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# PwC's Monthly Tax Update

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

August 2021



# Corporate Tax Update

## Treasury consultation on Patent Box regime

Federal Treasury has commenced its [consultation](#) on the proposed design of the Patent Box regime for the medical and biotechnology sectors that was announced as part of the 2021-22 Federal Budget. This proposal is designed to encourage innovation in Australia by taxing corporate income derived from certain patents at a concessional effective corporate tax rate of 17 per cent. The patent box concession is proposed to apply from income years starting on or after 1 July 2022.

As part of the consultation process, Treasury has released a [discussion paper](#) setting out the key design features of the Patent Box regime and providing a number of questions for stakeholder input. Stakeholders in the clean energy sector are also asked to provide input on incentives to support growth in clean energy technology.

Submissions in response to the consultation are due by 16 August 2021. The Government intends to issue exposure draft legislation following the consultation.

## Board of Taxation review into R&D incentive administration

As announced in the 2021-22 Federal Budget, the Board of Taxation is conducting a [review](#) to evaluate the dual-agency administration model for the Research & Development (R&D) Tax Incentive administered by both the Australian Taxation Office (ATO) and Industry Innovation and Science Australia. The Board has now released a [consultation guide](#) setting out the consultation process for the review, and raising a number of consultation questions. The Board is holding roundtable consultation meetings, and written submissions can be made until 15 September 2021.

## Guidance on deemed dividend rules for private companies

The ATO has issued the following in relation to the application of the deemed dividend rules (Division 7A of the *Income Tax Assessment Act 1936* (Cth)), which apply to private companies:

- The [benchmark interest rate](#) for Division 7A purposes for the 2021-22 income year for Division 7A purposes which remains at 4.52 per cent per annum. This benchmark interest rate is relevant to determine if a private company loan made in the 2021-22 income year is taken to be a dividend, and to calculate the amount of the minimum yearly repayment for the 2021 income year on an amalgamated loan taken to have been made prior to 1 July 2021.
- Updated Practical Compliance Guideline [PCG 2017/13](#) which deals with the repayment of unpaid present entitlements (UPEs) owing from a trust to a private company beneficiary to extend its application to sub-trust arrangements maturing in the 2021 income year. The updated guideline extends the application of the ATO's pre-existing guidance ([PS LA 2010/4](#) Division 7A: trust entitlements) to seven-year sub-trust arrangements so that it applies to those maturing in the 2021 income year. The ATO has confirmed that if the principal of the loan is not repaid on or before the date of maturity, a seven-year Division 7A complying loan agreement may be put in place between the trust and the private company beneficiary.

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# Employment Taxes Update

## Reminder – Superannuation guarantee obligations have increased

Employers should note that from 1 July 2021, the prescribed superannuation guarantee (SG) rate increased to 10 per cent (from the previous rate of 9.5 per cent). This increase means employers must contribute an additional half per cent to meet their SG obligations, subject of course to any separate requirements for specific organisations to contribute beyond the statutory rate (e.g. contractually agreed terms or enterprise agreements which may require a higher rate of contribution).

## New draft guidance for remission of penalties relating to the SG charge

The Australian Taxation Office (ATO) has released a draft practice statement ([PS LA 2021/D1](#)) which outlines the Commissioner's revised approach in relation to the remission of additional SG charge imposed under Part 7 of the *Superannuation Guarantee (Administration) Act 1992* (Cth).

This draft PS LA is intended to combine the principles in PS LA 2020/4 (which only applied to quarters ending on or before 31 March 2018) with the revised remission principles for quarters commencing from 1 April 2018.

Under PS LA 2021/D1, the ATO expectation is that minimum penalties of 100 per cent of the SG charge will apply where an employer did not come forward voluntarily and it took ATO compliance action for

them to disclose the SG shortfall. Voluntary disclosures made after the SG charge statement due date but prior to the commencement of ATO compliance action may still attract base penalties of up to 40 per cent of the SG charge, depending on the taxpayer's circumstances, including their compliance history, other mitigating factors and any exceptional circumstances.

A key inclusion within the new draft PS LA is the intention to limit the remission of penalties where an employer's compliance behavior in relation to SG obligations is not improving. Employers will need to be more proactive in assessing compliance to avoid an SG charge arising 28 days following the end of a particular quarter. This emphasises the importance of revisiting existing processes and controls in relation to SG compliance.

Comments can be made to the ATO on PS LA 2021/D1 up until 27 August 2021.

## NSW COVID-19 payroll tax support

The New South Wales (NSW) Government has [announced](#) payroll tax waivers of 25 per cent for businesses with total grouped Australian wages of between AUD 1.2 million and AUD 10 million that experience a 30 per cent or more decline in turnover as a result of lockdowns in response to COVID-19. Revenue NSW advises on its [website](#) that more information will be provided by the end of August 2021.

The due date for annual payroll tax reconciliations has been extended along with payment deferrals for the July and August monthly payroll tax liabilities to

7 October 2021 and interest free repayment plans available.

## Reasonable travel and meal allowances for the year ending 30 June 2022

The ATO has released [TD 2021/6](#), in which the Commissioner has set out the amounts considered to be reasonable for the 2021–22 income year where an allowance is paid to the employee in respect of:

- overtime meal expenses — for food and drink when working overtime
- domestic travel expenses — for accommodation, food and drink, and incidentals when travelling away from home overnight for work (particular reasonable amounts are given for employee truck drivers, office holders covered by the Remuneration Tribunal and Federal Members of Parliament), and

- overseas travel expenses — for food and drink, and incidentals when travelling overseas for work.

This Tax Determination should also be considered by employers when assessing whether any PAYG withholding is required to be calculated and remitted to the ATO on travel allowances paid to employees in respect of the above expenses.

## Queensland: Extension of payroll tax rebate

The Queensland Commissioner of State Revenue has released [Public Ruling PTAQ000.5.1](#) which provides for the extension of a 50 per cent wage rebate for apprentices and trainees for payroll tax purposes. The administrative arrangement was announced as part of the 2021-22 Queensland Budget and provides an extension of the rebate for a further 12 months to wages paid in the financial year ending 30 June 2022.

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# Global Tax Update

## 130 countries agree on new international tax framework

130 member countries of the Organisation for Economic Cooperation and Development (OECD) and Group of 20 (G20) Inclusive Framework on Base Erosion and Profit Shifting (BEPS) have [agreed](#) to a new two-pillar plan to reform international taxation rules. The two-pillar approach has been endorsed by the G20 Finance Ministers and Central Bank Governors which some may see as having provided the requisite political support for the overall design of the proposals.

The two-pillar plan is directed at large multinational enterprises (MNEs) to ensure that they are subject to taxation in countries where they operate and

derive profits. Under Pillar One, a share of the consolidated profit of multinational enterprises will be allocated to countries where sales arise based on a reallocation of 20 per cent of profit above a 10 per cent profit margin. Under Pillar Two, a global minimum effective tax rate of 15 per cent will be implemented to put a floor on competition over corporate income tax.

Inclusive framework members still need to reach agreement on several critical aspects of the proposal. This next phase involves technical discussions around how the rules will work in practice. The remaining technical work, including an implementation plan is intended to be finalised by October 2021 with Pillar One and Pillar Two intended to come into effect in 2023.



Refer to PwC's [Tax Policy Alert](#) on the two-pillar approach and PwC's [Tax Policy Alert](#) on the endorsement of the two-pillar approach for more details.

## Extended transitional compliance approach for corporate residency

The Australian Taxation Office (ATO) has updated [Practical Compliance Guideline PCG 2018/9](#) which deals with identifying the central management and control of a foreign incorporated company for residency purposes. The update has extended the transitional compliance approach provided to companies that are taking active and timely steps to change their governance arrangements under which the ATO will not allocate compliance resources to those companies to disturb their foreign residency status. This compliance approach has been extended to 31 December 2021 for taxpayers with a 31 December year end and 30 June 2022 for taxpayers with a 30 June year end.

## Transfer pricing and local file instructions and lodgment for 2021

The ATO has released the [local file instructions](#) for the 2021 local file as part of a taxpayer's country-by-country (CBC) reporting obligations. Updates to the instructions include, among other things, instructions for new fields (including a new question on whether debt interests are interest free), highlighting reporting rules for capital amounts for derivatives and debt interests (including loans and borrowings), and expanded instructions for foreign currency deferred payment arrangements. The ATO has confirmed that 31 December 2020 early balancing entities have additional time until 30 August 2021 to lodge Part A of their 2021 local file if they indicate in their tax return they are taking up the local file administrative solution (ie the entity does not need to complete questions 2 to 17 of the International dealings schedule 2021 (IDS)).

The income tax return and all other relevant sections of the 2021 IDS must still be lodged by the relevant due date.

## European Union proposes climate change policies

The European Union (EU) has proposed a [package of measures](#) to make the EU's climate, energy, land use, transport and taxation policies fit for reducing net greenhouse gas emissions by at least 55 per cent by 2030. In addition to a revised Emissions Trading Scheme (ETS) and an amended Energy Taxation Directive (ETD), there is also a proposed [Carbon Border Adjustment Mechanism](#) (CBAM) that will impose a carbon price on imports of a targeted

selection of products (eg cement, iron and steel, aluminium, fertiliser and electricity) to ensure an equivalence between the carbon pricing policy applied in the EU's internal market and the carbon pricing policy applied on imports from non-EU countries, such as Australia. Refer to PwC's [Tax Policy Alert](#) for more details.

## Tax revenues in Asia and the Pacific

The OECD released its [Revenue Statistics in Asia and the Pacific 2021](#) which shows that the average tax-to-GDP ratio for the 24 economies in the Asia-Pacific region covered by the report was 21.0 per cent in 2019 (the OECD average is 33.8 per cent). The report shows that on average, taxes on goods and services are the main source of tax revenues in the Asia-Pacific region (49.8 per cent) and in relation to taxes on income and profits, Asian economies tend to be more reliant on corporate income tax while Pacific economies are more reliant on personal income taxes.

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# Indirect Tax Update

## Review into low value imported goods measure

The Government has announced that the Board of Taxation will [review](#) the Goods and Services Tax (GST) measure facilitating the collection of GST on low value imported goods. The low value imported goods measure, which has applied since 1 July 2018, requires suppliers, online platforms and re-deliverers to register, collect and remit GST to the Australian Taxation office on imported goods that cost AUD 1,000 or less. The Board has been asked to assess the effectiveness of the low value imported goods measure and report on and assess any international developments and experiences.

Stakeholders are invited to provide early feedback by way of email on key issues with the Board's final report due by 17 December 2021.

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# Personal Tax Update

## COVID-19 support measures for individuals

The Commonwealth Government has announced changes in the way in which the Commonwealth will provide income support through the COVID-19 Disaster Payment. Under the [arrangements](#) which apply uniformly from 15 July 2021, income support will be provided to those who work or live in the areas declared as a Commonwealth Hotspot (with income support outside of these areas provided where requested and at the cost of the State or Territory Government).

Under those initial arrangements, individuals will be eligible for the COVID-19 Disaster Payment if they have lost between 8 and less than 20 hours of work for a payment of AUD 375, and for 20 or more hours of work for a payment of AUD 600, during the period of the lockdown. There will be no liquid assets test applied to eligibility for these payments.

In a subsequent development, the Government [announced](#) a significant expansion of the support to be provided from **2 August 2021**, where the rate of payment will increase again such that eligible workers will receive AUD 750 per week if they lose 20 hours or more of work while those that lose between 8 and less than 20 hours, or a full day of work, will receive a payment of AUD 450 per week. Eligibility will also be expanded so that individuals who currently receive an income support payment through the social security safety net will receive a weekly payment of AUD 200, in addition to their existing payment, if they can demonstrate they have lost more than 8 hours of work and meet the other eligibility requirements for the COVID-19 Disaster Payment.

Applications may be made through the myGov website.

## ATO urging taxpayers to keep records of charitable donations

The Australian Taxation Office (ATO) has put taxpayers on [notice](#) that they should have records of all gifts and donations that they are claiming as a deduction. The ATO also set out four key reasons why a donation or gift may not be tax deductible including:

- giving to an organisation that is not a Deductible Gift Recipient
- Receiving or expecting to receive a monetary or personal benefit (such as a raffle ticket or chocolate);
- not maintaining records of the donation or gift, and
- claiming a deduction for a donation intended to be made in a will or for workplace giving that has already reduced the amount of tax paid.

## Defence personnel tax exemption

The [Income Tax Assessment \(1936 Act\) Amendment \(Operations Paladin and Augury Eligible Duty\) Regulations 2021](#) provide for pay and allowances earned by Australian Defence Force Personnel serving as party of Operations Paladin to be exempt from income tax as 'eligible duty' for the purpose of section 23AD of the *Income Tax Assessment Act 1936* (Cth). It also expands the eligible area for Operation Augury to include Iraq and Syria.

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# State Taxes Update

## NSW COVID-19 support measures

The New South Wales (NSW) Government has announced a number of economic support measures for businesses and individuals as a result of the COVID-19 lockdown.

A key component of the early relief provided is the [COVID-19 2021 Business Support Grant](#) which is available from the NSW Government to eligible NSW businesses, including sole traders and not-for-profit organisations, who can apply for a one-off grant of:

- AUD 7,500 for businesses that have experienced a decline in turnover of 30 per cent or more
- AUD 10,500 for businesses that have experienced a decline in turnover of 50 per cent or more, or
- AUD 15,000 for businesses that have experienced a decline in turnover of 70 per cent or more.

There are a number of eligibility criteria required to be satisfied including the requirement to have total annual Australian wages of AUD 10 million or less as at 1 July 2020, an aggregated turnover between AUD 75,000 and AUD 50 million for the year ended 30 June 2020 and to have experienced the requisite decline in turnover over a minimum two week period (compared to the same period in 2019). Eligible businesses must also maintain their employee headcount as at 13 July 2021 for the period that the business is receiving payments.

Applications for the business support grant opened on 19 July 2021 and will close on 13 September 2021.

There is also a [Micro Business Support Grant](#) of AUD 1,500 per fortnight available for eligible businesses with a turnover of between AUD 30,000 and AUD 75,000 that experience a decline in turnover of 30 per cent or more.

In addition, under the [JobSaver program](#) (as [extended](#) on 28 July 2021 under joint relief provided by the Federal Government) eligible businesses can apply to receive tax free payments of 40 per cent of their weekly payroll with a minimum payment of AUD 1,500 per week and maximum of AUD 100,000 per week. Eligible businesses with no employees will receive AUD 1,000 per week. An eligible business must have experienced a decline in turnover of at least 30 per cent over a minimum two-week period within the Greater Sydney lockdown (which commenced 26 June 2021) compared to the same period in 2019, have aggregated turnover of between AUD 75,000 and AUD 250 million

(inclusive) for the year ended 30 June 2020 and maintain employee headcount as at 13 July 2021 for the period for which the business is receiving payments under the grant. These payments will be made fortnightly. Applications opened on 26 July 2021 and will close on 18 October 2021.

Other relief measures include:

- payroll tax waivers of 25 per cent for businesses with Australian wages between AUD 1.2 million and AUD 10 million that have experienced a 30 per cent decline in turnover
- payroll tax deferrals and interest free repayment plans
- land tax relief (see further below for details)
- a short term eviction moratorium for residential tenants who suffer a loss of income of 25 per cent as a result of COVID-19, and
- a deferral of gaming tax assessments for clubs and hotels (see further below for details).

## Victoria COVID-19 support measures

The Victorian government has announced a number of measures to support eligible small to medium businesses affected by COVID-19 and the July 2021 lockdowns (see [16 July business support](#) and [21 July business support](#)). These new announcements build on programs announced during lockdowns earlier this year.

- Eligible *Licensed Hospitality Venue Fund* recipients will automatically receive a total payment of AUD 7,200, while *Business Costs Assistance Program* recipients will automatically receive a total grant of AUD 4,800. Businesses that had chosen not to apply for these support programs when they were previously available, or had been ineligible to apply but are now eligible, are able to apply for July lockdown support payments
- Alpine hospitality, retail, accommodation and experience operators that were eligible for grants of up to AUD 15,000 will receive an extra AUD 3,000 on top of any entitlements under the *Licensed Hospitality Venue Fund or Business Costs Assistance Program*
- Eligible public events and public events suppliers affected by the lockdown will receive support of up to AUD 25,000 and AUD 10,000 respectively through an extension of the *Impacted Public Events Support Program*



- A new round of the *Live Performance Support programs*, with funding of up to AUD 7,000 for presenters and up to AUD 2,000 for suppliers
- A new round of the *Sporting Clubs Grants Program* will provide AUD 2,000 grants for community sport and active recreation organisations for events that have been unable to proceed or will have to be cancelled or postponed.

## South Australia COVID-19 business support

The South Australian (SA) Government will provide AUD 3,000 emergency cash [Business Support Grant](#) to eligible small and medium-sized businesses who have suffered at least a 30 per cent reduction in turnover in the week of 20 to 26 July 2021 (inclusive) (compared to the prior week) due to restricted trading conditions as a result of the state's COVID-19 lockdown. Eligible businesses must have an annual turnover of at least AUD 75,000 in 2020-21 or 2019-20, employ people in South Australia, and have an Australia-wide payroll of less than AUD 10 million in the 2019-20 financial year. Otherwise eligible small businesses who do not employ staff (i.e. sole traders) may be eligible for a grant of AUD 1000.

Applications for the Business Support Grant must be submitted by 30 September 2021.

## Amendments to Tasmanian stamp and land tax

The Tasmanian Parliament has passed the [Treasury Miscellaneous \(Cost of Living and Affordable Housing Support\) Act 2021](#) which gives effect to the 2021 Tasmanian election promises and provides for increased stamp duty concessions, land tax concession and first home buyer concessions, including:

- an exemption from stamp duty for the purchase of electric and hydrogen fuel cell vehicles from 1 July 2021 to 1 July 2023
- an increase to the dutiable value of property eligible for the First Home Buyer and Pensioner Duty concessions to AUD 500,000 from 16 March 2021
- an increase to the first home owner grant to AUD 30,000 from 1 April 2021 to 30 June 2022
- an increase to a number of land tax rate thresholds
- allow the Commissioner of State Revenue to accept payment of land tax in three instalments where the amount of land tax payable in any financial year exceeds AUD 500; and

- a reduction in the premium rate of interest charged on unpaid tax to 4 per cent from 8 per cent.

These measures are to commence on 1 July 2021, with the exception of the amendments to the First Home Buyer Duty concession and the Pensioner Duty Concession, which are to apply retrospectively from 16 March 2021 and the amendments to the First Home Owner Grant, which are to apply retrospectively from 1 April 2021.

## COVID-19: NSW land tax relief for COVID-19

The NSW Government has introduced measures to provide land tax relief to eligible landowners providing rent reductions to tenants impacted by COVID-19 from 1 July 2021 and Revenue NSW has released [guidelines](#) on these measures.

An eligible landowner with a commercial lease that provides a rent reduction to a tenant experiencing financial distress as a result of COVID-19 can receive a reduction of land tax payable for the 2021 land tax year. The land tax reduction available is the lesser of the amount of the rent reduction provided to an eligible tenant between 1 July 2021 and 31 December 2021 or 100 per cent of the land tax attributable to the parcel of land leased to that tenant. The guidelines released by Revenue NSW outline the eligibility criteria and application process to access the relief.

For residential landlords, the NSW Government has [announced](#) a Residential Tenancy Support Payment for eligible landlords of properties tenanted in NSW where rent reductions have been given to tenants impacted by the COVID-19 lockdown. Eligible landlords can either apply for a [grant](#) of up to AUD 1,500 or a reduction of up to 100 per cent of their 2021 land tax year liability (as noted above for commercial leases).

## COVID-19: NSW deferral of gaming machine tax

As part of the COVID-19 support measures announced by the NSW Government, Revenue NSW will [defer](#) the due date for gaming machine tax payable by clubs and hotels. For clubs, the gaming machine tax for the period 1 June 2021 to 31 August 2021 will be deferred to 21 December 2021 and for hotels, the gaming machine tax for the period 1 April 2021 to 30 September 2021 will be deferred to 21 January 2022. The deferred payment date will be automatically available.

## NSW land tax: Ruling on land subject to a life interest

Revenue New South Wales has released [public ruling LT 110](#) which considers the land tax liability of owners of land who have a limited estate in land consisting of a life estate, or an interest in reversion or remainder. The ruling also explains the different outcomes resulting when an interest in the land is held by a company, a fixed trust or a special trust, and application of an exemption when the land is used and occupied as a principal place of residence. The ruling is effective from 1 April 2021.

## NSW surcharge land tax

The NSW Civil and Administrative Tribunal found in [Horn-Smith v Chief Commissioner of State Revenue](#) [2021] NSWCATAD 196 that the appellant was liable to pay surcharge land tax on his property at Mosman in NSW for the 2017 to 2020 land tax years. This was on the basis that the appellant was deemed to be a 'foreign person' for the purposes of the *Land Tax Act 1956* (NSW). The appellant had resided in Australia permanently since 2010 and was in Australia for more than 200 days for each of the relevant land tax years, however he was and is a British Citizen holding a New Zealand visa.

## Victorian land tax applied to primary production land in an urban zone

The Victorian Supreme Court has upheld the assessments of land tax on land used by a family trust for a primary production business in the case of [Lotus Oaks Pty Ltd as trustee for Bozzo Family Trust v Commissioner of State Revenue \(Vic\)](#) [2021] VSC 388. In the relevant years the land was used to cultivate crops for sale and for residential property development. For land wholly or partly in an urban zone in greater Melbourne, to access the land tax exemption, section 67 of the *Land Tax Act 2005* (Vic) requires that firstly the land must be used solely or primarily for the business of primary production and furthermore in the case of land owned by a discretionary trust, the principal business of the trustee of the discretionary trust must be primary production of the same type as is carried on on the land, and secondly (section 67D of the *Land Tax Act 2005* (Vic)), a specified individual

beneficiary of the trust must be normally engaged in a substantially full-time capacity in the business of primary production of the type carried on on the subject land.

Over the relevant period, the appellant conducted the business of cultivating crops for sale, but it also conducted major businesses of residential subdivision, animal husbandry through the breeding and fattening of cattle and sheep, and the sale of wool. By 31 December 2014, residential subdivision was a rapidly growing and profitable business of the appellant and remained the appellant's most important and profitable business throughout the relevant period. Accordingly the Court has not satisfied on the evidence available that the appellant has discharged its onus of proof, or shown on the balance of probabilities, that primary production of the type carried on on the subject land (i.e. the cultivation of crops for sale) was the principal business of the trust at the relevant times.

Furthermore, the Court was not satisfied that the specified beneficiary of the trust was not at the relevant times normally engaged in a substantially full-time capacity in the business of primary production of the type carried on on the subject land, i.e. the evidence did not offer any real insight into the extent to which the beneficiary devoted his time to the business of cultivating crops for sale, as against his duties as a director of about 20 private companies, his responsibilities as a director of the appellant and of the developer for a large scale development project, and his oversight of all of the other primary production businesses of the appellant.

## South Australia land tax primary production exemption

The South Australian Court of Appeal in the [Commissioner of State Taxation v Takhar & Anor](#) [2021] SASCA 58 has held that land which had not been cropped because an environmental protection investigation was being conducted on the land fell within the scope of the "defined rural area" South Australian land tax exemption available for land used for the business of primary production.

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## Superannuation Update

### Superannuation levy rates

The Treasurer has made the [Australian Prudential Regulation Authority Supervisory Levies Determination 2021](#) to set the superannuation supervisory levy and the retirement savings account providers supervisory levy for the 2021-22 financial year.

### Consultation on retirement income covenant

The Government has commenced public consultation on a [position paper](#) dealing with the Government's proposed commitment to introduce a retirement income covenant. The proposed retirement income covenant is a key stage of the Government's retirement income framework.

The covenant will codify the requirements and obligations for superannuation trustees to improve retirement outcomes for individuals. It seeks to

place a key obligation on trustees to formulate, review and give effect to a retirement income strategy and is intended to encourage the further development of the retirement phase of superannuation, codify obligations for trustees, improve retirement outcomes and enable choice. Subject to the passage of legislation, the retirement income covenant is intended to commence from 1 July 2022.

Submissions on the position paper are due by 6 August 2021. The Government intends to release exposure draft legislation following the consultation.

### SMSF checklist

The Australian Taxation Office has released a handy [checklist](#) of issues that the trustee of a self-managed superannuation fund (SMSF) should consider in managing the fund and meeting the relevant obligations.

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# Legislative Update

Since our last update, Federal Parliament has been in recess so there have been no new tax or superannuation related Bills introduced into Parliament.

The following Commonwealth tax legislation has now completed its passage through Federal Parliament and is now law:

- [Treasury Laws Amendment \(COVID-19 Economic Response\) Bill 2021](#), which amends the income tax law to:
  - make certain state and territory grants made in response to COVID-19 non-assessable non-exempt income for eligible businesses, and
  - allow for protected information to be disclosed to Services Australia for the purposes of administering COVID-19 disaster payments.

Commonwealth revenue measures that were registered as legislative instruments or regulations since our last monthly update include:

- [Income Tax Assessment \(Eligible State and Territory COVID-19 Economic Recovery Grant Programs\) Amendment Declaration \(No. 1\) 2021](#) which provides for a number of Victorian grant programs to be considered non-assessable non-exempt income
- [Income Tax Assessment \(1936 Act\) Amendment \(Operations Paladin and Augury Eligible Duty\) Regulations 2021](#) which provides for pay and allowances earned by Australian Defence Force Personnel serving as party of Operations Paladin and Augury to be exempt from income tax.

Federal Parliament resumes for the Spring Sittings on 3 August 2021.

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## Other News

### Review of venture capital concessions

Treasury has [announced](#) that it will conduct a review into tax concessions for the venture capital industry. The review is intended to assess whether tax concessions are operating as intended in providing support to early-stage Australian start ups. The review will cover the Early Stage Venture Capital Limited Partnership, the Venture Capital Limited Partnership and Australian Fund of Funds programs and investments made directly by foreign residents registered under the *Venture Capital Act 2002* (Cth). While no specific details of the consultation process have been provided, consultation will occur over the August 2021

coming months with a view to a report provided to the Treasurer by the end of 2021.

### Victorian COVID-19 recovery grants as NANE income

The following COVID-19 recovery grant programs administered by Victoria will be non-assessable non-exempt income in accordance with the [Income Tax Assessment \(Eligible State and Territory COVID-19 Economic Recovery Grant Programs\) Amendment Declaration \(No. 1\) 2021](#):

- Alpine Support Program
- Business Costs Assistance Program Round Two
- Impacted Public Events Support Program



- Independent Cinema Support Program
- Licensed Hospitality Venue Fund 2021
- Live Performance Support Program
- Sustainable Event Business Program.

## Draft legislation on third party reporting for the sharing economy

Treasury has [released](#) exposure draft legislation and explanatory materials which will extend the third party reporting regime (ie the Taxable Payments Reporting System) to operators of electronic platforms in the sharing economy that will be required to report information regarding participating sellers to the Australian Taxation Office (ATO). The proposed legislation would initially apply to ride-sharing and short term accommodation online platform providers who will be required to report transactions they facilitate from 1 July 2022. The draft legislation would then extend the regime to asset sharing, food delivery, tasking based services and other services from 1 July 2023. Comments on the exposure draft materials are due by 2 August 2021.

See PwC's [Tax Alert](#) for more information.

## Review of effective lives of depreciating assets

The ATO has advised that it will commence a review to determine the effective lives of depreciating assets used in the following industries:

- [fertiliser manufacturing industry](#) within Australian and New Zealand Standard Industry Classification (ANZSIC) code 18310;
- [wooden furniture and upholstered seat manufacturing industry](#) within ANZSIC code 25110;
- [plastic safety screens](#) (commonly referred to as "sneeze guards") used to prevent the spread of COVID-19.

The ATO will issue draft effective lives for public comment and the new effective life determinations are intended to apply from 1 July 2022.

## Data matching program for lifestyle assets

The ATO has provided notice that it will conduct a data matching program in respect of [lifestyle assets](#). Under this program, the ATO will access data on marine vessels, motor vehicles, thoroughbred horses, fine art and aircraft from insurance policies for the 2020-21 to the 2022-23 income years. The data will be used by the ATO to identify and address a number of taxation risks, promote voluntary compliance, increase community confidence in the tax system and ensure individuals and businesses are fulfilling their tax and superannuation obligations

## Calculating the residual value of a leased item

The ATO has published an [addendum](#) to [Taxation Determination TD 93/142](#) on the calculation of the residual value of a leased item which is relevant to determine whether a contractual arrangement is a bona fide lease or a hire purchase agreement for income tax purposes. The addendum was issued as a result of the ATO becoming aware of some taxpayers entering into multiple consecutive short-term novated leases to obtain a residual lower value than would otherwise be obtained from a single long-term lease. The addendum applies from 14 July 2021.

## Consultation on Transparency Code for charitable donations

Treasury has [released](#) a consultation paper on developing a voluntary Transparency Code to improve the transparency of the use of charitable donations during natural disasters. The Transparency Code is being developed in collaboration with the charity sector. The consultation paper identifies five potential features of the Transparency Code which will support public understanding of how charitable donations are used in response to natural disasters and strengthen trust. Submissions on the consultation paper are due by 13 August 2021.

## IGTO report on undisputed tax debts

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has released a [report](#) on the investigation and exploration of undisputed tax debts in Australia. The report found, among other things, that:

- Overall, the Australian taxation system operates with a high level of voluntary compliance in relation to the payment of tax liabilities.
- Notwithstanding the high levels of voluntary compliance, collectable debt (ie those debts that are due and payable, and which are not subject to dispute, legal action or other restrictions on recoverability) continues to increase and is the largest component of the ATO's debt book, alongside Disputed Debt and Insolvent Debt.
- Collectable debts largely comprise three main heads of tax – income tax, activity statement and superannuation guarantee charge – with income taxes (an average of 70 per cent between the 2016-17 to 2019-20 financial years) and taxes designed to progressively collect income tax making up the majority.

- Year on year, the ATO's data reports that small businesses account for the largest component of collectable debt, followed by private and wealthy groups and individuals not in business.
- A large proportion of collectable debt reported as at 30 June is paid within 90 days.

The IGTO has made the following recommendations:

- The ATO consult with key stakeholders and participants in the tax system to co-design enhanced reporting regarding its debt book and debt recovery activities throughout the year
- The ATO develop metrics to measure its debt collection performance, including a return on investment against its efforts to collect debts in relation to different client experience groups or industry groups
- The ATO report (in aggregate) to the Australian Parliament all taxpayer debts that exceed a benchmark dollar value and have been outstanding for more than (say) 100 days and remind such taxpayers that this will occur unless they enter into an agreed ATO payment arrangement or other debt management arrangement on or before a prescribed date
- The ATO actively promote the benefits of new businesses voluntarily entering the Pay As You Go Instalment system and ensuring that the channels to enter, exit and vary instalments are readily accessible for both taxpayers and tax practitioners

- The ATO provide greater insight into the ATO Special Division in its reporting through segmentation based on occupation (ANZSCO) codes, and engage with the Australian Bureau of Statistics to identify opportunities to improve segmentation and reporting of collectable debt by industry divisions and occupation codes to enable enhanced comparative analysis.

## Federal court decision in relation to penalties

The Federal Court has held in [Commissioner of Taxation v Ross \[2021\] FCA 766](#) that the Administrative Appeals Tribunal (AAT) had erred in setting aside penalty uplifts. In this case, the ATO had issued amended assessments for a number of income years and a default assessment for one income year. The penalty uplift was applied on the basis that the taxpayers had previously been liable for a shortfall penalty in respect of the first income year for which an amended assessment was issued. The AAT had initially set aside the uplift in penalty on the basis that the taxpayers had no opportunity to modify their behaviour in response to the penalty as all amended assessments were issued on the same day. The Federal Court held that on the proper construction of the legislation, the penalty uplift applied automatically is not subject to the discretion of the Commissioner of Taxation.

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# PwC's Monthly Tax Update

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