PwC's Monthly Tax Update

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

September 2024

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Corporate Tax Update

Reforms to Petroleum Resource Rent Tax

The Petroleum Resource Rent Tax (PRRT) has been reformed following the making of new PRRT regulations registered that respond to recommendations from the Treasury Gas Transfer Pricing Review (GTP Review).

The GTP Review recommended significant changes to the PRRT system, including accounting for changing commercial circumstances in the liquified natural gas (LNG) industry, ensuring an appropriate arm's length price for gas at the taxing point is reflected in all circumstances, and improving transparency and reducing complexity in the ways the rules operate.

The Petroleum Resource Rent Tax Assessment Regulations 2024 contain various minor changes to update the drafting of the 2015 Regulations, and implement a number of recommendations made as part of the GTP Review, including:

- various changes to better accommodate commercial tolling arrangements
- requiring an irrevocable election to be made to use either the shorter or longer asset life formula
- equalising the treatment of the notional upstream and downstream entities between loss and profit situations when using the residual pricing method (RPM)
- updating the comparable uncontrolled price (CUP) rules to align with current guidelines from the Organisation for Economic Cooperation and Development (OECD)
- modifying the advanced pricing arrangement rules (APA) to provide additional guidance to both industry and the Commissioner of Taxation on the principles to consider in agreeing to an APA, and
- ensuring that when a new facility is brought into the PRRT regime for the first time, that the value of the plant for use in the RPM is the historical cost of the facility.

The Treasurer has indicated that the Government will continue to monitor the operational aspects of the PRRT and address any integrity issues that emerge. Consultation on exposure draft legislation to implement outstanding recommendations of the Callaghan Review will occur in due course.

The new Regulations apply to years of tax beginning on or after 1 July 2024.

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Employment Taxes Update

Payroll Tax: Tasmania– Updated guidance on payroll tax rebate for apprentices, trainees and youth

On 29 July 2024, the State Revenue Office of Tasmania released updated guidance on the payroll tax rebate scheme for apprentices, trainees and youth employees.

A rebate can be claimed for a period of up to two years for apprentices and trainees and up to one year for youth employees commencing their employment between 1 July 2023 and 30 June 2025.

The payroll tax rebate scheme was extended for one year to 30 June 2025 under amendments made by the *Taxation Legislation (Affordable Housing and Employment Support) Act* (Tas). Employers are required to claim the rebate within the 9-month period immediately after the end of the relevant financial year.

Superannuation Guarantee: Jockeys held to be employees of race club

On 30 July 2024, the Administrative Appeals Tribunal (AAT) handed down its decision in the matter of Australian Turf Club Ltd v FCT [2024] AATA 2728 finding that jockeys who raced at racetracks operated by the Australian Turf Club (the taxpayer) met the extended employee definition under section 12(8) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA), thus requiring the taxpayer to make superannuation contributions on the jockeys' behalf.

The taxpayer's application for review was heard at the same time as four other applications – the Armidale Jockey Club, Clarence River Jockey Club, Grenfell Jockey Club Limited and Illawarra Turf Club – all of the matters considering a review of the decisions of the Commissioner to disallow objections to amended assessments of the superannuation guarantee charge (SGC) where the parties agreed that the evidence filed in one matter applied to all matters. Despite all five matters being heard together, the parties requested separate decisions for each applicant.

The AAT considered whether each Club was an employer under subsection 12(3) or subsection 12(8) of the SGAA. Although the Tribunal found that subsection 12(3) was not applicable since there was no evidence of a contract, and the labour of the jockey was not 'wholly' or 'principally' for labour as they were instead paid on an ad hoc, race-by-race basis, the AAT considered section 12(8) to be the more relevant provision. Broadly, section 12(8) extends the definition of an employee for superannuation purposes, to include "a person who is paid to perform or present... any music, play, dance, entertainment, sport, display or promotional activity...is an employee of the person liable to make the payment".

Conjecture arose regarding whether the taxpayer or the owner was liable to make the payment to the jockeys.

The AAT agreed with the taxpayer that the use of the definitive article in the term "the person" as opposed to "a person" in subsection 12(8) meant that only one person could be liable at the same time for the payment for the same performance. The AAT was of the view that multiple employers for one activity was not contemplated by the SGAA.

However, the taxpayer's argument that money was held by a race club and was paid to a jockey on behalf, and for the benefit of, the owner or trainer, was not accepted as reason enough for the provision not to apply. Ultimately, the AAT held that the taxpayer was the "employer" of the jockeys for the purpose of the SGAA.

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Superannuation Guarantee on Government funded Paid Parental Leave from 1 July 2025

On 22 August 2024, the Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Bill 2024 was introduced to Federal Parliament.

Under the proposed amendment, parents with children born on or after 1 July 2025 that receive Government funded Paid Parental Leave (PPL) will also receive superannuation contributions. The amendments provide that the superannuation contributions will be paid on an annual basis and will comprise of the following:

- a *core component*: calculated by multiplying the total amount of PPL paid for the person in an income year by the superannuation guarantee rate for that income year; and
- a *nominal interest component*: to address the foregone returns resulting from the superannuation being paid on an annual basis. The rate applied will be in line with the *Paid Parental Leave Act 2010*.

Payroll Tax: Revenue NSW announces payroll tax relief for bulk billing medical centres

Revenue NSW announced that from 4 September 2024, a payroll tax rebate scheme will be introduced under the bulk billing support initiative in NSW. Under this initiative, medical centres in NSW that engage contractor general practitioners (GPs) may be eligible to receive a payroll tax rebate, provided the following bulk billing threshold requirements are met:

- Metropolitan Sydney: at least 80% of GP services (of the medical centre) are bulk billed.
- Other areas: at least 70% of GP services (of the medical centre) are bulk billed.

Global Tax and Trade Update

ATO to establish Pillar Two Working Group

The Australian Taxation Office (ATO) is establishing a special purpose working group to support it during the implementation of the Pillar Two Global and Domestic Minimum Tax in Australia. Through consultation, the working group will seek feedback on administrative aspects of the implementation of the new measure, including:

- the design of two new Australian tax returns to enable assessment and collection of the new taxes
- the resources, systems or processes that multinational businesses will require in response to the announced measure, and
- how the ATO can support implementation through public advice and guidance, and co-designing client engagement approaches.

Expressions of interest to join the working group closed on 9 August 2024.

Key developments in international tax administration

The ATO's Deputy Commissioner Rebecca Saint has delivered a speech to the PacRim Conference, in which she highlighted a variety of key developments in tax administration in Australia, including international tax-related matters.

Among other topics discussed, the Deputy Commissioner spoke to intangibles and the mischaracterisation of payments, noting that the ATO is focused on finalising its views in its latest draft software ruling – TR 2024/D1 – following feedback earlier in the year. In parallel, the ATO is also working on draft administrative guidance, likely to be a practical compliance guide (PCG), which will focus on the practical implications of the view in the ruling, particularly around apportionment, evidentiary requirements and the ATO's compliance approach to the (mis)characterisation of royalty payments. The ATO will consult on this draft guidance. (Note: following this speech which was delivered in June 2024, the Commissioner of Taxation has sought special leave to appeal to the High Court in respect of a case concerning royalties. The ATO advised in a media release that it will defer finalisation of TR 2024/D1 pending the outcome of the High Court proceedings).

In the speech, the diverted profits tax (DPT) was also discussed, with the Deputy Commissioner noting that it is a provision that the ATO continues to apply sparingly. While the ATO has considered the potential application of DPT in over 500 cases, only two cases have proceeded to assessment stage, while there are ten cases where the ATO is actively considering the application of the DPT.

The speech also touched on Pillar Two, with the Deputy Commissioner noting that the ATO does not intend to apply penalties or sanctions during a transitional period in connection with filing GloBE Information Returns where a multinational enterprise has taken reasonable measures to ensure the correct application of the GloBE rules. However, following receipt of the first incoming lodgments, targeted GloBE reviews are expected to be conducted, taking a risk-based approach. The ATO does not propose to undertake a justified trust or assurance approaches, at least in the initial years.

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Proposed changes to Australia's foreign resident CGT regime

Treasury has released a consultation paper on the Federal Government's proposal, announced in the 2024-25 Federal Budget, to amend Australia's foreign resident capital gains tax (CGT) regime to:

- clarify and broaden the types of assets on which foreign residents are subject to CGT
- amend the point-in-time principal asset test to a 365-day testing period, and
- require foreign residents disposing of shares and other membership interests exceeding $20 million to notify the ATO prior to the transaction being executed.

These amendments are proposed to apply to CGT events commencing on or after 1 July 2025. Comments on the consultation paper closed on 20 August 2024.

Separately, draft legislation was released in relation to proposal announced in the 2023-24 Mid-Year Economic and Fiscal Outlook to increase the foreign resident capital gains withholding tax rate for relevant CGT assets from 12.5 to 15 per cent and remove the current $750,000 withholding threshold that applies to real property interests. These changes will apply to acquisitions of relevant CGT assets made on or after the later of 1 January 2025 and the commencement date. Comments on this draft law closed on 5 August 2024.

For further information on the above measures, refer to our Tax Alert.

Latest on the International Compliance Assurance Program

The Organisation for Economic Cooperation and Development (OECD) has released details of the documentation required by those groups interested in applying for a multilateral risk assessment under the International Compliance Assurance Program (ICAP). The ICAP is a voluntary program for a multilateral coordinated risk assessment of a multinational group's key international tax risks.

The upcoming deadlines for groups to apply to join ICAP are 30 September 2024, 31 March 2025 and 30 September 2025. The OECD recommends groups that wish to join ICAP should contact the tax administration in the jurisdiction where their ultimate parent entity is resident in advance of the next application deadline.

Update from G20 Finance Ministers and Central Bank Governors meeting

The third meeting of G20 Finance Ministers and Central Bank Governors held under the Brazilian G20 Presidency took place between 25-26 July 2024 in Rio de Janeiro, Brazil.

The OECD Secretary-General prepared a Tax Report to G20 Finance Ministers and Central Bank Governors which describes some the key developments in international tax reform since February 2024, including progress on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy and on the implementation of the Base Erosion Profit Shifting (BEPS) minimum standards. The report also covers progress made in tax transparency, tax administration and consumption taxes, and includes dedicated segments on tax and inequality and tax policy developments.

Following the meeting, for the first time in its history, G20 Members agreed a comprehensive stand-alone Tax Declaration (Rio de Janeiro G20 Ministerial Declaration on International Tax Cooperation) which highlights the OECD's work to make international tax arrangements fairer and work better, including through the 'landmark achievement' of the automatic exchange of information through the Global Forum on Transparency and Exchange of Information for Tax Purposes. The G20 Members also reaffirmed their commitment to swiftly implement the Two-Pillar Solution.

The following OECD reports to the G20 Finance Ministers and Central Bank Governors were also released:

- Taxation and Inequality which contributes to discussions on the role of tax systems in addressing inequality. It explores how tax systems can mitigate or exacerbate inequality with a focus on the distribution of income and wealth and identifies scope for potential reform.
- Beneficial Ownership and Tax Transparency – Implementation and Remaining Challenges examines the critical role of beneficial ownership transparency in combating tax evasion and illicit financial flows.
- Strengthening International Tax Transparency on Real Estate – From Concept to Reality which sets out the building blocks to bring increased transparency into real estate transactions and holdings.
- Bringing Tax Transparency to Crypto-Assets – An Update which provides an update on the work to implement the recently agreed OECD/G20 Crypto-Asset Reporting Framework (CARF) – a key component of the International Standards for Automatic Exchange of Information in Tax Matters developed by the OECD. Fifty-eight members of the Global Forum on Transparency and Exchange of Information for Tax Purposes – including Australia – have already announced their intention to commence exchanges under the CARF by 2027.

India Budget 2024: Impact on foreign investors and multinationals

The India Finance Minister presented the Union Budget for 2024-25 on 23 July 2024 after the re-elected Modi Government came into power to serve its third term. Tax proposals include a reduction to the headline income tax rate for the certain income of foreign companies from 40 to 35 per cent and measures intended to simplify and rationalise the existing law to enable the ease of doing business, reduce the compliance burden and tax disputes, and bring more certainty to the law. For further information, refer to PwC's Global Alert.

MLI update – Synthesised text for Spain

The ATO has published the synthesised text of the *Agreement between Australia and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, 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 for Australia on 1 January 2019.

New excise rates

The ATO has published the following new excise and fuel tax credit rates:

- rates of excise for tobacco manufacture occurring in Australia or manufactured tobacco goods imported into Australia applicable from 1 September 2024
- excise duty rates for alcohol from 5 August 2024 to 2 February 2025
- excise duty rates for fuel and petroleum products from 5 August 2024 to 2 February 2025
- the fuel tax credit rates for fuel acquired from 5 August 2024 to 2 February 2025.

Indirect Tax Update

Self-review guides to GST classification of food and health products

The Australian Taxation Office (ATO) has released a self-review checklist for small to medium businesses, and a self-review guide for medium to large business in relation to the goods and services tax (GST) treatment of food and health products. This guidance has issued in the context of the supply of food and health products, but is of use to any business, i.e. manufacturers, wholesalers, retailers etc, that undertake high-volume, low-value transactions where GST classification errors can lead to significant under-reporting of GST.

The checklists each provide practical, step-by-step guidance on how a business can:

- self-review the GST classification of its supplies (products it purchases as stock, or import, or produce for sale); and
- assess the robustness of its business systems, processes and controls that directly impact its GST classification decisions.

Although the use of either guide is not mandatory, the ATO encourages regular self-review of the GST classification of supplies, and the adoption of better practice processes and controls listed in each respective checklist/guide. It is considered better practice to assess GST classification processes and controls annually.

Draft GST determination on supplies of sunscreen

The ATO has released draft GST Determination GSTD 2024/D2, which explains the Commissioner's preliminary view on when a supply of a sunscreen product is GST-free.

According to the draft Determination, a supply of a product that contains sunscreen is GST-free if that product is of a kind of sunscreen preparation for dermal application, with SPF of 15 or more, that is required to be included on the Australian Register of Therapeutic Goods (ARTG) and is marketed principally for use as a sunscreen.

Sunscreen preparations may be in various forms, including creams, lotions, gels, balms, oils or mousses and be packaged in bottles, tubes, pump packs, sprays or sticks. However, supplies of products with an SPF of less than 15 are not GST-free.

In determining whether a product is of a kind marketed principally for use as sunscreen, it is necessary to consider the kinds of sunscreens that are marketed principally for use as sunscreens. The marketed use of a product is to be determined objectively, having regard to what a reasonable observer would understand from the content of the marketing. The draft Determination contains a table which lists common terms and features used in the marketing of sunscreen products and assists in determining whether a product is of a kind principally marketed for use as a sunscreen.

The draft Determination replaces two product classification issues listed in the Pharmaceutical Health Forum concerning sunscreen preparations for dermal application and when sunscreen preparation is marketed principally as a sunscreen, as the ATO's views in GSTD 2024/D2 are consistent with those expressed in the issues register.

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

Comments on the draft determination can be made by 13 September 2024.

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Personal Tax Update

Personal Tax Update

The Australian Taxation Office (ATO) has updated its guide to employees for work expenses which has been designed to help an employee to decide whether an expense is deductible. This Guide explains:

- how to determine if an expense is deductible against employment income
- how to apportion expenses if they are only partly deductible
- how to work out whether a deduction can be claimed in the year it is incurred or whether it is claimed as a decline in value over a number of years, and
- what records are needed to be kept to substantiate the deduction.

Some new issues that employees should be aware of for the 2023-24 income year include:

- Practical Compliance Guideline PCG 2024/2 which sets out guidance for work-related claims relating to electric vehicle home charging.
- Taxation Ruling TR 2024/3 which sets out the ATO's views for deductibility of self-education expenses.

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State Tax Update

State tax maps

Given recent changes to the Duties landscape, PwC's Australian Stamp Duty and Land Tax Maps have been updated. These maps provide an overview of the stamp duty and land tax rates for each State and Territory of Australia as of 1 August 2024.

Western Australia: First home duty concessions now law

The Duties Amendment (First Home Owner Concessions) Bill 2024 (WA), which gives effect to the Western Australian (WA) 2024-25 Budget proposal to increase the first home owner duty concession has been passed by both Houses of Parliament. Under these measures:

- properties valued up to $450,000 are exempt from transfer duty, and
- properties valued between $450,001 and $600,000 receive a duty concession, with duty assessed at a rate of $15.01 per $100 or part of $100 above $450,000.

The changes apply to purchases of established, newly constructed or substantially renovated homes made on or after 9 May 2024 by eligible first home buyers.

Victoria: Duty confirmed on substantially 'one arrangement'

In Oliver Hume Property Funds (Broad Gully Rd) Diamond Creek Pty Ltd v Commissioner of State Revenue [2024] VSCA 175, the Victorian Court of Appeal dismissed an appeal by the taxpayer against a decision of the Victorian Civil and Administrative Tribunal to uphold an assessment to duty in relation to a subscription of shares in a landholder entity.

The taxpayer, a special purpose vehicle established for a property development project, issued 1.8 million shares to 18 investors. The amount of each investment ranged from 2.8% to 11.1% of the available shares, but in total this equated to a 99.99% interest.

The Commissioner assessed the taxpayer to duty on the basis that the investors acquired their interests in the taxpayer via an 'associated transaction', and therefore the acquisition of shares by the investors constituted a 'relevant acquisition' for the purposes of section 78(1)(a)(ii)(C) of the *Duties Act 2000 (Vic)*. Relevantly, acquisitions are 'associated transactions' if they 'form, evidence, give effect to or arise from substantially one arrangement, one transaction or one series of transactions'.

The Court of Appeal granted leave to appeal and concluded that the Tribunal made no error in upholding the assessment. The focus of the language in the definition of 'associated transaction' is not on the individuals concerned, but on the relationship between the acquisitions and the singular 'arrangement' or 'transaction' (or 'series of transactions'). Further, it focuses on the objective terms and circumstances surrounding the acquisitions. It was relevant to consider whether there was some connection or interdependence between the circumstances by which the persons acquired their interests, such that the acquisitions might be characterised as, essentially, 'one' arrangement. In this regard, the Court considered that there were a number of objective interconnecting factors, which together, combined to support a finding that the acquisitions formed, evidenced, gave effect to, or arose from, substantially 'one arrangement' or alternatively 'one series' of transactions. Importantly, these included:

- the common purpose of the transactions and the legal and commercial context in which they were undertaken;
- the timing and sequence of the transactions which reinforced the view that the transactions were interdependent;
- the commonality of parties involved in multiple transactions, suggesting there was a coordinated effort rather than separate unrelated dealings;
- contingent contractual interdependencies where one contract was dependent upon the performance of another; and
- the economic substance of the transaction, not just its legal form.

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NSW: High value land sales reporting to move to eDuties

A recent audit by Revenue New South Wales has identified certain high-value transactions made through the Electronic Duties Return (EDR) that may create a higher risk to solicitors and conveyancers who assess those transactions. To ensure such high-value transactions are assessed correctly and all evidentiary requirements provided, from 8 October 2024 Revenue NSW will require agreements for the sale of land with a dutiable value of $20m or more to be lodged via eDuties. This requirement will be based on the date of lodgement not the date of the agreement / contract for sale (i.e. relevant contracts signed prior to 8 October 2024 will still need to follow this process if they have not been assessed or lodged prior to 8 October 2024). A transitional period from 19 September 2024 will be in place where these transactions can be lodged either through EDR or submitted to Revenue NSW via eDuties for assessment.

This change will target transactions where duty is payable, including both residential and non-residential property. Exemptions and concessions will not, however, be affected, and there will be no change in the lodgment process for such transactions.

NSW: Mixed results for marriage transfer duty exemptions

The New South Wales Civil and Administrative Tribunal has considered two recent cases concerning the transfer of dutiable property, where the taxpayers had claimed exemption from duty for the transfer of residential land where the dwelling was used as a principal place of residence of a married couple, under section 104B of the *Duties Act 1997 (NSW)*.

- In Bo v Chief Commissioner of State Revenue [2024] NSWCATAD 219, the Tribunal found in favour of the taxpayer and revoked the Commissioner's assessment to transfer duty under section 8(1)(a) of the *Duties Act 1997 (NSW)*. Notwithstanding that at the time of the transfer, only the taxpayer lived in the property as her husband had been living in China for work-related reasons, and had been in China for over 12 months, the Tribunal found that the couple had evidenced occupation of the home together with the requisite degree of permanence, such that the home had been their principal place of residence at the time of the transfer.
- In Zhu v Chief Commissioner of State Revenue [2024] NSWCATAD 231, the Tribunal concluded that no exemption under section 104B was available as the married couple had not used the property as their principal place of residence at the time the transfer occurred – they only commenced using the property as such when they moved into the property to reside there, after returning from overseas. The Tribunal did note that, had the married couple already established the property as their principal place of residence, then their absence from the property on the taxing date would not have been relevant, as there is no requirement to 'occupy' for the spousal transfer exemption under section 104B to be available.

Tasmania: Miscellaneous Amendments Bill passes Parliament

The Taxation Legislation (Miscellaneous Amendments) Bill 2024 (Tas) has now completed its passage through the Tasmanian Parliament. The Bill introduces a 50% duty concession to buyers of a new apartment or unit off-plan or under construction valued at up to $750,000 from 1 July 2024 to 30 June 2026. The Bill also makes a consequential amendment to the *Land Tax Act 2000 (Tas)* resulting from the increase in the land tax tax-free threshold.

Superannuation Update

Deductibility of fund payments to cover trustee risk reserves

The Australian Taxation Office has finalised Taxation Determination TD 2024/6, which outlines the Commissioner's views on the deductibility under section 8-1 of the *Income Tax Assessment Act 1997 (ITAA 1997)* of payments that are made by the trustee of a superannuation fund (in its capacity as trustee) to the trustee in its own capacity for the purpose of building up a sufficient reserve to pay any potential penalty that it can no longer be indemnified for by the fund.

From 1 January 2022, the indemnification prohibitions in sections 56 and 57 of the *Superannuation Industry (Supervision) Act 1993 (SISA)* were expanded to prevent a superannuation trustee or a director of a superannuation trustee from using trust assets to pay a criminal, civil or administrative penalty incurred in relation to a contravention of a Commonwealth law.

According to the Determination, a payment by the fund to the trustee will not be deductible to the fund under section 8-1 of the *ITAA 1997* where it is objectively determined on the facts that:

- the trustee is charging the fund the amount for the purpose of building or maintaining a reserve to address the trustee's risk because of the amendments to section 56 of the *SISA*, and
- the amount is charged by the trustee as a lump sum or a number of lump sum instalments or an ongoing amount that is separate and distinct from its existing ongoing and recurrent charges for trustee services.

This view is taken because the payments made by the fund are losses or outgoings of capital, or of a capital nature. Specifically, it is said that the fund is receiving an enduring benefit in respect of the stability of its income-producing structure by enabling the trustee to build a sufficient reserve to meet any applicable risk.

On the other hand, the Determination outlines that a payment by the fund to the trustee will be deductible to the fund under section 8-1 of the *ITAA 1997* where it is objectively determined on the facts that the fund is making a payment to the trustee for trustee services ('trustee fees'). These trustee fees are ongoing and recurrent charges for the services provided by the trustee to the fund, which may be increased from time to time in accordance with the powers and terms of the trustee's engagement to reflect the increased cost of providing its services to the fund.

Where some of the expenditure incurred by the fund relates to gaining or producing exempt income or non-assessable non-exempt income, a fair and reasonable apportionment (as outlined in TR 93/17) will be required by the fund in respect of its deduction.

The Determination was originally released as draft Taxation Determination TD 2023/D3, with changes made following industry consultation to further explain the rationale for the Commissioner's views.

TD 2024/6 is effective both before and after its date of issue.

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Transfer balance account value for certain superannuation income streams

The Income Tax Assessment Amendment (Transfer Balance Account Value for Certain Superannuation Income Streams) Regulations 2024 prescribe the rules for dealing with certain superannuation income streams for the purpose of the transfer balance account provisions within Division 294 of the *ITAA 1997*.

The Regulations prescribe a special value for transfer balance account reporting purposes and provide for a transfer balance debit to arise when these superannuation income streams cease, and the cessation does not otherwise result in a transfer balance debit.

The Regulations apply to certain non-lifetime permanent incapacity pensions that scheme trustees had not reported as a superannuation income stream because they did not meet relevant legislative criteria prior to the government's legislative response to the Federal Court decision in *Commissioner of Taxation v Douglas [2020]* FCAFC 220. The Regulations apply where the scheme trustee has not reported to the Commissioner for transfer balance cap purposes prior to the commencement of the regulations. These pensions have subsequently been prescribed as capped defined benefit income streams and are superannuation income streams as a result of the Government's legislative response to the *Douglas* decision.

The Regulations have retrospective operation, as it is necessary to prescribe a special value to determine the transfer balance credit that is to be used for the purpose of the transfer balance provisions, which commenced 1 July 2017. It is also necessary, for the purposes of the Regulations, to apply the transfer balance debit to relevant pensions that may have ceased prior to the commencement of the Regulations, in accordance with the government's legislative response to the *Douglas* decision.

Legislative Update

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

- The Paid Parental Leave Amendment (Adding Superannuation for a More Secure Retirement) Bill 2024, which was introduced into the House of Representatives on 22 August 2024, 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 per cent. The Bill also makes a minor technical amendment to the *Fair Work Act 2009* relating to unpaid parental leave.

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

- The Customs Licensing Charges Amendment Bill 2024 and Customs Amendment (Strengthening and Modernising Licensing and Other Measures) Bill 2024, among other matters, streamline processes and requirements for the licensing regime for customs brokers, depots and warehouses, and enable the digitisation of certain applications and forms.

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

- The Petroleum Resource Rent Tax Assessment Regulations 2024, registered 6 August 2024, remake the *Petroleum Resource Rent Tax Assessment Regulation 2015*, which were due to sunset on 1 April 2026. The 2024 Regulations make various minor changes to update the drafting of the 2015 Regulation, as well as substantive changes that align with the Treasury Gas Transfer Pricing Review. For further information, see Corporate Tax Update.
- The Income Tax Assessment Amendment (Transfer Balance Account Value for Certain Superannuation Income Streams) Regulations 2024, registered 16 August 2024, prescribes rules for dealing with certain superannuation income streams for the purpose of the transfer balance account provisions in Division 294 of the *Income Tax Assessment Act 1997*. For further information, refer to Superannuation Update.
- The Location Offset Amendment Rules 2024, registered 19 July 2024, amend the *Location Offset Rules 2018* to reference additional conditions that need to be met to be eligible to receive the Location Offset so that it is consistent with the provisions in Division 376 of the *Income Tax Assessment Act 1997*. The Rules commence 1 October 2024. The Location Offset entitles eligible applicants to a tax offset on qualifying Australian production expenditure of films.
- The Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Lebanon and Zimbabwe) Determination 2024 and the accompanying Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Lebanon and Zimbabwe) Determination 2024, both registered 30 July 2024 with retrospective effect, create new Indirect Tax Concession Scheme (ITCS) packages for Lebanon and Zimbabwe by providing indirect tax concessions to their diplomatic missions and consular posts in Australia, respectively, and accredited staff.
- The Customs (International Obligations) Amendment (Australia–Timor-Leste Defence Cooperation Agreement) By-Law 2024, registered 2 August 2024, amends the *Customs (International Obligations) By-Laws 2023* to prescribe new goods, including personal effects, furniture and household goods (but not cigarettes, cigars, tobacco, and spirituous liquors) and a motor vehicle imported into Australia by members of a Timor-Leste Visiting Force or a dependant of a member, to be eligible for the concessional customs duty rate of "Free", provided relevant conditions are met.

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Other News Update

Four-year amendment window proposed for small and medium businesses

The Treasury has released exposure draft legislation to increase the period for small and medium businesses to apply to have an income tax assessment amended from two to four years.

Currently, the standard limitation period in which the Commissioner of Taxation can amend an assessment of a small and medium business entity (either on application by the entity or under the Commissioner's own initiative) is two years. After expiry of the limitation period, the Commissioner generally cannot amend the assessment under the amendment process.

The draft legislation proposes to allow the Commissioner, on application by the taxpayer, to amend an assessment of an individual, company or a person in their capacity as trustee of a trust estate, where the taxpayer is a small or medium business entity, within four years after the day on which the Commissioner gives notice of the assessment to the taxpayer.

If legislated, the four-year amendment period would apply in relation to assessments issued for income years starting on or after 1 July 2024. Comments on the draft law closed 9 August 2024.

Non-resident trusts: Draft ATO guidance on section 99B compliance approach

The Australian Taxation Office (ATO) has issued draft Practical Compliance Guideline PCG 2024/D1, which provides taxpayers with guidance on the ATO's approach to the application of section 99B of the *Income Tax Assessment Act 1936* (*ITAA 1936*) in relation to arrangements where the property of a non-resident trust is paid to or applied for the benefit of a resident beneficiary.

By way of background, when section 99B of the *ITAA 1936* applies it operates to include an amount of trust property paid to, or applied for the benefit of, a resident beneficiary of a trust, subject to certain legislated exceptions.

The Guideline aims to provide clarity on:

- common scenarios where section 99B may need to be considered
- the practical aspects of record keeping evidencing that an exception in subsection 99B(2) applies to reduce the amount that section 99B would otherwise include in assessable income, and
- the ATO's compliance approach to distributions and benefits which it considers to be low risk, and the record keeping expected to substantiate this.

Draft PCG 2024/D1 includes common scenarios in which section 99B may need to be considered, including instances where:

- a non-resident migrates to Australia
- a resident beneficiary receives a distribution, gift, or loan
- a trustee allows a resident beneficiary to use non-resident trust property
- a beneficiary receives an amount from a deceased estate,
- a resident beneficiary receives a loan which is later forgiven.

The draft PCG also outlines the ATO's compliance approach in respect of two common scenarios where section 99B of the *ITAA 1936* may apply, namely in respect of deceased estates and the provision of trust property on commercial terms.

Let's talk

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In relation to distributions from a non-resident deceased estate, the ATO will consider the arrangement low risk where the trustee (executor) distributes an amount or benefit of trust property from a non-resident deceased estate of a deceased who was a non-resident at their date of death, to a resident beneficiary and each of the following criteria are satisfied:

- The trust property, including cash or proceeds from the sale of trust assets is distributed to the resident beneficiary within 24 months of the date of death.
- The total value of trust property received, whether in multiple payments or in one lump sum payment, by the resident beneficiary does not exceed A$2m at the time the amount is paid or applied to the resident beneficiary.

In relation to the provision of trust property, the ATO will consider an arrangement to be low risk where the non-resident trust provides trust property to a resident beneficiary as part of an agreement for the beneficiary to borrow, hire or use that property on commercial terms and each of the following are satisfied:

- The borrowing, hire or use of the trust property is subject to an agreement, whether written or verbal.
- The agreement is made on commercial terms.
- The resident beneficiary makes a physical payment to the trustee equal to the interest, hire or use per the commercial terms.

Where the arrangement does not meet the outlined criteria, it does not necessarily mean that section 99B of the *ITAA 1936* applies, but the ATO may engage with the taxpayer to better understand the arrangement, including whether an exception to section 99B applies.

Once finalised, the Guideline is proposed to apply both before and after its date of issue. Comments closed 28 August 2024.

Draft Determination on section 99B hypothetical resident taxpayer tests

Paragraphs 99B(2)(a) and 99B(2)(b) of the *ITAA 1936* exclude certain amounts of trust property paid to, or applied for the benefit of, resident beneficiaries from being assessed under subsection 99B(1) and depend upon specific tests, referred to as the hypothetical resident taxpayer tests.

Draft Taxation Determination TD 2024/D2 sets out the ATO's view on whether the following are relevant in applying the hypothetical resident taxpayer tests:

- characteristics of the hypothetical taxpayer other than residency
- in determining whether an amount would be assessable, the circumstances that gave rise to the relevant amount in the hands of the trustee, and
- the source of the amount paid or applied to the beneficiary.

The draft Determination states that for the purposes of the hypothetical resident taxpayer tests, the only characteristic of the hypothetical taxpayer is that they are an Australian resident. Further, in applying the hypothetical resident taxpayer tests to determine whether or not an amount would be assessed to the hypothetical taxpayer, it is necessary to consider the circumstances that gave rise to the relevant amount in the hands of the trustee.

The ultimate source of the amount paid or applied to the beneficiary is also taken into account in determining whether it is 'attributable to' amounts which would be assessed in the hands of a hypothetical resident taxpayer for the purposes of paragraph 99B(2)(a) or whether an amount 'represents' an amount that would not have been assessable if derived by the hypothetical resident taxpayer for the purposes of paragraph 99B(2)(b).

The draft Determination also includes examples to illustrate these points.

When the final Determination is issued, it is proposed to apply both before and after its date of issue. Comments on the draft closed 28 August 2024.

Clarification on collection and recovery of disputed debts

The ATO has updated Practice Statement Law Administration PS LA 2011/4 to clarify that it is the ATO's expectation that large businesses and some wealthy group taxpayers with a disputed debt pay their debt in full or enter into a 50/50 arrangement. Where a large business or wealthy group taxpayer does not do so, the ATO may take action to secure payment of the disputed debt before the dispute is resolved.

Under a 50/50 arrangement, the taxpayer pays a minimum of 50% of the disputed principal tax debt. In return, and subject to certain conditions, the Commissioner defers recovery of the balance of the disputed debt and agrees to partially remit the general interest charge (GIC) that would otherwise be payable.

PS LA 2011/4 defines a large business and wealthy group taxpayer as a taxpayer that is a:

- member of a group with a turnover of greater than $250m
- member of a private group with over $250m in net assets, or
- significant global entity.

Such groups can include Australian public and private businesses, majority foreign-owned businesses, and private equity arrangements.

ATO's Corporate Plan 2024-25

The ATO's corporate plan 2024-25 provides coverage of the functions of the ATO, the Tax Practitioners Board (TPB) and the Australian Charities and Not-for-profits Commission (ACNC) - the first corporate plan that explicitly brings these three functions together.

From the ATO perspective, as noted in his address to ATO employees at the corporate plan 2024-25 launch, Commissioner of Taxation, Rob Heferen, noted that, above all, the ATO will aim to collect the right amount of tax, in accordance with the law, in the most efficient way for government and the taxpayer, and that the 2024-25 plan ensures the ATO's core foundation as Australia's principle tax collector is at the centre of all that it does.

Among other matters, the 2024-25 corporate plan lays out the ATO's strategic priorities and flags key risks for the year ahead. It highlights six key activities that support the ATO to deliver on its core commitments to government and community. Central to this is efficiently collecting the right amount of tax in a way that is well designed, tailored, transparent, and easy.

The corporate plan also highlights six focus areas for the ATO, including:

- strengthening debt collection
- enhancing counter fraud measures
- sustaining multinational and large taxpayer performance
- enhancing the ATO's cybersecurity
- strengthening the value of data and digital, and
- blueprinting a future small business digitalised tax experience.

Administrative Review Tribunal commencement date

The Attorney-General's Department has announced that the Administrative Review Tribunal (ART) will commence operations on 14 October 2024. The ART is a federal review body that replaces the Administrative Appeals Tribunal (AAT), as legislated by the new *Administrative Review Tribunal Act 2024* earlier this year.

The ART's objective will be to provide administrative review that:

- is fair and just
- resolves applications in a timely manner, with as little formality and expense as possible
- is accessible and responsive to the diverse needs of parties
- improves the transparency and quality of government decision-making, and
- promotes public trust and confidence in the Tribunal.

All matters currently before the AAT will continue as usual and will automatically transition to the ART upon its commencement. Those who have applied to the AAT for review of a decision do not need to submit a new application, and all AAT decisions that have already been finalised will not be considered again by the ART.

Editorial

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

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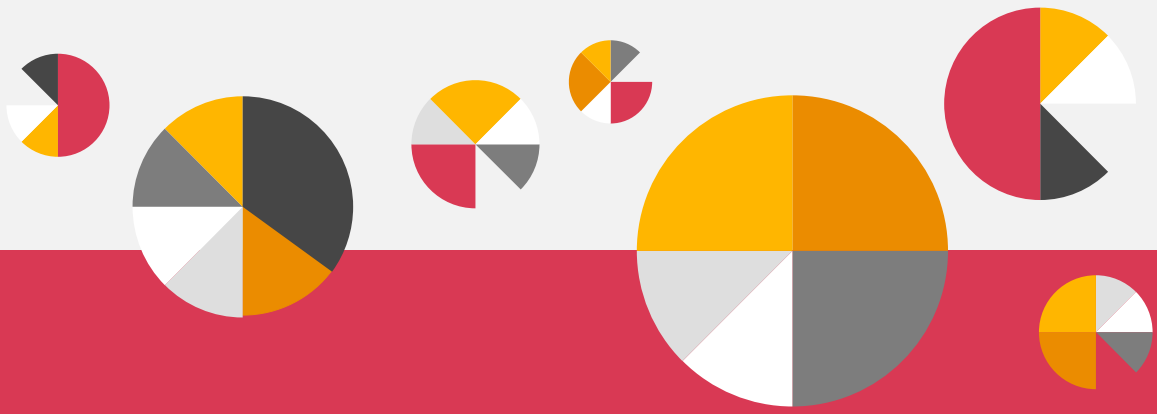

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