



PwC's Monthly Tax Update

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

October 2024

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Corporate Tax Update

Reportable tax position schedule – ATO findings

The Australian Taxation Office (ATO) has issued its findings report into the [Reportable tax position](#) (RTP) schedule disclosures in the 2022-23 financial year. The report includes high-level observations on trends over the four income years 2019-20 to 2022-23, where practicable. In summary, this includes:

- An increase in taxpayers making disclosures and an upward trend in low-risk disclosures for large public and multinational entities.
- Arrangements of concern are declining.
- A 15% increase in lodged schedules over four years which reflects the progressive expansion of the lodgment requirement from the Top 100 population to all entities that meet the total business income threshold and ownership criteria.

ATO releases Top 100 and Top 1,000 findings reports

The ATO has issued the following public groups findings reports on its income tax and goods and services tax (GST) assurance program reviews completed to 30 June 2024:

- [Top 100 income tax and GST](#) – observed an increase in the number of taxpayers achieving high assurance for income tax, with 52% of Top 100 taxpayers attaining overall high assurance and 31% attaining medium assurance. There has also been a further reduction in overall low assurance ratings to 13%. Transfer pricing in relation to related party financing arrangements and related party sales are a continued area of focus.
- [Top 1,000 income tax and GST](#) - highlighting improvements in outcomes of reviews for both income tax and GST, with 90% of Top 1,000 taxpayers receiving a medium or high assurance rating for tax risk management and governance.

For highlights relating to Goods and Services Tax (GST), refer to our Indirect Tax Update.

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Employment Taxes Update

Payday Super: Policy design details

Following the Government's announcement in the 2023-24 Budget, from 1 July 2026, there will be a requirement for employers to pay employee superannuation in alignment with the payment of their salary and wages, instead of being based on the current quarterly requirement – referred to as Payday Super.

On 18 September 2024 the Government released a [Fact Sheet](#) providing further details regarding Payday Super. The Government has confirmed that the legislative design process will progress throughout the coming months, that industry engagement will be sought by the Australian Taxation Office (ATO), and that some refinement to the details contained within the Fact Sheet may occur as a result of this process.

The Fact Sheet provides a number of key updates on the upcoming reform, including:

- Update to the timing of required contributions - superannuation guarantee (SG) contributions will be required to be received by the relevant superannuation fund within seven calendar days of the respective ordinary times earnings (OTE) being paid. Employers will otherwise be subject to the superannuation guarantee charge (SGC), subject to limited exceptions.
- The SGC is being revised to better reflect both the Payday Super environment and the seriousness of underpaid or late-paid SG. More specifically, the revision is intended to fully compensate employees for late payment occurring, incentivise employers to quickly and proactively disclose underpayments, and increase consequences for employers who do not - and who repeatedly do the wrong thing (reflected through changes to penalty and interest imposition).

- The 'choice of fund' rules will be revised to make it easier for employees to nominate their superannuation fund when starting a new job.

For further information on the above, including a more comprehensive explanation of the reforms, refer to our recent [Tax Alert](#).

Superannuation Guarantee and paid parental leave

On 19 September 2024, the [Paid Parental Leave Amendment \(Adding Superannuation for a More Secure Retirement\) Bill 2024](#) was passed by both Houses of Parliament without amendments. In brief, the Bill consists of a series of legislative amendments to provide for the payment of superannuation contributions for people who receive Commonwealth-funded paid parental leave pay (PPL) in respect of children who are born on or after 1 July 2025.

Specifically, the Paid Parental Leave Superannuation Contribution (PPLSC) will be paid in addition to PPL, without requiring a separate application from PPL recipients.

The ATO will utilise PPL payment information from Services Australia to calculate and disburse the superannuation contributions. These payments will be paid on an annual basis and will be comprised of two components:

- A core component determined by calculating the amount of PPL paid for the individual in an income year, multiplied by the applicable SG rate for the income year; and
- A nominal interest component, which is intended to compensate the individual for lost returns resulting from the annual payment basis (which is in contrast to the more frequently paid SG).

The Bill and the administration of the scheme has been designed to align to the extent possible, with existing tax and superannuation processes.

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PAYG withholding: Exemption for US entertainers

On 11 September 2024, the continuation of the current pay as you go (PAYG) withholding exemption for certain payments to US resident entertainers who perform services in Australia, was confirmed through the [Taxation Administration \(Withholding Variation for Certain Payments to US Resident Entertainers Including Athletes\) Legislative Instrument 2024](#). For such purposes, an “entertainer” is defined to include theatrical, motion picture, radio or television artistes, musicians and athletes, which also covers “sports persons”.

The exemption from withholding is limited to circumstances where the sum of all payments made to the entertainer for services in Australia does not exceed USD\$10,000 for the relevant financial year.

Single touch payroll and default SG assessments

The ATO has reviewed and made minor updates to a small number of Law Administration Practice Statements, including the [PS LA 2007/10 Making default assessments: section 36 of the Superannuation Guarantee \(Administration\) Act 1992](#). The main update is to address how the ATO will use Single Touch Payroll data as an information source for the purpose of making default SG Charge assessments.

NSW payroll tax: Payments made to drivers were not wages

On 6 September 2024, the NSW Supreme Court handed down its decision in the matter of [Uber Australia Pty Ltd v Chief Commissioner of State Revenue \[2024\] NSWSC 1124](#), finding that Uber Australia Pty Ltd (Uber) is not subject to payroll tax on payments made to drivers who use its platform.

In brief, Hammerschlag CJ found that drivers supplied services to Uber, resulting in a ‘relevant contract’ as defined within section 32 of the *Payroll Tax Act 2007 (NSW)* (the Act). More specifically, the three activities of driving, rating and referring, either on their own or in combination, were concluded to be “services”, and those services were viewed as being ‘for or in relation to the performance of work’.

The Court also considered the exemptions contained within section 32 of the Act - in particular, the ‘services to public’ exemption, ‘two or more person’ exemption, the ‘90 day’ exemption and whether the ‘services were ancillary to the supply of goods’ exemption. The majority of these exemptions were rejected by the Court, due to His Honour’s interpretation of the

exemption criteria, or alternatively, due to a lack of evidence being presented. The ‘two or more person’ exemption was accepted as being applicable to certain drivers on a case-by-case basis.

The Court then considered section 35 of the Act and in particular, whether the payments made by Uber were ‘for or in relation to the performance of work’. Although a “relevant contract” was found to exist between the driver and Uber, the payments made by Uber to the driver were held not to be wages for the purpose of section 35, as in His Honour’s view, Uber was not making any payments to the driver; rather, it was the rider who made payments to the drivers, and Uber’s role in the arrangement was in a capacity as a ‘limited payment collection agent’. On this basis, and having regard to the contractual terms and the purpose of the ‘contractor provisions’, the Court concluded that payments were not ‘for or in relation to’ the performance of work.

Acknowledging that there was undoubtedly some form of relationship between Uber’s payments to the driver and the work performed by the driver, Hammerschlag CJ reasoned that the relationship cannot be described as being ‘in relation to the work performed’. Consequently, His Honour concluded that those payments should not be taken to be ‘wages’ for the purposes of section 35 of the Act, meaning payments were not subject to payroll tax.

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

NSW payroll tax: Practice note on bulk billing support for medical centres

[Revenue NSW](#) released guidance regarding the NSW payroll tax exemption and rebate available for medical centres that engage contractor General Practitioners (GPs).

Broadly, an exemption applies for GP wages paid or payable prior to 4 September 2024, unless payroll tax has already been paid on these wages before this date. If payroll tax has already been paid, the employer is not entitled to a refund for payroll tax already paid on these wages.

For payments on or after 4 September 2024, an employer is entitled to a rebate of payroll tax in relation to wages paid to GPs where the ‘relevant proportion’ of bulk-billed GP services exceeds the applicable threshold being:

- at least 80% for Metropolitan Sydney; and
- at least 70% for other areas.

To be eligible for a rebate, the employer must maintain sufficient records to enable Revenue NSW to calculate the accurate amount of rebate.

SA payroll tax: Budget measure Bill progresses

On 3 September 2024, the [Statutes Amendment \(Budget Measures\) Bill 2024](#) was passed by the House of Assembly and introduced to the Legislative Council. In brief, the Bill proposes amendments to the *Payroll Tax Act 2009 (SA)* to allow employers to declare a certain percentage of wages paid to general practitioners (GPs) under a bulk billing service as exempt wages for payroll tax purposes. These amendments will apply to the financial year commencing 1 July 2024 and any subsequent financial year.

This exemption operates further to the South Australian amnesty announced previously, covering payments to GPs up until 30 June 2024 (as detailed in our previous [Tax Alert](#)).

Tasmanian payroll tax

The [Tasmanian 2024-25 State Budget](#) was delivered on the 12 September 2024. A 12 month extension has been granted for the existing payroll tax rebate scheme, covering youth employees, apprentices and trainees. This scheme operates up to 30 June 2025, subject to any further extensions.



Global Tax and Trade Update

Pillar Two – subject to Tax Rule

The Australian Government has [announced](#) that it has signed a Statement of Support for the OECD's 'Subject to Tax Rule'.

The 'Subject to Tax Rule' (STTR), which is part of the OECD/G20 Two-Pillar Solution, allows developing countries to apply 'top-up tax' when certain types of income have not been taxed at a minimum rate. The STTR is a treaty-based rule that will apply to intra-group payments from source States that are subject to low nominal tax rates in the State of the payee.

Reforms to foreign residents' capital gains withholding regime

The foreign residents' capital gains withholding (FRCGW) regime imposes a non-final withholding obligation on the purchaser of certain Australian real property and related interests where the property is acquired from a foreign resident vendor. The [Treasury Laws Amendment \(2024 Tax and Other Measures No. 1\) Bill 2024](#), among other measures, which was introduced to Parliament on 12 September 2024, will implement the 2023-24 Mid-Year Economic and Fiscal Outlook (MYEFO) measure to:

- increase the withholding rate to 15% (from 12.5%), and
- remove the current \$750,000 threshold before which withholding applies so that disposals of Australian real property, or an indirect taxable Australian real property interest, the holding of which causes a company title interest to arise, by a foreign resident are subject to FRCGW requirements.

Once legislated, these amendments will apply to acquisitions made on or after the later of 1 January 2025 and the first subsequent quarter after the day the Bill receives royal assent.

Debt deduction creation rules and Division 7A arrangements

The Australian Taxation Office (ATO) has released [commentary](#) on its website regarding the application of the debt deduction creation rules (DDCR) for private businesses and privately owned groups. The DDCR can apply in relation to debt deductions arising in respect of assessments for income years commencing on or after 1 July 2024.

The commentary confirms that:

- The DDCR applies to domestic transactions, in addition to cross-border related party arrangements.
- The DDCR applies to historical transactions where the related party loan is still on foot (or has been refinanced) when the rules apply.
- Complying Division 7A loans (relevant to private companies) are not excluded from the operation of the DDCR.

ATO to issue PCG on royalties and software

The ATO has confirmed that it is [planning](#) to issue a draft Practical Compliance Guideline (PCG) that it intends will guide taxpayers in understanding where the ATO is likely to apply compliance resources in relation to royalty withholding tax risk potentially present in software arrangements. The draft PCG – which is expected to issue late this year – is proposed to provide practical guidance to accompany the technical position set out in draft Taxation Ruling [TR 2024/D1](#).

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Australia signs double tax treaty with Slovenia

The Australian Government has signed a [new tax treaty](#) with Slovenia – the first tax treaty between the two nations. The Government indicates that in 2023, trade between the two nations amounted to about \$411 million, and bilateral investment amounted to about \$215 million.

Once both countries have completed their [domestic implementation requirements](#), the treaty will enter into force.

MLI update – synthesised text for Vietnam

The ATO has published the [synthesised text](#) of the *Agreement between Australia and Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, as amended by the 1996 Exchange of Notes and the 2002 Exchange of Letters, as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI), which entered into force on 1 January 2019 for Australia.

United States: Harris and Trump offer differing approaches to US tax policy

Vice President Kamala Harris and former President Donald Trump have laid out competing tax policy agendas since becoming their party's nominees for the United States' 2024 presidential election at the recent Democratic and Republican national party conventions. The tax policy agendas proposed by Harris and Trump are expected to be a top focus of the next Congress, with the US Federal Elections on 5 November 2024 to also decide which party will control the US House of Representatives and the US Senate. For further information, refer to PwC US's [Tax Insights](#).

New draft excise determination on addition of water and integral attributes of beer

Draft Excise Determination [ED 2024/D2](#) sets out the Commissioner's preliminary view on how much water can be added to beer before the final beverage no longer meets the definition of 'beer' in the Schedule to the *Excise Tariff Act 1921*. This new draft determination has been issued by the ATO to replace the views expressed in [ED 2024/D1](#) (issued in June but now withdrawn) by providing further clarity on the:

- ability for conventional medium-strength to low-strength beer to satisfy the beer definition, even though water may be added to it during the production process, provided the final beverage exhibits the integral attributes normally associated with beer as specified in the beer definition within the Excise Tariff Act.
- limits to the quantity of unfermented substances (for example, water and flavours) that can be added to a beer base before the beverage will no longer meet the beer definition, particularly where the final beverage produced by the addition of water or flavours is not intended to be consumed as conventional beer.

ED 2024/D2 addresses concerns raised by industry stakeholders in respect of the previous draft, and to allow further opportunity for feedback.

When the final determination is issued, it is proposed to apply from 1 February 2025. Comments closed 27 September 2024.

Draft excise legislative instrument regarding concessional spirits

The ATO has released draft legislative instrument [Excise \(Concessional Spirits – Class of Persons\) Determination 2024](#), which specifies the class of persons who can use up to a specified quantity of spirit in a calendar year free of duty, provided they use the spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. This instrument will reduce the compliance burden on such persons because they will not be required to individually apply for approval to use up to the specified quantity of spirit free of duty for the approved purposes.

Once finalised, the draft legislative instrument will commence 1 January 2025. It replaces the Excise (Concessional spirits – class of persons) Determination 2014 (No. 1). Comments closed 18 September 2024.

Indirect Tax Update

Rulings updated to clarify 'ATM' and 'ATM services' for GST purposes

The Australian Taxation Office (ATO) has issued draft update [GSTR 2014/2DC2](#), which proposes amendments to GSTR 2014/2 to reflect the Administrative Appeals Tribunal's (AAT) decision in *Banktech Group Pty Ltd and Commissioner of Taxation [2023] AATA 3850* regarding the meaning of 'automatic teller machine (ATM) services' for goods and services tax (GST) purposes. In that case, the AAT decided that the supply of cash withdrawals through cash dispensing devices used by the taxpayer were not 'ATM services' as they were inconsistent with the ordinary meaning of the term.

This is a revised draft update that replaces draft [GSTR 2014/2DC1](#) which initially issued on 22 March 2023 and now withdrawn.

Broadly, draft GSTR 2014/2DC2 explains the GST treatment of:

- a fee payable for ATM services listed in subsection 40-5.09(5) of the *A New Tax System (Goods and Services Tax) Regulations 2019* (GST Regulations)
- a surcharge imposed by a merchant on a customer in respect of a credit card transaction concerning supplies of goods or services by the merchant to the customer
- a surcharge imposed on a customer in respect of a credit card transaction concerning the payment of an Australian tax or an Australian fee or charge subject to Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, and
- a surcharge imposed by a merchant in respect of a debit card transaction concerning a supply of goods or services, a cash withdrawal or both a supply of goods or services and a cash withdrawal.

Similarly, the ATO has issued draft consolidation [GSTR 2002/2DC2](#), which outlines proposed changes to GSTR 2002/2, which covers the GST treatment of financial supplies and related supplies and acquisitions, about how 'ATM' is defined along other minor consequential amendments.

When the Rulings updates are finalised, both are proposed to apply both before and after their date of issue. Comments on both draft Ruling updates close on 18 October 2024.

Tax invoice requirement waived for motor vehicle incentive payments

[A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Motor Vehicle Incentive Payment Made to Motor Vehicle Dealer\) Determination 2024](#) waives the requirement for a recipient of a supply of a motor vehicle, in certain circumstances, to hold a tax invoice before the relevant input tax credit will be attributable to a tax period. It applies where the recipient makes a creditable acquisition of a motor vehicle from a motor vehicle dealer and, in addition to the consideration payable by the recipient, the motor vehicle dealer receives or is entitled to receive third-party consideration in the form of a motor vehicle incentive payment.

Instead of a tax invoice, the recipient must hold a document that meets specified information requirements, as outlined in the instrument. The instrument repeals and replaces 'A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Motor Vehicle Incentive Payment Made to Motor Vehicle Dealer) Legislative Instrument 2014', which would otherwise have sunset on 1 October 2024. The instrument has the same substantive effect as the one it is replacing.

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Addendum to GST Detailed Food List

The ATO has issued an [Addendum](#) to the [Goods and Services Tax Detailed Food List](#). Specifically, the Addendum amends Goods and Services Tax Industry Issue GST II FL1 to align relevant entries with GSTD 2024/1 in respect of supplies of combination food, add new food and beverage product lines, merge similar entries, update a number of entries to correctly reference the updates to *A New Tax System (Goods and Services Tax) Regulations 2019*, delete duplicate entries and combine similar entries.

ATO Top 100 and Top 1,000 GST findings reports

The ATO has issued various public groups findings reports, among which include findings reports from the Top 100 and Top 1,000 income tax and GST assurance programs for the income year ended 30 June 2024.

From a GST perspective, key highlights noted from the [Top 100](#) population included that:

- Most large businesses obtained high or medium assurance ratings, with 93% of the Top 100 GST reporters reviewed having obtained overall high or medium assurance ratings.
- Improvements continued in tax governance, with over half of the Top 100 GST reporters obtaining a Stage 2 or 3 rating for tax governance.
- Areas of continued focus include GST food classification, financial services and investment as well as real property, accommodation and retirement villages.
- The ATO continues to see improvements in GST Analytical Tool (GAT) ratings with a Stage 2 or 3 rating attained by 86% of taxpayers who had the GAT applied.

Key GST highlights from the [Top 1,000](#) population reviews included that:

- There are high levels of assurance that the right amount of GST has been paid, with 96% of taxpayers having achieved high or medium assurance that they have paid the correct amount of GST.
- There were significant improvements in GST governance – 50% of taxpayers reviewed in 2024 achieved a stage 2 or 3 rating, with 45% of taxpayers reviewed in 2024 achieving an overall high assurance rating.
- Taxpayers should continually review their GST compliance, with the ATO continuing to see 40% of taxpayers making a voluntary disclosure once notified of a review and before receiving the ATO's recommendations.
- The ATO detects and escalates issues of concern for further investigation: in the reviews conducted in 2024, the ATO identified 2% with GST issues that required further ATO action.

Draft law to modernise the Luxury Car Tax

The Treasury has released [draft legislation](#) to modernise the Luxury Car Tax (LCT). This is to give effect to the 2023–24 Mid-Year Economic and Fiscal Outlook announcement that from 1 July 2025 it would tighten the definition of a fuel-efficient vehicle and align the indexation rate for LCT thresholds.

Specifically, the proposed law:

- updates the definition of a fuel-efficient car by reducing the maximum fuel consumption for a car to be considered fuel-efficient for the LCT to 3.5 litres per 100 kilometres from the current 7 litres per 100 kilometres, and
- amends the index number used to index the LCT threshold from All Groups CPI to the motor vehicle purchase sub-group of the CPI.

The amendments are proposed to apply to taxable supplies and taxable importations of luxury cars on or after 1 July 2025.



Personal Tax Update

New ATO guidance on Part IVA and personal services business

The Australian Taxation Office (ATO) has issued draft Practical Compliance Guideline [PCG 2024/D2](#), which sets out the ATO's compliance approach to the potential application of the general anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* to an alienation arrangement where personal services income (PSI) of an individual is derived through a personal services entity (PSE) that is conducting a personal services business (PSB).

Although the PSI provisions narrow the scope for Part IVA to apply to alienation arrangements, it continues to remain possible that Part IVA will apply. Draft PCG 2024/D2 provides practical guidance on the types of alienation arrangements that the ATO considers to be at 'low' or 'higher' risk of Part IVA applying and the likelihood of the ATO having cause to apply compliance resources to review those arrangements.

Note that while the draft PCG addresses the likelihood (risk) that an alienation arrangement will bring Part IVA into question and should be reviewed, it does not provide detailed guidance on when Part IVA could potentially apply to arrangements involving income splitting or retention of profits. Existing guidance material covering the administration and application of Part IVA more broadly can be found in Law Administration Practice Statement PS LA 2005/24.

Once finalised, draft PCG 2024/D2 is proposed to apply to arrangements entered into both before and after its date of issue.

ATO data-matching program

The ATO has announced that it will undertake the following data-matching programs:

- An [officeholder data-matching program](#), in which it will acquire officeholder data from the Australian Securities and Investments Commission (ASIC), the Office of the Registrar of Indigenous Corporations (ORIC), the Australian Charities and Not-for-profits Commission (ACNC), and the Australian Business Registry Service (ABRS) for 2023-24 through to 2026-27.
- A [lifestyle assets data-matching program](#), in which the ATO will acquire lifestyle assets data from insurance providers for 2023-24 through to 2025-26. Insurance policy data will be collected for certain classes of assets, where the asset value equals or exceeds nominated thresholds.

Full Federal Court confirms lump sum was assessable

In [Sladden v Commissioner of Taxation \[2024\] FCAFC 122](#), the Full Federal Court upheld the Administrative Appeal Tribunal's (AAT's) decision in Sladden and Commissioner of Taxation (Taxation) [2023] AATA 3815 that a lump sum paid in settlement of a claim under an insurance policy was assessable income.

The issue in dispute was concerning whether a settlement sum received by the taxpayer from commuting an insurance policy income protection benefit into a lump sum was ordinary income. Although it transpired that the settlement would also include surrender of the taxpayer's life insurance policy, the taxpayer did not go back to the insurer and ask for anything beyond the settlement sum offered.

The Full Federal Court found that it was open to the AAT to find on the facts, and the terms of the deed of release, that the 'settlement sum' of \$1m that was paid was in respect of commutation of the taxpayer's monthly benefits payable under the income protection cover and that no part of the settlement sum was paid or payable in respect of the termination of the life cover plan.

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State Tax Update

Tasmanian State Budget 2024-25

The [Tasmanian State Budget](#) was handed down on 12 September 2024. The Budget included the following taxation measures (all of which had been announced prior to the March 2024 State election):

- First home buyer duty exemption, which applies from 18 February 2024 until 30 June 2026.
- Pre-completion duty concession for new apartments and units for two years until 30 June 2026.
- Extension of the pensioners downsizing duty concession by 12 months to 30 June 2025.
- Extension of the land tax exemptions for newly constructed rental properties and former short stay accommodation premises made available for long-term rental by two years to 30 June 2026.
- Extension of the payroll tax rebate scheme for youth employees and apprentices and trainees by 12 months to 30 June 2025.
- Increase to the land tax tax-free threshold by \$25,000 from \$99,999 to \$124,999.

In addition, the Budget referred to the [Independent Review of Tasmania's State Finances](#), which made a range of recommendations for State tax reform, as well as mention of the proposal to consult on a short stay accommodation levy.

NSW: Changes to principal place of residence land tax exemption

From 1 February 2024, the New South Wales (NSW) principal place of residence (PPR) land tax exemption is only available in relation to a property where all the persons who use and occupy the land as a principal place of residence together own at least 25% in the property. Existing landowners who are eligible to claim the PPR exemption prior to

1 February 2024 and own less than 25% in the property [may continue](#) to claim the exemption for the 2024 and 2025 land tax years, with the 25% ownership requirement to apply to those owners from the 2026 land tax year. Landowners who purchase or acquire property from 1 February 2024 and do not meet the minimum ownership requirement will become liable from the 2025 land tax year.

To reflect these changes, Revenue NSW has updated ruling [LT 082v6](#), and has included examples to highlight how the minimum ownership requirement and transitional rules operate. The updated ruling is effective 1 February 2024.

NSW: Surcharge duties - principal place of residence exemption not applicable

In [Sar v Chief Commissioner of State Revenue \[2024\] NSWCATAD 246](#), the NSW Civil and Administrative Tribunal found a taxpayer was liable for surcharge purchaser duty as the principal place of residence exemption was not available by virtue of his wife's use and occupation of the property.

At the time the taxpayer bought the residential property in question, the taxpayer was a 'foreign person' and liable for surcharge purchaser duty under the *Duties Act 1997 (NSW)*. However, the taxpayer argued that the principal place of residence exemption applied, as he 'possessed the property' for the requisite amount of time through his wife and family residing there.

The Tribunal dismissed this argument, finding that the taxpayer's use and occupation did not commence at the time his wife took possession of the property. Section 104ZKA(4) of the Duties Act specifically requires the taxpayer, and no other person, to have 'used and occupied' the property 'as his or her principal place of residence'. In this case, at the time the taxpayer's wife took possession of the property, the taxpayer resided in Singapore where he worked.

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NSW: Additional surcharge land tax cases

The NSW Civil and Administrative Tribunal has also considered the following surcharge land tax matters since our last update:

- In [Feng v Chief Commissioner of State Revenue \[2024\] NSWCATAD 273](#), the Tribunal confirmed the taxpayer's assessments to surcharge land tax for the 2019 to 2023 land tax years: the taxpayer did not use and occupy the relevant property as her principal place of residence for a continuous period of 200 days, and the exemption under section 5B of the *Land Tax Act 1956 (NSW)* (which relates to the principal place of residence exemption) was not available for any of the relevant land tax years.
- In [Wan v Chief Commissioner of State Revenue \[2024\] NSWCATAD 278](#), the Tribunal found that the taxpayer did not establish that he took reasonable care to comply with his tax obligations and that there were no exceptional circumstances to warrant the remission of the market rate interest or the premium rate interest for the 2019 land tax year. The Tribunal also made the comment that the nature of the statutory scheme is that it is 'self-registering' - a taxpayer must make enquiries as to whether they are liable to pay the land tax surcharge and there is no requirement on the Chief Commissioner of State Revenue to make inquiries with the taxpayer as to whether he was a 'foreign person' for surcharge land tax purposes.

Victoria's proposed short-stay levy

The [Short Stay Levy Bill 2024 \(Vic\)](#) was introduced into Victorian Parliament. The Bill proposes to introduce a short stay levy of 7.5% of the total booking fee in relation to the provision of short stay accommodation in Victoria from 1 January 2025. The short stay levy is proposed to be payable in respect of each short stay of less than 28 days. Premises that are occupied as the principal place of residence of the owner or renter of the premises are excluded from the definition of short stay accommodation, as are commercial residential premises and certain other specified types of premises.

Victoria: Draft Ruling on abolition of duty on business insurance

Under the *Duties Act 2000 (Vic)*, with effect from 1 July 2024, duty on business insurance premiums will be progressively abolished over ten years by reducing the rate of duty (previously 10%) by 1% each year.

The State Revenue Office of Victoria has released draft Revenue 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. Comments on the draft closed on 25 September 2024.

Victoria: Draft Ruling on land being prepared for primary production

The State Revenue Office of Victoria has released draft Revenue Ruling [LTA-006v2](#) which provides guidance on when land is being prepared for primary production for purposes of the primary production land tax exemption. To be eligible for the primary production preparatory exemption, section 68(1) of the *Land Tax Act 2005 (Vic)* requires the Commissioner of State Revenue to be satisfied that the land is being prepared for use primarily for primary production and the land will become exempt under section 65, 66 or 67 of the Act within 12 months after the commencement of the preparatory activities. The Revenue Ruling, which when finalised will replace LTD-006, sets out:

- guidance on the activities that constitute preparation in the context of section 68
- the factors which the Commissioner will consider in exercising his discretion as to whether time should be extended, and
- the requisite evidentiary requirements for the exemption.

Comments on the draft close on 2 October 2024.

Victoria: Land tax assessments upheld

In [Peng v Commissioner of State Revenue \(Review and Regulation\) \[2024\] VCAT 880](#), the Victorian Civil and Administrative Tribunal confirmed reassessments of land tax for the 2017 to 2021 land tax years, and an assessment to land tax for the 2022 land tax year.

The taxpayer claimed that he and his wife used part of the relevant property as their principal place of residence (having conceded that the remaining part was rented to tenants throughout the relevant period). However, the Tribunal found that the taxpayer failed to discharge his onus of proving that he and his wife used the relevant property, or any part of it, as their principal place of residence. The taxpayer's statutory declaration was noted to be general, vague and lack detail (e.g. as to when and how they used the property) and was not supported by any independent witness, while the taxpayer's evidence was more broadly contradicted by much of the documentary evidence put before the Tribunal.

WA: Transfer duty payment assistance for eligible off-the-plan purchases

The Western Australian (WA) Commissioner of State Revenue has [announced](#) assistance is to be given to eligible buyers affected by construction delays in off-the-plan developments. A buyer in an off-the-plan development must pay transfer duty within three years of their contract date, or earlier if settlement occurs first. However, if duty is payable before settlement can occur, a buyer may apply to the Commissioner for a tax payment arrangement to defer payment of duty for up to 12 months, with the possibility of extension if there are ongoing delays beyond the buyer's control.

For arrangements entered [until June 2025](#), the Commissioner will remit the interest normally charged on a payment arrangement for buyers in developments that were planned to be completed within three years from the contract date that remain unfinished. Remissions of any late payment penalty tax will also be considered based on individual circumstances.

QLD: Coal royalty rate floor

The [Progressive Coal Royalties Protection \(Keep Them in the Bank\) Bill 2024](#) (QLD) has now passed the Queensland Parliament. This Bill introduced a coal royalty rate floor, by providing that a regulation may not prescribe coal royalty rates that are lower than those prescribed.



Superannuation Update

Draft regulations on legacy retirement product conversions and reserves

The Federal Treasury has released for [consultation](#) draft *Treasury Laws Amendment (Self-managed superannuation funds – legacy retirement product conversions and reserves) Regulations 2024*. The draft regulations expand on and support implementation of a 2021-22 Budget measure that will:

- enable individuals to exit a specified range of legacy retirement products for up to five years, and
- allow for more flexible pathways to make allocations from a reserve by:
 - providing that where a reserve supported an income stream that is ceased, and the reserve is allocated to the former recipient of that income stream, it will be exempt from both contribution caps
 - counting other reserve allocations towards an individual's non-concessional contributions instead of their concessional contributions.

The draft regulations apply to legacy lifetime, life expectancy and market-linked superannuation income stream products that commenced prior to 20 September 2007, or which commenced as a result of a conversion of an earlier legacy product that commenced prior to that date.

Comments close 8 October 2024.

No election required to carry forward unused concessional contributions cap

In [WTBW and Commissioner of Taxation \(Taxation\) \[2024\] AATA 3268](#), the Administrative Appeals Tribunal (AAT) considered the statutory construction of 'excess concessional contributions' for Division 293 purposes.

A person is liable to pay Division 293 tax if they have 'taxable contributions' for an income year which is determined if the sum of the taxpayer's income for surcharge purposes for an income year and their 'low tax contributions' for the corresponding financial year exceeds \$250,000. The 'low tax contributions' amount is calculated as the taxpayer's 'low tax contributed amounts' less the taxpayer's 'excess concessional contributions' for the financial year.

The Commissioner argued that the taxpayer had no excess concessional contributions for the year ended 30 June 2022, because the taxpayer's concessional contributions were fully offset by his unused concessional contributions cap carried forward from previous years.

The taxpayer argued that he did have excess concessional contributions for 2022 because the unused concessional contributions cap carried forward from previous years applied only if he elected that it should apply, and he had not done so.

Ultimately, the AAT decided that an unused concessional contributions cap amount carried forward from previous years applies by force of law and does not require a taxpayer to elect to apply the unused amount carried forward or permit a taxpayer to elect not to apply the carried forward amount or part of it.

Accordingly, the Commissioner's assessment for Division 293 tax was affirmed.

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Payday Super – further information released

On 18 September 2024, Treasury released a factsheet that provides more information about the proposed Payday Super regime, which is to commence on 1 July 2026. Payday Super seeks to align the timing of payment of superannuation to the payment of salary or wages by employers. For further information, refer to the Employment Taxes update and to our [Tax Alert](#).

Super mortgage offset product?

The Senate Economics References Committee has issued its [Second Report](#) into its [inquiry into Improving consumer experiences, choice, and outcomes in Australia's retirement system](#). It has recommended that the Australian Government further explore the potential design of a super mortgage offset product applicable to a homeowner's primary residence; the pros and cons of different options; and the regulatory settings that would be needed to permit development of such a product. The Government Senators on the Committee issued its dissenting report into this recommendation noting that using a superannuation balance to offset a mortgage would not assist first home buyers, nor result in a single new home being built, and that a proposed scheme is a massive risk to an individual's income and financial security in retirement.

The Committee is due to issue its final report by 30 June 2025.



Legislative Update

The following tax or superannuation related Bills were introduced into Federal Parliament since our last update:

- The [Administrative Review Tribunal \(Miscellaneous Measures\) Bill 2024](#), which was introduced into the House of Representatives on 21 August 2024, makes amendments to various Acts to make consequential and technical amendments arising from the enactment of the *Administrative Review Tribunal Act 2024*. The Bill also repeals the *Tribunals Amalgamation Act 2015*.
- The [Customs Tariff Amendment \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership Expansion\) Bill 2024](#), which was introduced into the House of Representatives on 11 September 2024, amends the *Customs Tariff Act 1995* to give effect to matters relevant to the accession of the United Kingdom of Great Britain and Northern Ireland (the United Kingdom (UK)) to the Trans-Pacific Partnership, including providing a 'free' rate of customs duty for certain originating goods of the UK, phasing rates of customs duty for certain originating goods of the UK that will incrementally reduce to 'free' by 1 January 2033 at the latest, and insert a 'safeguard' provision.
- The [Treasury Laws Amendment \(2024 Tax and Other Measures No. 1\) Bill 2024](#), which was introduced into the House of Representatives on 12 September 2024, introduces various amendments, including:
 - modifying the foreign resident capital gains withholding payments regime to increase the withholding rate from 12.5 to 15% and remove the threshold before which withholding applies in relation to Australian real property interests

- allowing employers to make a standing declaration to their tax agent in relation to single touch payroll that covers multiple lodgments for extended periods
- providing the Commissioner of Taxation with a power to retain tax refunds for a 90-day period to enable the Commissioner to obtain financial institution details for the refund to be paid into; and
- extending the time from two years to four years in which small or medium business taxpayers may apply to have an income tax assessment for income years starting on or after 1 July 2024 amended.

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

- The [Paid Parental Leave Amendment \(Adding Superannuation for a More Secure Retirement\) Bill 2024](#), which among other matters, adds a superannuation contribution to the Commonwealth-funded Paid Parental Leave Scheme in respect of children born on or after 1 July 2025 at a rate of 12%.
- The following Commonwealth revenue measures were registered as a legislative instrument since our last update:
- The [Payment Times Reporting Rules 2024](#), registered on 12 September 2024, repeal and remake the 2020 Rules to support the wider amendments made to the Payment Times Reporting Scheme that was amended in relation to payment times reports for reporting periods beginning on or after 1 July 2024.

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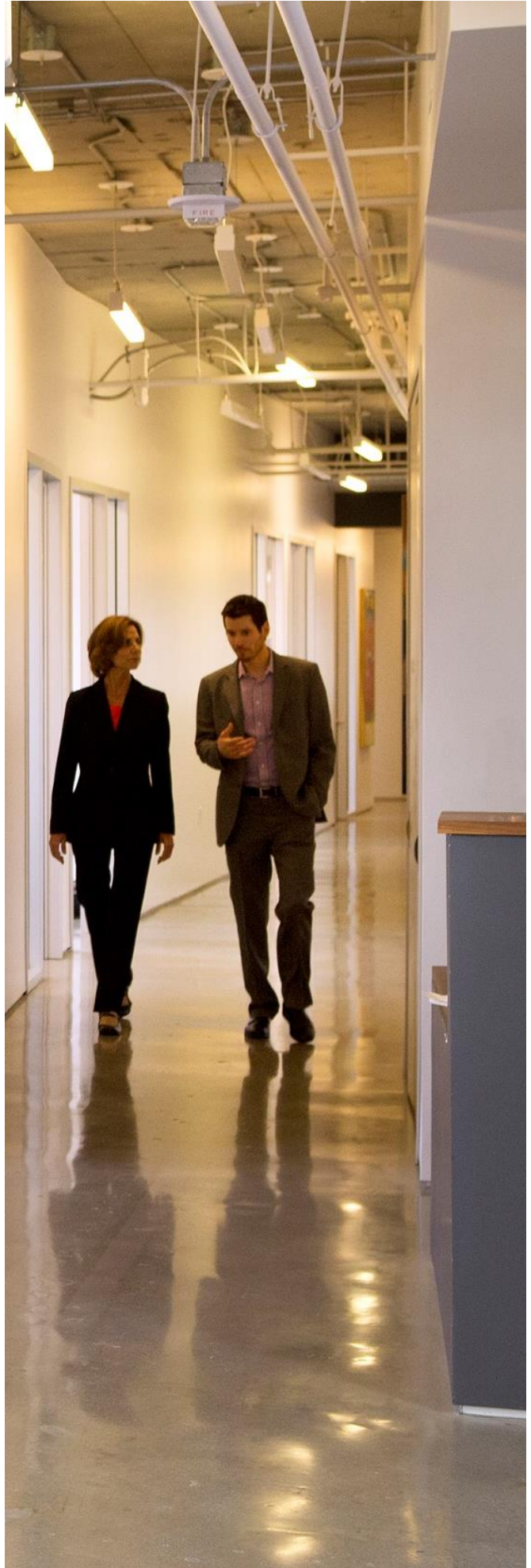
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- The [Taxation Administration \(Withholding Variation for Certain Payments to US Resident Entertainers Including Athletes\) Legislative Instrument 2024](#), effective 10 September 2024, varies the amount an Australian payer must withhold (to nil) from certain withholding payments made to entertainers who are residents of the United States of America when they undertake activities as an entertainer in Australia and the sum of all payments does not exceed USD\$10,000. It replaces the instrument 'Taxation Administration Act 1953 – Pay as you go withholding – Variation to remove the requirement to withhold from payments for certain US resident entertainers and sport persons' which would otherwise sunset on 1 October 2024.
- The [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Motor Vehicle Incentive Payment Made to Motor Vehicle Dealer\) Determination 2024](#), effective 10 September 2024, waives the requirement for a recipient of a supply of a motor vehicle, in certain circumstances, to hold a tax invoice before the relevant input tax credit will be attributable to a tax period. For further information, refer to our Indirect Tax Update.
- The [Excise \(Blending Exemptions\) Instrument 2024](#), effective 10 September 2024, specifies circumstances in which blends of excisable fuels, with or without other substances, are taken not to be excisable goods. This has the effect that excise duty is payable on the components of these blends (where applicable), but not on the blends themselves.



Other News Update

Senate inquiry into Australia's taxations system

The Senate referred an [inquiry into Australia's taxation system](#) to the Senate Economics References Committee for inquiry and report by 10 December 2024. Among other things, the inquiry will make particular reference to the tax arbitrage between onshore and offshore profits, the abolition of numerous tax loopholes that favour special interest groups (in particular, foreign interests), franking credits and whether capital gains tax concessions for passive investment cause a misallocation of capital into the non-productive economy.

ATO report on advice and guidance

The Australian Taxation Office (ATO) has issued [Insights Report – advice and guidance program](#) which shows the insights it has drawn from work completed in the public and multinational business advice and guidance program over the 2020-21 to 2023-24 financial years. This report outlines the following in relation to private ruling, class ruling, guidance and early engagement requests:

- insights on the requests for advice that the ATO receives
- observations about the time it takes to provide service offerings and the key factors that impact its timeliness, and
- key findings about the outcomes of the engagements.

The ATO reports that private ruling requests received in 2023-24 increased noticeably from the prior year, while there is a noticeable downward trend in requests for early engagements and guidance matters. The ATO had no eligible New Investment Engagement Service (NIES) engagements in 2023-24 and have accordingly withdrawn the NIES as a service offering.

There was an increase in withholding tax exemption requests relating to sovereign immunity and superannuation funds for foreign residents (reported as the most frequently requested advice topic) with the next most popular advice topics being capital gains tax (e.g. demergers, rollovers, losses and cost base), capital management (returns of capital, off-market share buy-backs, capital raising transactions, special dividends and issuance of capital notes) and employee share schemes.

Update on ATO's Next 5,000 private groups program

ATO Assistant Commissioner Daniel Smith has [highlighted](#) aspects of the Next 5,000 private groups tax performance program that are on the ATO's radar for the rest of the 2024-25 financial year:

- The ATO will continue to undertake streamline assurance reviews for groups with more complex structures and will undertake risk reviews on the remaining population.
- Effective record keeping and tax management procedures are important
- The annual [Next 5,000 program findings report](#) will be released in November 2024.

Property - ATO data-matching program

The ATO has announced that it will undertake a [property management data-matching program](#), in which it will acquire property management data from property management software companies for 2018-19 through to 2025-26. The data items include specified property owner identification details, property details, and property transaction details.

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