties with other administrative penalties, ensuring taxpayers are aware of how multiple penalties may be applied and remitted.

Queensland payroll tax: Amnesty for dentists

On 30 September 2024, the Queensland Government approved a payroll tax amnesty for payments to dentists under relevant contracts, effective until 30 June 2025. Clinics benefiting from the amnesty will not be required to pay payroll tax on these payments during the amnesty period but must commence paying payroll tax from 1 July 2025 if no exemption applies.

To qualify for the amnesty, clinics must make a voluntary disclosure of their payroll tax liabilities, register for payroll tax by 30 June 2025, and comply with ongoing payroll tax obligations. Additionally, clinics must provide wage information for the period from 2018 to 2025 to assess their eligibility for the amnesty. Clinics that do not participate in the amnesty may face compliance activity from the Queensland Revenue Office starting 1 July 2025.

See more information on the payroll tax amnesty here.

Northern Territory payroll tax: Apprentice and trainee wages to be exempt

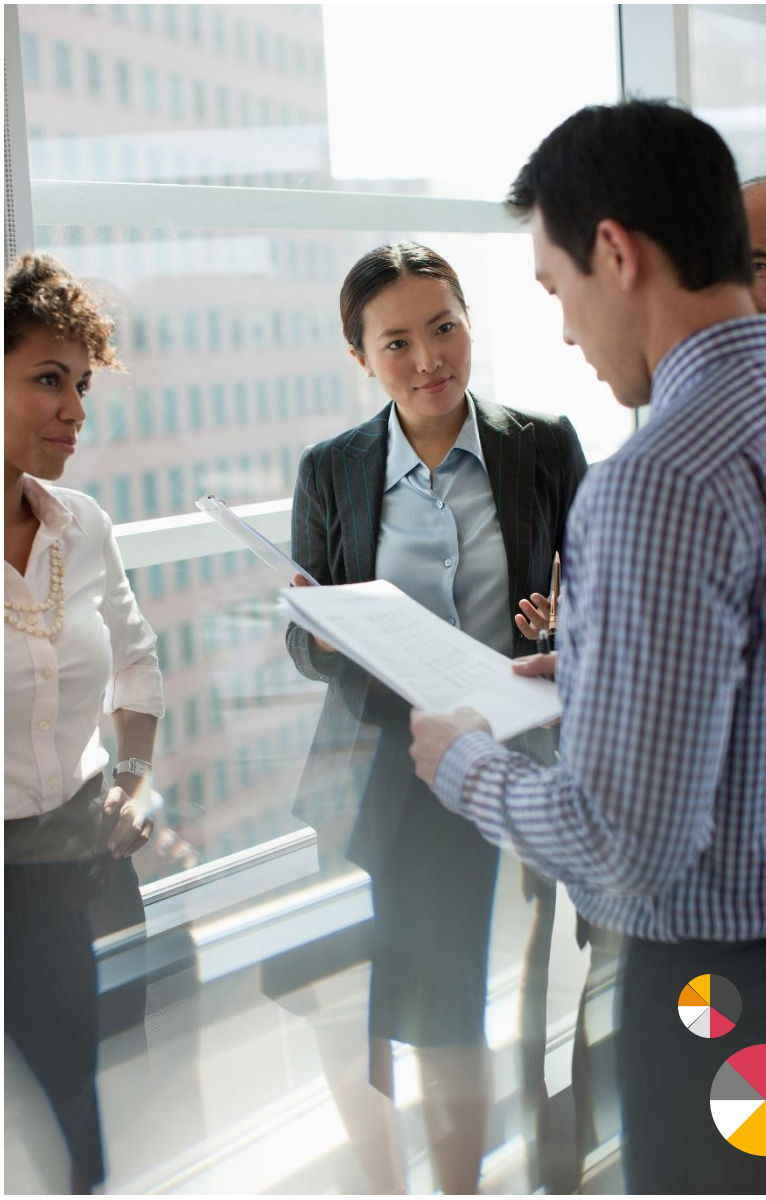
On 23 October 2024, in a Joint Media Release the Northern Territory (NT) Government announced changes to the NT payroll tax are set to take effect in 2025, impacting thresholds and exemptions as follows:

- Increase in tax-free threshold: Effective from 1 January 2025, the NT payroll tax tax-free threshold will rise from $1.5m to $2.5m. This adjustment aims to provide relief to smaller businesses by reducing their tax burden.
- Exemption for apprentice and trainee wages: Starting 1 July 2025, wages paid to apprentices and trainees will be exempt from payroll tax. This exemption is part of the broader initiative to support workforce development and training.
- Reduced payroll tax for mid-sized businesses: From 1 July 2025, businesses with payrolls ranging from $2.5m to $7.5m will benefit from a reduction in payroll tax. This measure is designed to support mid-sized businesses and stimulate economic growth.

NSW payroll tax: Revenue Legislation further Amendment Bill 2024

The Revenue Legislation Further Amendment Bill 2024 (NSW), which was introduced into the NSW Parliament on 16 October 2024, makes miscellaneous amendments to several Acts, including amendments to the *Payroll Tax Act 2007 (NSW)*. This includes amendments to make it clear that wages do not include amounts paid or payable by a corporate collective investment vehicle (CCIV) to its corporate director and to insert definitions of prescribed billing arrangements and veterans' arrangements for the rebate of payroll tax for general practitioners.

Duties and land tax amendments are also made by this Bill – refer to the State Taxes section for details.



Global Tax and Trade Update

Country by country reporting updates

The Australian Taxation Office (ATO) is intending to scale back the use of country by country (CBC) exemptions such that, for periods starting on or after 1 January 2024, all taxpayers will be required to lodge a short form and master file, even where there are no international related party dealings.

Going forward, exemptions will be granted for one year only in cases:

- where the entity is an Australian CBC reporting parent, or a member of a group consolidated for accounting purposes with an Australian CBC reporting parent, where the group has no foreign operations – for a CBC report
- where the CBC reporting parent is foreign and its annual global income is A$1bn or more but falls below the CBC reporting foreign currency threshold in the jurisdiction of the foreign CBC reporting parent – for a CBC report
- where the entity was a CBC reporting entity in the preceding year but left the CBC reporting group due to a demerger or sale to a third party and is not a CBC reporting entity in the new group – for a CBC report and master file.

Of note is that there is no exemption for foreign residents operating permanent establishments in Australia. Other exemptions for the CBC report, master file and local file may be available in exceptional circumstances after a review of the facts and circumstances and consideration of the evidence.

The ATO has also announced material changes to the short form local file which will impact all Australian taxpayers required to lodge a local file as part of their CBC reporting obligations for periods starting on or after 1 January 2024. The proposed changes to the short form are the most significant change in CBC reporting since its inception. For further information, refer to our Tax Alert.

For wider guidance around navigating CBC complexities, ensuring compliance, and creating a proactive strategy with actionable steps, refer to this global PwC article.

ATO's draft guidance on restructures in response to thin capitalisation changes

The ATO has released its first public guidance on Australia's new thin capitalisation rules in the form of draft Practical Compliance Guideline PCG 2024/D3, which is intended to provide a framework for assessing the risk of anti-avoidance provisions applying to restructures in response to the changes to the thin capitalisation rules. The draft PCG highlights areas the ATO is likely to apply resources to review arrangements, with risk assessment categories ranging from white (further risk assessment not required) to red (high risk) and associated examples.

Currently, the draft PCG only covers compliance risks arising from restructures in response to the debt deduction creation rules (DDCR) and will be updated to include a new schedule on restructures arising from the other changes to the thin capitalisation rules at a later date.

The draft PCG also provides some limited guidance on the records and evidence that a taxpayer will require to determine whether the DDCR has application to arrangements. Importantly, the ATO considers that the onus is on the taxpayer to prove that the DDCR does not apply, and the ATO does not consider it appropriate to limit its compliance activities to more recent transactions.

When finalised, the guideline will apply to restructures entered into on or after 22 June 2023 (being the date that the thin capitalisation amending Bill was introduced into Parliament). Comments on the draft guideline close 8 November 2024.

For further information about the draft PCG, refer to our Tax Alert.

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Approved form for new thin capitalisation choices

The ATO has released the approved form for making a choice to use the group ratio test (GRT) or Third Party Debt Test (TPDT) under the new thin capitalisation rules. In accordance with section 820-47 of the *Income Tax Assessment Act 1997 (Cth)*, this is the only valid way to make these choices, with the form required to be completed by the earlier of the day the entity lodges its tax return for the year, or the day it is required to lodge its tax return for the year (unless the Commissioner allows a later day).

This form is not required to be lodged with the ATO, but retained as a record of having made a valid choice. It will need to be completed each year that a taxpayer chooses to use the GRT or TPDT.

Amendments proposed to thin capitalisation law

As part of a package of miscellaneous and technical amendments designed to correct drafting errors, repeal inoperative provisions, address unintended outcomes and make other technical changes, Treasury has released for consultation, proposed amendments that will ensure that associate entities of general class investors are correctly categorised for thin capitalisation purposes as a general class investor, outward investing financial entity (non-ADI) or an outward investing entity (ADI).

The amendments, which are yet to be introduced to Parliament, are proposed to apply in relation to income years starting on or after 1 July 2023. Comments on the draft law closed 11 October 2024.

Proposed amendments to Consolidated Entity Disclosure Statement requirements

Among other changes proposed by the above Treasury consultation on technical amendments, amendments are also proposed to the *Corporations Act 2001 (Cth)* in relation to public company's requirement to disclose residency of group subsidiaries in a Consolidated Entity Disclosure Statement (CEDS) as part of their annual financial reports. Specifically, the proposed amendments indicate when a partnership and a trust will be an 'Australian resident' for these purposes.

An additional amendment is proposed to cover the case where a subsidiary entity is not an Australian resident and there is a lack of a corporate tax system in the foreign jurisdiction in which the subsidiary is established and operates (i.e. the subsidiary entity is also not resident in the foreign jurisdiction). In such cases, the proposal is that the reporting entity should state that the subsidiary is not an Australian resident but should not list the relevant foreign jurisdiction for that subsidiary.

These amendments are proposed to apply in relation to annual financial reports for financial years commencing on or after 1 July 2024, which ensures that there is no retrospective impact. That is, the first annual report incorporating these proposals is expected next year, i.e. after 30 June 2025 (pending enactment). Comments on the draft law closed 11 October 2024.

OECD releases Tax Policy Reforms 2024 report

The Organisation for Economic Co-operation and Development (OECD) has released its ninth edition of Tax Policy Reforms: *OECD and Selected Partner Economies*, an annual publication that provides comparative information on tax reforms across countries and tracks tax policy developments over time.

The latest edition of the report (Tax Policy Reforms 2024) covers the tax policy reforms introduced or announced in 2023 in 90 member jurisdictions of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, including all OECD countries. Some key observations noted in the report include:

- The trend towards tax decreasing reforms observed during the Covid-19 pandemic and the subsequent period of high inflation is showing signs of deceleration or reversal.
- The trend in corporate income tax rate cuts appears to have halted, with far more jurisdictions implementing rate increases than decreases in 2023, for the first time since the first edition of the Tax Policy Reforms report in 2015.
- Significant progress has been made towards implementing the Global Minimum Tax (GMT) to establish a worldwide floor for the effective tax rates of large multinational enterprises. As of April 2024, 60 jurisdictions had announced publicly that they are taking steps towards introducing corporate income tax or implementing the GMT, with 36 taking steps towards an application of the GMT starting in 2024, and some expect to implement legislation taking effect from 2025.
- Climate considerations are also increasingly influencing the design and use of tax incentives, with more jurisdictions implementing generous base narrowing measures to promote clean investments and facilitate the transition towards less carbon-intensive capital.
- While cuts to personal income taxes remain a tool for supporting economic recovery and household incomes, a growing share of jurisdictions within the report are implementing social security contribution increases.

Crypto-Asset Reporting Framework: OECD publishes schemas and user guides

The OECD has released the XML Schemas and User Guides to support the transmission of information between tax authorities pursuant to the Crypto-Asset Reporting Framework (CARF) and the amended Common Reporting Standard (CRS).

The CARF and CRS XML Schemas and User Guides reflect the reporting requirements of the CARF and the amended CRS that were approved by the OECD in 2023 and subsequently endorsed by the G20 and the Global Forum as international standards. First exchanges under both the CARF and amended CRS are expected to commence in 2027.

The OECD has also issued a first set of frequently asked questions, to provide interpretative guidance on the CARF, which should help ensure consistency in its implementation.

OECD Manual on Effective Mutual Agreement Procedures

The OECD has released an online Manual on Effective Mutual Agreement Procedures (MEMAP), as part of a broader project to improve the functioning of existing international tax dispute procedures and to develop supplementary dispute resolution mechanisms. MEMAP is intended as a guide to increase awareness of the MAP process and how it should function. It provides tax administrations and taxpayers with basic information on the operation of MAP and identifies best practices for MAP without imposing a set of binding rules upon Member countries.

HMRC issues guidelines for compliance on transfer pricing

Any Australian group which has operations in the United Kingdom should note the recently issued transfer pricing Guidelines for Compliance released by HMRC. Transfer pricing has been a key focus area of HMRC, with the transfer pricing compliance burden and expectations of HMRC increasing. The Guidelines are designed to help businesses understand HMRC's expectations as they plan, implement, manage, and document their transfer pricing, setting out what HMRC considers best practice compliance and higher risk approaches. Read more in PwC's global alert.

Indirect Tax Update

Supplementary annual GST return

The Australian Taxation Office (ATO) is working to better tailor its engagement with the Top 100 and Top 1,000 public and multinational business taxpayers for goods and services tax (GST). To facilitate this, the ATO is introducing a supplementary annual GST return for large businesses who have received a GST assurance review for the 2024-25 financial year.

Taxpayers will be notified by the ATO if they need to complete the return and also the due date for lodgment. In the meantime, the ATO has released the form and detailed instructions so taxpayers can consider how they will prepare it.

This annual GST return will be an important tool the ATO will use to apply its differentiated approach for GST assurance. Taking steps now to ensure that the information reported in the forthcoming return aligns to the better practice expectations of the ATO should help to reduce the time and resources required for subsequent ATO reviews. Read more in our Alert.

Luxury car tax not applicable to cars held in a museum

In Automotive Invest Pty Limited v Commissioner of Taxation [2024] HCA 36, the High Court of Australia has allowed the taxpayer's appeal from the Full Federal Court in Automotive Invest Pty Ltd v FC of T [2023] FCAFC 129, with the result that luxury car tax (LCT) adjustments on luxury cars held in a car museum was not applicable.

Many of the cars exhibited in the museum were also held for sale and the taxpayer received more revenue from sales than from museum admission fees. The Commissioner contended that in respect of the 40 cars the subject of the proceedings there was an increasing luxury car tax adjustment as the cars were used for the additional purpose of being displays in a museum, which was not a quotable purpose.

The High Court (by majority), considered sections 9-5 and 15-30 of the *A New Tax System (Luxury Car Tax) Act 1999 (Cth)*, noting that once intended use(s) have been identified, it is necessary to identify the intended purposes of those uses. Based on the quotable purposes, which are specific ends or goals, section 9-5 requires the identification of the specific ends or goals which are the ultimate reason(s) why a taxpayer is using a car in a particular way. In this respect, it is necessary to distinguish between this use of purpose to mean a specific 'end' and the different concepts of 'motive' and 'means'.

In this case, the High Court by majority accepted that the taxpayer's purpose in holding the cars was to hold them as trading stock for sale, and that the museum was only the means by which the taxpayer's purpose was achieved: the museum was not the ultimate object or end itself.

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New draft determination on supplies of food of a kind marketed as a prepared meal

The ATO has withdrawn draft GSTD 2024/D1 (initially issued in March 2024) and has replaced it with a revised draft determination, GSTD 2024/D3, which explains the Commissioner's view on the circumstances in which a supply of food is not GST-free under paragraph 38-3(1)(c) of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* because it is a supply of food of a kind 'marketed as a prepared meal, but not including soup'.

The new draft Determination follows from the decision of the Federal Court in *Simplot Australia Pty Limited v Commissioner of Taxation [2023] FCA 1115* where the Federal Court considered the GST treatment of a range of frozen food products which it found were food of a kind marketed as a prepared meal (other than soup) and therefore they were not GST-free. The revised draft determination also has been updated following consultation feedback to provide further practical guidance for salad products, including a compliance approach to assist taxpayers in determining whether certain salad products are likely to be food of a kind marketed as a prepared meal.

Once the final determination is issued, it is proposed to apply both before and after its date of issue.

Comments on the new draft determination close on 15 November 2024, where the ATO is particularly interested in feedback on its view that products that are less than 150 grams in total weight are generally not food of a kind marketed as a prepared meal, and its compliance approach.

Personal Tax Update

Deductions for financial advice fees

The Australian Taxation Office (ATO) has issued Taxation Determination TD 2024/7, which sets out when an individual may be entitled to a deduction under section 8-1 or section 25-5 of the *Income Tax Assessment Act 1997 (Cth)* for fees paid for financial advice. The Determination does not apply to an individual who is carrying on an investment business.

The Determination replaces TD 95/60 (now withdrawn) as a result of regulatory reforms to the financial services industry. However, it does not represent a change in the ATO's view on the deductibility of financial advice fees as previously outlined in TD 95/60.

TD 2024/7 confirms that fees for financial advice incurred on a regular or recurrent basis for an existing or ongoing income-producing investment are deductible while fees for financial advice on a proposed investment prior to the acquisition of an asset will not be deductible under section 8-1 because they are an expense associated with putting the income-earning investment in place. In certain circumstances, it may be necessary to apportion the deduction because the full amount of the fees paid may not be deductible.

The Determination applies to arrangements both before and after its date of issue.

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State Tax Update

NSW: Revenue Legislation Further Amendment Bill 2024

The Revenue Legislation Further Amendment Bill 2024 (NSW), which was introduced into the New South Wales Parliament on 16 October 2024, makes miscellaneous amendments to several Acts, including amendments to the *Duties Act 1997 (NSW)* to, among other things:

- clarify the tax treatment of a sub-fund of a corporate collective investment vehicle (CCIV)
- make it clear that duty charged under Chapter 2 is payable whether a dutiable transaction is effected by an instrument or by other means,
- provide for a duty exemption for a declaration of a bare trust over dutiable property if the transfer of the dutiable property to the bare trust is exempt under section 274 (Transfer of certain business property between family members); and
- provide that the exemption from duty when there has been a break-up of a marriage or other relationship in certain circumstances carries over to a person's legal representative if the person dies.

Amendments are also proposed to be made to the *Land Tax Management Act 1956 (NSW)* to, among other matters, insert a section that sets out its application to a sub-fund of a CCIV, and make clear that for a reduction in land value for flats on mixed development land or mixed use land, the land must not be owned or jointly owned by a person in the person's capacity as trustee of a special trust.

The *Taxation Administration Act 1996 (NSW)* is similarly amended by, among other changes, inserting a new section that provides for the Chief Commissioner to impose a penalty where a notice of assessment or reassessment of tax liability is issued to a taxpayer on the basis that a scheme is a tax avoidance scheme, while also setting out how an amount may be converted if the amount involved in the calculation of tax is not in Australian currency.

Payroll tax amendments are also made by this Bill – refer to the Employment Taxes section for details.

NSW: guide to surcharge purchaser duty changes

Revenue NSW has issued a guide that provides key information relating to the 2024-25 NSW Budget amendments that resulted in an increase in the rate of surcharge purchaser duty from eight to nine per cent for the sale or transfer of residential-related property on or after 1 January 2025. The guide specifically considers how the transitional provisions may impact duties transactions in relation to surcharge purchaser duty including in relation to options and transfers that are (or not) in conformity with an agreement was entered into before 1 January 2025.

New South Wales: land tax and surcharge land tax assessments confirmed

In Guo v Chief Commissioner of State Revenue [2024] NSWCATAD 309, the New South Wales Civil and Administrative Tribunal has upheld assessments on the taxpayer to land tax and surcharge land tax in the relevant years.

The Tribunal accepted that the taxpayer regarded her NSW property as her family home, that she did not own another home, and that her husband continued to live in that home when the taxpayer visited her mother in China, and that the taxpayer intended to return to the property as soon as circumstances permitted. The taxpayer was not present in Australia for a continuous period of 200 days in any of the relevant calendar years. The Tribunal noted that an intention to return did not establish that the property was her principal place of residence as a matter of fact. On the facts, the taxpayer (an Australian permanent resident) did not meet the criteria for land tax exemption, nor did she satisfy the residence requirement in section 5B of the *Land Tax Act 1956 (NSW)* for surcharge land tax purposes.

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While the Tribunal noted that the taxpayer's husband was an Australian citizen, the property was purchased in the taxpayer's sole name. Had the property been purchased in the husband's name, the outcome may have been different.

NSW: critical minerals strategy – deferral of royalties

As part of its critical minerals strategy, the NSW Government will defer royalties up to $250m to help new critical minerals projects get established in NSW. The royalty initiative will be an opt-in scheme where the first five years of royalties are deferred. It will apply to critical minerals projects that start production between 1 July 2025 and 30 June 2030, predominantly mine commodities listed on the Commonwealth Government's Critical Minerals List and where the proponent has a market capitalisation under $5bn.

Guidelines and eligibility criteria will be made available soon.

Victoria: extended off-the-plan stamp duty concession

In Victoria, first home buyers and owner-occupiers can access a stamp duty concession when they buy off-the-plan, allowing construction costs to be deducted from the sale price when calculating how much stamp duty they owe, provided the reduced value for stamp duty calculations following the deduction of construction costs is under $750,000 for first home buyers and $550,000 for owner occupiers.

On 21 October 2024, the Victorian Government announced a 12-month extended concession (effective 21 October 2024) allowing those, not just first home buyers and owner-occupiers, who buy an apartment, unit or townhouse off-the-plan to access the 100 per cent deduction of outstanding construction and refurbishment costs when determining how much stamp duty is owed. Furthermore, the thresholds will be removed so the concession is available for apartments, units and townhouses of any value.

An eligible apartment, unit or townhouse is one that is in a strata subdivision – meaning they retain common property such as a driveway or a shared hallway.

House and land packages or other dwellings that are not part of a strata subdivision are not eligible for the extended concession, but first home buyers and owner-occupiers can still utilise the existing concession on these properties (which will continue after this 12-month extension).

Victoria: landholder duty provisions and capital raisings and temporary penalty tax amnesty

Victorian Revenue Ruling DA-057v2 has been updated effective 8 October 2024 to reflect the Court of Appeal's decision in the recent case of *Oliver Hume Property Funds (Broad Gully Rd) Diamond Creek Pty Ltd v Commissioner of State Revenue [2024] VSCA 175*. In this case, the Court unanimously found that the acquisitions made in the applicant landholder pursuant to a conditional capital raising were subject to duty as an associated transaction notwithstanding that the acquirers were not acquainted with each other.

As explained in the updated Revenue Ruling, the Commissioner's position to not regard acquisitions made in response to a genuine public offer as constituting an 'associated transaction' is only relevant in the context of applying the 'associated transaction' provisions. The Commissioner's views do not extend to the application of sections 89B and 89C of the *Duties Act 2000 (Vic)* which specifically contemplate the aggregation of interests acquired by the public where the acquisitions relate to the conversion of a private unit trust scheme to a public unit trust scheme or a private company to a listed company.

In light of the decision, the Commissioner is aware that different views regarding the application of the associated transaction provision to capital raisings may have been taken. Accordingly, not only will there be a compliance program on capital raisings in landholders, the Commissioner has announced a penalty tax amnesty on voluntary disclosures of liabilities arising from capital raisings.

The period of the penalty tax amnesty will run until 31 March 2025. During that time, the Commissioner will remit all penalty tax and will only impose interest at the market and reduced three per cent premium rates on any disclosed liabilities arising from capital raisings in landholders. After that time, the Commissioner will commence a compliance program and impose relevant rates of penalty tax and interest on any identified liabilities.

Victoria: ruling on abolition of duty on business insurance

With effect from 1 July 2024, Victorian duty on business insurance premiums will be progressively abolished over ten years, by reducing the rate of duty (previously ten per cent) by one per cent each year. The Victorian State Revenue Office has released Ruling DA-068, which provides guidance on what business insurance is, as well as the circumstances where the reduced rate of duty will apply to business insurance from 1 July 2024.

Victoria: land tax – updated ruling on land prepared for primary production

The Victorian State Revenue Office has issued LTA-006v2, which replaces LTA-006 to provide detailed guidance on the activities that constitute preparation of land for use primarily for primary production, identify the factors the Commissioner will consider in exercising his discretion to extend the 12-month period, and set out the evidentiary requirements for the land tax exemption. The updated Ruling is effective from the 2025 land tax year.

Victoria: land tax – no estoppel against the Commissioner of State Revenue

In Carrigan v Commissioner of State Revenue (Review and Regulation) [2024] VCAT 1006, the Victorian Civil and Administrative Tribunal confirmed assessments to land tax for the relevant years, as no estoppel was available against the Commissioner of State Revenue in relation to an assessment of land tax.

Under section 54 of the *Land Tax Act 2005 (Vic)*, there is an exemption from land tax for land used and occupied as a person's principal place of residence. A limited extension of that exemption is given in section 57, by providing that the liability for tax is to be assessed as if a person had not died but had continued to use and occupy the land as his/her principal place of residence, with that exemption ending on the earlier of the third anniversary of the person's death, or (as relevant in this instance) the day on which the deceased person's interest in the land vests in another person (other than as legal personal representative).

The taxpayer alleged that he was supplied with various misrepresentations, including one from an officer of the State Revenue Office, as to when the extended exemption under section 57 would end. The Tribunal noted that the principle that there is no estoppel by representation against a revenue authority is clear and has consistently been applied at both a federal and state level, and that it is based on the principle that revenue authorities should not be thwarted in undertaking their duty to collect the tax imposed by legislation approved by parliament. To allow estoppel in such circumstances would effectively allow a revenue authority to amend the tax law by its statements, contrary to the intention of the legislature.

Queensland: updated revenue office rulings

The Queensland Revenue Office has released the following Public Rulings and a Practice Direction in relation to the application of duty:

- Public Ruling DA000.18.1, which sets out the terms of an administrative arrangement that allows for the benefit of the following concessions/exemption to be kept, even though the recipient does not satisfy one of their requirements:
  - a transfer duty concession for a home, first home or vacant land on which a first home is to be constructed, or
  - an additional foreign acquirer duty (AFAD) exemption for specified foreign retirees.
- Public Ruling DA085.1.8, which clarifies the Commissioner's interpretation of the *Duties Act 2001 (Qld)* in relation to transfer date, occupation date (in particular, what is meant by the term 'principal place of residence') and the circumstances in which a reassessment will be issued in relation to duty concession for homes and first homes.
- Practice Direction DA000.1.2, which explains the Commissioner's practice in identifying the taxpayer to whom a reassessment under section 153 or 154 of the *Duties Act 2001 (Qld)* is issued where all the following apply:
  - a number of taxpayers have purchased residential or vacant land
  - an assessment of transfer duty has been made based on at least one taxpayer receiving a concession under Chapter 2, Part 9 of the Duties Act
  - the assessment has been paid
  - at least one of the taxpayers who received a concession failed to satisfy the occupancy requirements, and
  - the reassessment was required under section 153 or 154.

The above Public Rulings and Practice Direction are effective 10 September 2024.

Superannuation Update

No special circumstances for non-concessional contributions

In BVZH and Commissioner of Taxation (Taxation) [2024] AATA 3618, the Administrative Appeals Tribunal (AAT) considered section 292-465 of the *Income Tax Assessment Act 1997 (Cth)* which concerns the Commissioner's discretion to disregard all or part of the non-concessional contributions made for a financial year so that there would be no liability on the applicant for excess non-concessional contributions tax. The AAT found that the taxpayer's situation did not amount to special circumstances that warranted the Commissioner to exercise his discretion.

As at 30 June 2019, the taxpayer's total superannuation balance was approximately $1.8m. After separating from his wife, and following a Family Court order under which an amount of superannuation was paid to the benefit of the taxpayer's former wife, the taxpayer recorded a total superannuation balance of just under $1.39m at 30 June 2020.

The taxpayer believed that, as his balance remained below $1.4m, it enabled him to make a maximum three-year non-concessional contribution to be brought forward under the applicable rules at that time, and so he made a non-concessional contribution of $100,000 to his superannuation fund on 18 June 2020.

However, in accordance with section 292-85(2), the taxpayer's non-concessional contributions cap for the financial year ending 30 June 2020 was nil, as immediately before the start of that financial year, the taxpayer's total superannuation balance exceeded the general transfer balance for that year.

The taxpayer argued that he was not aware of the application of section 292-85 and had made an honest mistake, such that the contributions should be disregarded by the AAT under section 292-465. The AAT disagreed – there was no authority produced which supported a contention that consent orders made by the Family Court of Australia splitting the superannuation entitlements of a party to a marriage, constituted 'special circumstances'. Similarly, special circumstances do not arise as a result of simple errors, albeit innocent errors or other mistakes made in good faith.

Update on better targeted superannuation concession measure

The Bills (i.e. 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 per cent on certain earnings of a superannuation fund to those individuals who have total superannuation balances in excess of $3m with effect from the 2025-26 income year is still before the Federal Parliament. At the time of writing, the Bills are before the Senate.

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Legislative Update

Since our last update, no new tax or superannuation related Bills were introduced into Federal Parliament.

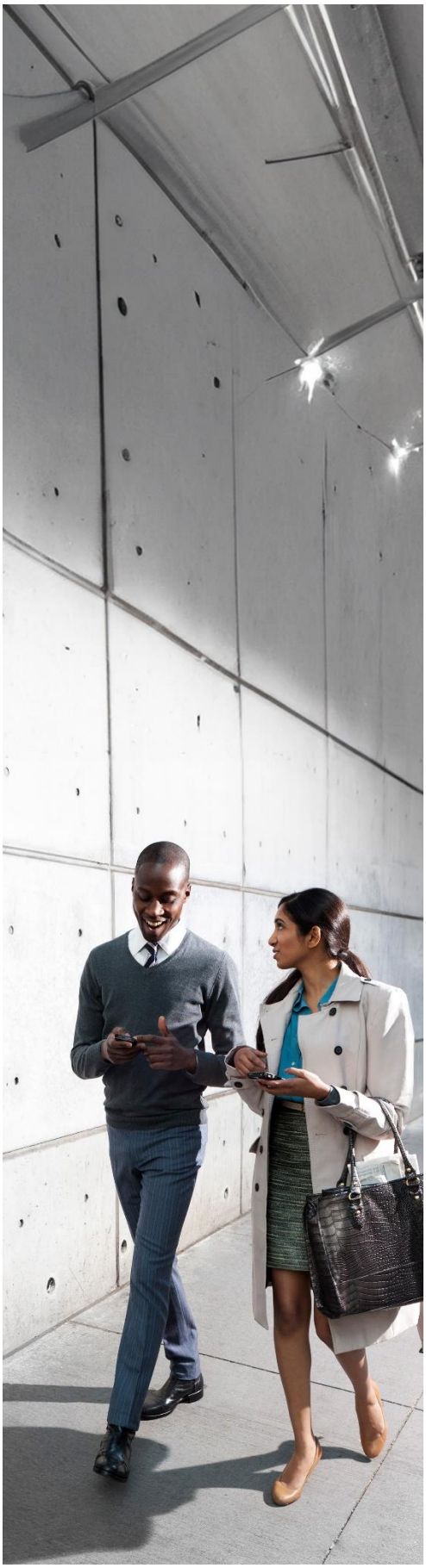
The following tax and superannuation related Bills have now completed their passage through Parliament:

- The Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024, which, among other measures, increases the Commonwealth penalty unit from $313 to $330.
- The Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Expansion) Bill 2024, which provides a 'free' rate of customs duty for certain originating goods of the United Kingdom (UK), with effect from entry into force of the Protocol for Australia, specifies the phasing rates of customs duty for certain originating goods of the UK that will incrementally reduce to free by, at the latest, 1 January 2033, and inserts a 'safeguard' provision that would restore the customs duty rate to the rate that applied immediately before the commencement of the Protocol for certain products, so long as the UK maintains its equivalent safeguard.

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

- The Customs Amendment (International Sporting Event-FIFA) By Law 2024, which amends the Customs By-Laws to prescribe goods eligible for the 'free' rate of concessional customs duty that were used at the FIFA Women's World Cup 2023, where they were imported in the period starting 1 January 2022 and ending 31 December 2022.

The final sitting date for Federal Parliament for the 2024 calendar year is scheduled to be Thursday 28 November 2024.



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Other News Update

Proposed date for 2025-26 Federal Budget

The Government is proposing to deliver the next Federal Budget for the 2025-26 financial year on Tuesday, 25 March 2025. This is earlier than the typically scheduled second Tuesday in May, likely in light of the requirements for determining when the next Federal election is to be held.

Guidance issued for corporate collective investment vehicle regime

A corporate collective investment vehicle (CCIV) the Australian Taxation Office (ATO) has issued Law Companion Ruling LCR 2024/1 which:

- outlines the operation of the corporate collective investment vehicle (CCIV) regime
- explains the deeming principle and its effect on the tax treatment of a CCIV, a CCIV sub-fund trust and investors; and
- provides views on specific tax interpretative issues.

A CCIV is a new type of company limited by shares that is available for funds management. From a regulatory perspective, a CCIV is a registered company with all its assets and liabilities segregated into 'sub-funds' and is operated by a single corporate director.

The tax framework, however, treats each CCIV sub-fund as a separate tax entity that is a trust. The general intent is to align the tax outcome of the CCIVs and their investors with the existing treatment of investors in attribution managed investment trusts (AMITs). The general trust taxation rules apply to CCIVs, subject to some modifications, where it does not qualify for the AMIT regime.

The Ruling is effective 1 July 2022, being the commencement date of the CCIV regime.

Exposure draft legislation to deny GIC and SIC deductions

Following the 2023-24 Mid-Year Economic and Fiscal Outlook announcement, Treasury has released exposure draft legislation and accompanying explanatory materials for consultation, which propose to deny deductions for any general interest charge (GIC) and shortfall interest charge (SIC).

By way of reminder, the GIC is typically imposed on unpaid tax liabilities while the SIC applies when incorrect self-assessment leads to a shortfall in tax paid. Despite the denial, taxpayers will continue to have the ability to apply to the ATO and request the remission of any GIC or SIC payable.

The denied deductions will apply in relation to GIC or SIC incurred on assessments for income years starting on or after 1 July 2025.

Comments on the draft law closed 16 October 2024.

Consultation to review tax promoter penalty laws

Treasury has released a consultation paper as part of its review into the operation of the tax promoter penalty laws. By way of background, the promoter penalty provisions aim to deter the promotion of tax avoidance and tax evasion schemes (collectively referred to as 'tax exploitation schemes'), where the scheme benefit to be claimed is not permitted under the law. These provisions also prohibit tax intermediaries from promoting or implementing a scheme and misrepresenting that scheme as being endorsed by the ATO through public, private, or oral rulings.

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This consultation seeks views on whether the tax promoter penalty laws operate as intended, are fit for purpose, and are adequate to deter, and to protect the community from contemporary forms of misconduct. The review also seeks views on whether the existing tax promoter penalty law framework has kept up with new emerging threats to the integrity of the tax system and if the tax promoter penalty laws should be expanded to capture lower-level promoter behaviour.

Comments on the paper closed 1 November 2024.

ATO will not respond to claims tax laws are invalid

The ATO has updated PS LA 2004/10 in respect of a change in its business process in relation to taxpayer claims as to the invalidity of the entire taxation system or the tax system does not apply to them for a particular reason. In such cases, ATO staff will not respond to such correspondence. As many claims of this type have been rejected by the Courts, the ATO does not consider it an appropriate use of ATO resources to respond.

Government payments – ATO data-matching program

The Commissioner of Taxation has advised via Gazette notice, that the ATO will acquire payments data from government entities who administer government programs for the 2023-24 to 2025-26 financial years. The data items include various service provider identification details, as well as payment transaction details. It is estimated that records relating to approximately 60,000 service providers will be obtained each financial year.

Practice Statements updated

The ATO has made various minor updates to the following Practice Statement Law Administration guides, for technical accuracy and currency:

- PS LA 2021/3 Remission of additional superannuation guarantee charge
- PS LA 2008/9 Goods and services tax 'revenue-neutral' corrections
- PS LA 2007/7 Making default assessments of taxable income in respect of attributable income
- PS LA 2006/17 Self-managed superannuation funds – disqualification of individuals to prohibit them from acting as a trustee of a self-managed superannuation fund
- PS LA 2006/7 Alternative assessments
- PS LA 2007/3 Remission of penalty for failure to comply with requirements in relation to tax invoices, adjustment notes or third party adjustment notes
- PS LA 2011/4 Collection and recovery of disputed debts

myGovID to rename to myID

In mid-November 2024, the Australian Government's Digital ID app, myGovID, will be renamed to myID. The rename aims to resolve confusion between the myGovID app and myGov, following a recommendation from the Critical National Infrastructure report.

When myGovID changes to myID, users do not need to do anything differently. An update to the app will be issued through the relevant app stores in November.

Administrative Review Tribunal operational

On 14 October 2024, the Administrative Review Tribunal (ART) became operational replacing the Administrative Appeals Tribunal (AAT).

The ART has established jurisdictional areas, including one for 'Taxation and Business'. As a result, the Small Business Taxation Division no longer exists.

All matters that were before the AAT have now automatically transferred to the ART. Those who have applied to the AAT for review of a decision do not need to submit a new application to the ART.

Editorial

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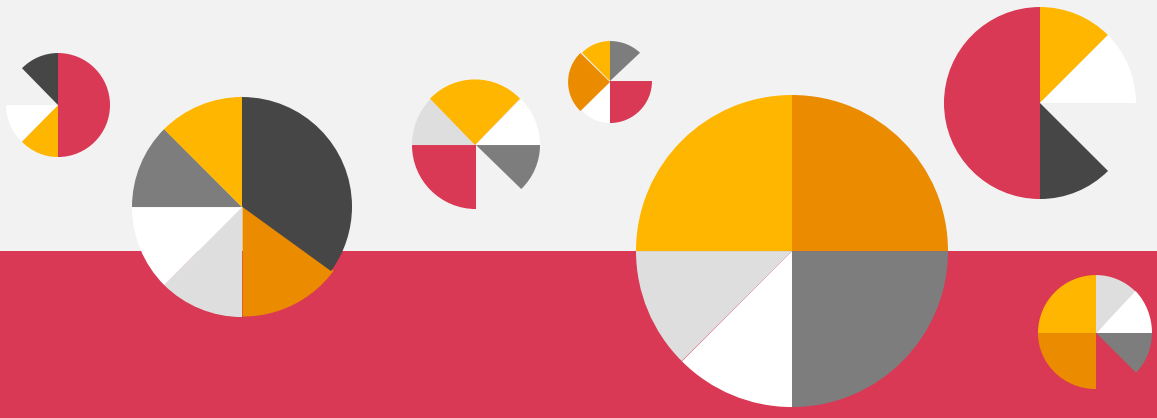

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