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PwC's Monthly Tax Update

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

July 2020



Corporate Tax Update

COVID-19 economic stimulus measures and R&D claims

Research and development (R&D) Tax Incentive claimants that access COVID-19 economic stimulus measures including increased access to the instant asset write-off; accelerated depreciation¹; JobKeeper payments and other grants; and State and territory payroll tax relief measures, should consider the potential for interactions with R&D claims for this financial year and, depending on the date of the company's tax year end, the following year. Refer to the [PwC website](#) for further details.

Expansion of RTP Schedule for large private corporate groups

Currently, the Reportable Tax Position (RTP) Schedule is required to be lodged by any public company or foreign-owned company that has total business income of either:

- AUD250 million or more in the current year
- AUD25 million or more in the current year and is part of a public or foreign owned economic group with total business income of AUD250 million or more in the current year or the immediate prior year.

The Australian Taxation Office (ATO) has previously announced the expansion of the RTP Schedule to large private groups for income tax years starting on or after 1 July 2020. The ATO has now [advised](#) that large private companies will only need to complete an RTP Schedule with their 2021 income tax return if they are notified by the ATO to do so. The ATO will advise those affected private companies by the end of July 2020. There are however plans to move to self-assessment of the lodgment requirement in subsequent income years. Furthermore, the ATO proposes to add new questions to the Category C section of the RTP schedule and to review the current RTP Category C questions.

Update on ATO's Top 1000 program

The ATO has [indicated](#) that its Top 1000 tax performance program has continued throughout COVID-19. It will start its next actions for those taxpayers identified from past reviews and commence approximately 30 Top 1000 goods and services tax assurance reviews in August 2020.

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Employment Taxes Update

ATO JobKeeper update

Treasury has been undertaking a review of the JobKeeper program – the outcome of which the Government will incorporate in its economic and fiscal update on 23 July 2020. [Suggestions](#) have been made that the review would consider whether the quantum of the AUD1,500 payment continues to be the right amount, and in the context of an economy where restrictions are being eased and people getting back into work, whether the continuation of that JobKeeper program is appropriate in certain sectors. In the interim, the Government [announced](#) JobKeeper changes for employers and sole traders providing a child care subsidy approved service, with payments to cease from 20 July 2020.

Since our last edition of PwC's Monthly Tax Update, there also has been further guidance on the application of the JobKeeper program from the Australian Taxation Office (ATO).

Of particular note is the [ATO's intention](#) to maintain the integrity of the JobKeeper rules through an active compliance approach. Specifically, the ATO has flagged that the following behaviours are attracting its attention:

- payments to people who do not meet the eligibility requirements or are not employees,
- falsifying records or revising activity statements to meet the fall in turnover test,
- applying for JobKeeper where there is no evidence of carrying on a business or there is no assessable income from carrying on a business,
- employers failing to pass on the full AUD1500 JobKeeper payment to eligible employees,
- multiple eligible business participant claims, and
- employees being incorrectly excluded under the one-in-all-in rule.

Since there are penalties for making false claims and not complying with the relevant obligations, it is recommended that all employers maintain diligence in assessing their eligibility, as well as for their employees, and in meeting the ongoing requirements for continued support under the JobKeeper program.

Other important information released by the ATO regarding JobKeeper include:

- [guidance](#) on the application of the modified decline in GST turnover test for group employer entities, including:
 - circumstances in which an employer entity forming a GST group after 1 March 2020 is able to apply the modified test,

- determining the test members of an employer entity,
 - applying the modified test for group employer entities,
 - whether the supply of employee labour services is “merely incidental”, and
 - principal activity of the employer entity.
 - [guidance](#) on the turnover test for universities
 - [clarification](#) of the ATO position on different payment types to employees
 - [clarification](#) in relation to the payment of eligible termination payments (ETPs) which are not to be included as part of the AUD1,500 an employer is to make to eligible employees under the JobKeeper wages condition with effect from JobKeeper fortnight 6 (8 June onwards). As a transitional concession for any employer who claimed JobKeeper payments that included an ETP paid to a terminated employee between JobKeeper fortnights 1 to 5 (from 30 March to 7 June 2020), the ATO will not recover an overpayment that has occurred as a result of these payments.
 - [circumstances](#) in which the Commissioner of Taxation is automatically exercising his discretion to provide additional time to meet the following conditions in the JobKeeper rules in relation to an eligible business participant:
 - hold an ABN,
 - notify the Commissioner of assessable business income for the 2018-19 year where there is a pre-existing lodgement deferral in place for the 2019-20 income tax return, and
 - notify the Commissioner of sales for tax period 1 July 2019 to 12 March 2020.
 - [guidance](#) for not-for-profits and charities
- Eligible employers are still entitled to enrol for JobKeeper, provided they suffer the requisite decline in turnover and meet the relevant conditions. At the same time, even though there has been a lift in COVID-19 restrictions for some businesses which may have an increase in turnover since their JobKeeper payment eligibility commenced, JobKeeper payments will continue, provided that the employer continues to pay eligible employees a minimum of AUD1,500 per fortnight (before tax) and lodge the business monthly declarations.

For the latest up-to-date information, refer to our [JobKeeper payments webpage](#).

Super Guarantee and JobKeeper payments

New Regulations ([Superannuation Guarantee \(Administration\) Amendment \(JobKeeper Payment\) Regulations 2020](#)) have been made to ensure employers are not subject to additional superannuation guarantee (SG) obligations as a result of participation in the JobKeeper scheme. In particular, the Regulations provide that amounts of salary or wages that do not relate to the performance of work and are only paid to an employee to satisfy the wage condition for receiving a JobKeeper payment are excluded salary or wages. As a consequence, these amounts are excluded from the calculations of an employer's SG shortfall and the minimum superannuation contribution an employer is required to make in respect of an employee to avoid a superannuation guarantee charge liability.

Ridesharing arrangements and FBT exemption

New legislation ([Treasury Laws Amendment \(2019 Measures No 3\) Act 2020](#)) has been enacted to amend the fringe benefits tax (FBT) exemption for certain taxi travel to include a broader range of transport services, including ride sharing services. The change applies with retrospective effect from the commencement of the 2019-20 FBT year. The ATO has also updated its [Chapter 20 of the Fringe benefits tax - a guide for employers](#), dealing with exempt benefits, to reflect the changes.

ATO finalises compliance approach for superannuation contributions to clearing house

The ATO has finalised Practical Compliance Guideline [PCG 2020/6](#), which describes the circumstances in which the Commissioner of Taxation will not apply compliance resources to determine which income year an employer is entitled to claim income tax deductions for superannuation contributions made through the Small Business Superannuation Clearing House (SBSCH) to a superannuation fund or retirement savings account (RSA).

The law requires that superannuation contributions are made to a super provider or RSA and therefore deductible (subject to meeting any other qualifying conditions) when the payments are received by the trustee of a complying superannuation fund or an RSA. Uncertainty around the timing of a deduction may arise however, where a period of time between an employer's payment to the SBSCH and the trustee of a complying super fund receiving the contribution straddles different income years.

Subject to meeting the requirements outlined in the guideline, the Commissioner will not apply compliance resources will not be applied to consider whether a contribution was received by the trustee of a superannuation fund or RSA in the same income year in which the payment was made to the SBSCH, provided the payment was made before the close of business on the last business day on or before 30 June.

Single touch payroll deadline

A business that employs 20 or more employees has until 14 July 2020 to make a finalisation declaration for its employees' end of financial year payroll information through Single Touch Payroll (STP)-enabled payroll systems. Employers with 19 or fewer employees must finalise this by 31 July 2020. Employee information that is reported and finalised through STP means there is no requirement to provide 2020 payment summaries to employees or to lodge a payment summary annual report with the ATO.

PAYG withholding schedules for 2020-21

The Commissioner of Taxation has issued a [legislative instrument](#) containing the PAYG withholding schedules specifying the formulas and procedures to be used for working out the amount to be withheld from payments made on a weekly, fortnightly, monthly or quarterly basis to employees, directors, labour-hire workers, religious practitioners, and in respect of compensation, sickness or accident payments. The withholding schedules apply to payments made from 1 July 2020.

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Global Tax Update

Latest news from international tax and transfer pricing

Reforms to Australia's foreign investment framework

The Australian Government has announced major reforms to Australia's foreign investment framework which deal with national security risks, strengthening compliance measures, streamlining approval processes and administrative enhancements. Key elements of the reform package include:

- A new national security test for foreign investors who will be required to seek approval to start or acquire a direct interest in a 'sensitive national security business' - regardless of the value of the investment.
- A time-bound 'call in' power enabling the Treasurer to review acquisitions that raise national security risks outside of proposed acquisitions relating to a 'sensitive national security business'.
- A national security last resort power that provides the ability to impose or vary conditions and in extraordinary circumstances order disposal on national security grounds.
- Stronger and more flexible enforcement options including the expansion of infringement notices and higher civil and criminal penalties.
- Measures to streamline approval for passive investors and investments into non-sensitive businesses.

Draft legislation is expected to be released for consultation in July 2020, with the reforms scheduled to commence on 1 January 2021. For more information refer to our [LegalTalk Alert](#).

COVID-19 impacts on transfer pricing

The economic impacts of the COVID-19 pandemic can have flow-on effects on a range of transfer pricing arrangements for multinational groups. In response to the potential for multinationals to change transfer pricing arrangements during this time, the Australian Taxation Office (ATO) has released [guidance](#) on the analysis it would expect taxpayers to perform to evaluate the impact of the pandemic on their business, and evidence that it may seek to review to consider whether a taxpayer's approach to their transfer pricing has been appropriate. It also outlines the expectations for those which have applied (or are applying) for an Advance Pricing Arrangement.

In addition, the ATO has effectively put multinationals on [notice](#) that it will be reviewing changes to related party arrangements and examining the supporting documentation. This would apply to arrangements such as:

- early termination or repayment of liabilities under related party financing agreements that trigger tax deductions for foreign exchange losses,
- changing related party agreements to avoid ongoing withholding obligations on amounts payable to overseas parties,
- changing related party agreements to reduce assessable income from rights or property provided to overseas related parties, and
- changing related party agreements to increase contractually assumed risks and allocation of global economic losses for limited risk entities.

Expanded concept of significant global entity now law

The [legislation](#) to expand the scope of what is a significant global entity (SGE) and introduce the new concept of a Country by Country Reporting Entity (CbCRE) is now law and applicable to income years commencing on or after 1 July 2019.

These new rules are particularly relevant for any groups of entities that would be required to consolidate for accounting purposes as a single group if the members of the group were assumed to be a listed company and were not affected by the accounting exceptions for consolidation or materiality. As the consequences of an entity becoming an SGE or a CbCRE are significant in terms of the additional compliance burdens and the cost of failing to determine status as an SGE correctly, affected entities should review their existing ownership and control structure as soon as possible. For further insights refer to our previous [Tax Alert](#).

ATO withdraws update to transfer pricing guidelines on offshore shipping hubs

The ATO has withdrawn its [draft update](#) dealing with offshore shipping service hubs that was proposed to be made to Practical Compliance Guideline [PGG 2017/2](#) which deals with the ATO compliance approach to transfer pricing issues related to various centralised operating models. Following comments received on the draft update, the ATO considers the Guideline is not the best product for communicating its guidance on offshore shipping service hubs and it will develop further guidance.

Global tax policy considerations in dealing with COVID-19 impacts

In the latest PwC Global [Tax Policy Bulletin](#), various tax policy considerations in respect to COVID-19 impacts are considered including how different the post-COVID-19 economy may look if unilateralism may overtake multilateralism or regionalisation. In addition, it discusses new expectations on solidarity and tax transparency, short-term trade-off between stimulus and competition, and different perspectives on taxing the economy of the future.

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Indirect Tax Update

Luxury car tax thresholds for 2020-21

Cars with a luxury car tax (LCT) value over the luxury car tax threshold attract LCT at the rate of 33 per cent. The Australian Taxation Office (ATO) has provided that the [luxury car tax threshold](#) for the 2020-21 financial year is AUD68,740. The fuel-efficient car limit for the 2020-21 financial year is AUD77,565. Note annual Taxation Determinations for the luxury car tax thresholds are no longer published by the ATO.

Draft determination on whether supply of a transaction account is GST-free

The ATO has released Draft Goods and Services Tax Determination [GSTD 2020/D1](#), which provides preliminary guidance on the extent to which the supply of a transaction account (such as a bank account) is GST-free under table items 3 or 4(a) in s38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (*GST Act*). According to the draft determination, such supplies are GST-free to the extent that the account holder's effective use or enjoyment of the transaction account takes place outside of Australia. Effective use or enjoyment of a transaction account is said to take place outside of Australia to the extent that:

- transactions under the account are undertaken while the account holder is physically outside of Australia, and
- the account holder's presence outside of Australia is integral to that transaction (i.e. the account holder makes a cash withdrawal at an automated teller machine (ATM) or branch, or the transaction under the account requires the account holder to be physically present at the merchant or counterparty location).

When the final Determination is issued, it is proposed to apply from 1 October 2020. Comments can be made on the Draft Determination by 3 July 2020.

ATO's compliance approach to GST apportionment of acquisitions relating to financial supplies under transaction accounts

To supplement the issue of the Commissioner's views in draft [GSTD 2020/D1](#) noted above, the ATO has released a [draft schedule](#) to update Practical Compliance Guideline PCG 2019/8 which sets out the ATO's compliance approach for GST

apportionment of acquisitions that relate to certain financial supplies and also sets out the framework used by the ATO to assess the risk associated with methods to determine the extent of creditable purpose of these acquisitions under the *GST Act*. The update is in draft Schedule 2 which applies to an Australian authorised deposit-taking institution (ADI) that supplies an interest in, or under, an account covered by table item 1 in subsection 40-5.09(3) of the *A New Tax System (Goods and Services Tax) Regulations 2019* (*GST Regulations*) (e.g. everyday, savings, cheque, deposit or transaction accounts, online savings accounts and term deposits, and overdraft accounts).

Once finalised, the update will have effect from the start of the first tax period commencing on or after 1 October 2020. Comments can be made on the draft schedule by 3 July 2020.

No entitlement to input tax credit on acquisition of gold

The Administrative Appeals Tribunal in [Cash World Gold Buyers Pty Ltd v Commissioner of Taxation \[2020\] AATA 1546](#) has held that the taxpayer, an entity which purported to make acquisitions of gold, was not entitled to input tax credits on acquisitions of gold as the acquisitions were not all creditable acquisitions. The taxpayer acquired significant quantities of gold from intermediaries and the invoices issued by the intermediaries did not identify any GST amounts, with only a few invoices specifying the quantity of gold supplied. The Tribunal found that to the extent that taxable supplies of scrap gold were made, the taxpayer did not hold valid tax invoices substantiating the acquisitions and therefore was not entitled to claim input tax credits in the relevant tax periods. The taxpayer was unable to demonstrate to what extent the supplies of gold were not "precious metal" excluded from the second-hand goods provisions. The Tribunal also was not satisfied that even if the supplies of gold made by the intermediaries to the taxpayer were not taxable supplies, the taxpayer was not entitled to claim input tax credits under Division 142 of the *GST Act* as the prices charged by the intermediaries did not recover any amount on account of GST.

Government to suspend indexation of GST instalments for 2020-21 financial year

The Federal Government has [announced](#) that it will legislate to suspend the indexation of tax instalment amounts for the 2020-21 financial year in response to COVID-19. This change will affect instalments

payable to the ATO for taxpayers paying GST (and PAYG) instalments in 2020-21. Taxpayers who do not pay GST by instalments are not affected. Historical Gross Domestic Product (GDP) outcomes

are normally used to index a range of instalment amounts annually to reflect anticipated income growth.

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Personal Tax Update

ATO will review early release of super

Eligible individuals who have been significantly financially affected by COVID-19 may be able to temporarily access up to AUD10,000 of their superannuation in 2019-20 and a further AUD10,000 in 2020-21. The Australian Taxation Office (ATO) has [seen some instances](#) of COVID-19 early release of superannuation where people have not been entitled. Behaviours that will attract the ATO's attention include:

- applying when there is no change to regular salary and wage, or employment information,
- artificially arranging affairs to meet the eligibility criteria,
- making false statements or fraudulent attempts to meet the eligibility criteria, or
- withdrawing and recontributing super for a tax advantage.

The ATO may revoke the determination that it issued in respect of an application for COVID-19 early release of super if an individual is unable to demonstrate eligibility when the ATO asks for evidence. Furthermore, in such cases the amount will become assessable income.

The ATO will [collect data](#) to validate any claims for early super release by:

- confirmation of government Payment made to applicants for the period of 19 April 2020 to 24 September 2020 from Services Australia, and
- details of incarcerated individuals for the period of 1 March 2020 to 27 September 2020 from state and territory correctional facility regulators.

Australian tax residents returning to Australia from potentially exempt foreign service

The ATO has [clarified](#) that individuals such as foreign aid workers, who returned earlier than planned from overseas to work in Australia due to COVID-19, will only be able access the income tax exemption for their foreign earnings where they meet the usual legislative requirements under s23AG of the *Income Tax Assessment Act 1936* (ITAA 1936) (Cth) which only applies where the foreign earnings are derived from a continuous period of service in the foreign country that lasts for at least 91 days. For more information refer to our [Global Mobility COVID-19 update](#).

Income from IMF not exempt from Australian income tax

The Administrative Appeals Tribunal (AAT) in [Hamilton v Commissioner of Taxation \[2020\] AATA 1812](#) has held that the taxpayer which was engaged to undertake paid work by the International Monetary Fund (IMF) was not exempt from Australian income tax under the *International Organisations (Privileges and Immunities) Act 1963* (Cth) (IOPI Act). By way of background, Australian officeholders in some transnational non-governmental organisations (NGOs) such as the IMF are entitled to certain privileges and immunities including, in some cases, an income tax exemption on income derived from those entities. In this case, having regard to the facts, the Tribunal found that as the taxpayer's appointments were outside the organisational structure of the IMF and did not provide him with any defined duties or authority with

respect to the IMF and its functions, as such, he did not hold an 'office within an international organisation' within the meaning of the IOPI Act and the IMF income was not exempt from income tax.

Foreign citizen on working holiday visa not a tax resident

The AAT in [MacKinnon v Commissioner of Taxation \[2020\] AATA 1647](#) has held that a taxpayer, a British citizen on a working holiday visa, was not an Australian resident for income tax purposes. The Tribunal found that even though the British citizen's presence in Australia was more than 183 days, the residency test was not satisfied as the taxpayer did not intend nor did they settle in Australia, and their usual place of abode was outside of Australia. The Tribunal did not accept that the taxpayer had formed an intention to take up residence in Australia since her plans were always fluid and conditional.

Taxpayers did not carry on business in partnership

The AAT in [Holman v Commissioner of Taxation \[2020\] AATA 1375](#) has held that a taxpayer and his wife did not carry on a retail outlet business as a partnership for income tax purposes. The Tribunal found that even though the taxpayer was assisting his spouse in running a business which was solely registered in the spouse's name, this did not constitute a partnership. Due to a lack of evidence to demonstrate a partnership was carried on, including the extent of the taxpayer's capital contributions, the Tribunal was not satisfied, on the balance of probabilities, that a partnership existed.

Work-related travel and self-education expenses

The AAT in [Hiremani v Commissioner of Taxation \(Taxation\) \[2020\] AATA 1653](#) has held that the taxpayer, an employee which provided IT services and who worked from home and at his work office, was not entitled to a deduction for travelling expenses which related to travel from his home to

his work office. The Tribunal found that the expenses were not sufficiently connected with the gaining or production of the taxpayer's assessable income as they related simply to his travel between home and the office. The Tribunal did not accept that the transportation of three laptops was an incident of the performance of the taxpayer's duties.

In relation to the taxpayer's deduction claimed for self-education expenses in relation to a project management course, the Tribunal allowed the taxpayer's claim as the relevant course was designed to increase the taxpayer's professional proficiency and was advantageous to his existing engagement and was provided by a place of education that satisfied the requirements in s82A of the ITAA 1936.

Deduction allowed for working from home occupancy expenses

The AAT in [McAteer and Commissioner of Taxation \(Taxation\) \[2020\] AATA 1795](#) has found that a taxpayer who was required by his employment contract to be able to work from his home when rostered on duty after hours. was entitled to a deduction of a proportion of the occupancy expenses referable to the study/lab. Furthermore, the Tribunal found that the taxpayer was also entitled to a deduction for depreciation on two iPads over the effective life of these depreciating assets, not to an outright deduction as their cost was over \$300. The Tribunal was satisfied that it was not a mere convenience that the taxpayer work at home when he is rostered on call and that it was relevant to this finding that significant equipment was supplied for use at home in the employer's business.

Work-related car expense deductions rate

The ATO has [determined](#) that the rate at which work related car expense deductions may be calculated using the cents per kilometre method for the income year commencing 1 July 2020 is 72 cents per kilometre.

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State Taxes Update

Guidelines on NSW COVID-19 land tax relief

Revenue NSW has released [guidelines](#) on applying for the 2020 land tax COVID-19 relief program. The NSW Government introduced measures to provide relief to commercial and residential landowners, who provide a reduction in rent to a tenant who is experiencing financial distress as a result of COVID-19. The 2020 land tax COVID-19 relief is intended to reduce a landowner's land tax payable for 2020, by up to 25 per cent, for a taxable parcel of land where rent relief has been given to the tenant who occupies that land. Landowners eligible for the reduction may also defer their land tax payments by up to three months. For the latest up to date information regarding COVID19 and state taxes, refer to our [State Tax COVID-19 updates](#) webpage.

Important NSW duties and land tax amendments

The [State Revenue Legislation Further Amendment Bill 2020](#), which was introduced to the NSW Parliament last year, has now completed its passage and been enacted into law. The measures included in this Act make some important amendments in relation to NSW duties and land tax law. Specifically, among other things, the changes include the following:

- an exemption from, and potential refunds of, surcharge purchaser duty and surcharge land tax payable in respect of residential land by the trustee of a discretionary trust if the trust irrevocably prohibits a foreign person from being a beneficiary of the trust (so as to prevent a discretionary trust from inadvertently attracting liability for surcharge duty and tax payable by a foreign trustee). In cases where trust deeds need amending they must now be amended by the extended deadline of 31 December 2020
- extend provisions that treat an assignment to a third person of an option to purchase dutiable property as a transfer of the property for duty purposes so as to include an arrangement for the relinquishment of the option with an agreement to sell to the third person
- change the method of determining the value of the land holdings of a landholder for the purposes of the threshold for provisions that impose duty on the acquisition of an interest in a landholder so that unencumbered value is used instead of unimproved value

- provide that, for the purposes of duty payable on the acquisition of an interest in a landholder, land includes anything (whether or not a fixture) that is fixed to land, and
- make a landholder jointly liable for the duty payable by a person when the person acquires an interest in the landholder, and provide for the liability of the landholder to be a charge on the land for which a caveat can be registered.

SA land tax obligations for 2020-21

The South Australian (SA) Government has [announced](#) that it will extend the deadline until 31 July 2020 for SA land owners to make their annual land holding declarations to RevenueSA. This includes confirming and updating land holdings, company group information, and notifications of land held on trust in preparation for the changes to land tax laws which relate to land tax aggregation rules and surcharges for certain trusts that commence from 30 June 2020.

RevenueSA has also released the [2020-21 Land Tax Thresholds](#).

Victoria – Duty guidance on economic entitlements

The State Revenue Office (SRO) of Victoria has released [guidance](#) on the application of the new provisions addressing economic entitlements in relation to land. These provisions were enacted following the Supreme Court of NSW's decision in [BPG Caulfield Village Pty Ltd v Commissioner of State Revenue \[2016\] VSC 172](#), which found, amongst other things, that for duty purposes, an economic entitlement could not be acquired in circumstances where the taxpayer only acquired an economic entitlement to some, but not all, of the landholdings of a landholder.

The SRO guidance includes guidance and clarification in relation to the following:

- service fees that are not an economic entitlement, including clarification that fund manager fees which relate to holding and maintaining property for the fund and a retirement village resident's entitlement to participate in the sale of the residence under a lease/licence arrangements are not an economic entitlement
- how much duty is to be paid
- transitioning to the new rules, and

- examples of the application of the economic entitlement provisions including for joint ventures, profit sharing development arrangements and real estate agent service fees.

Victorian duty decisions

The following Victorian duty cases were issued since our last update:

- The Victorian Civil and Administrative Tribunal in [Gao v Commissioner of State Revenue \[2020\] VCAT 577](#) has set aside the duties decision of the Commissioner of State Revenue and held that the taxpayer satisfied the residence requirement for duty concession and reduction and first home owner grant in a case where the home owner only physically occupied the relevant property for a total of 74 days in the 12-month period. As such, the additional duty and associated penalty imposed by the Commissioner should be varied to nil, and the decision to reverse the grant and impose a penalty set aside.
- The Victorian Civil and Administrative Tribunal in [Jayne Elise Maddison, Michael James](#)

[Maddison, Ryan Matthew Maddison as trustees for Mount Morgan Trust v Commissioner of State Revenue \[2020\] VCAT 612](#) has held that the taxpayers, who carried on cattle farming as trustees of a discretionary trust, were not entitled to the exemption from duty available for young farmers and associated entities in respect of a transfer of property to them in their capacity as trustees. Although the taxpayers are natural persons under the age of 35 who carry on primary production on the relevant property, the proper construction of the phrase 'young farmer' does not include a person who acquires land or carries on primary production in her or his capacity as trustee of a trust; and since the capital beneficiaries of the trust at the time of the transfer were not limited to the taxpayers and their partners, the taxpayers as trustees of the trust did not satisfy the definition of 'young farmer business entity'. Accordingly, the Tribunal found that the exemption in s69AD of the *Duties Act 2000* (VIC) could not apply to the transfer.

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Superannuation Update

ATO finalises guideline on non-arm's length measures

The Australian Taxation Office (ATO) has finalised Practical Compliance Guideline [PCG 2020/5](#) which provides a transitional compliance approach for a complying superannuation entity concerning legislative amendments relation to the incurring of certain non-arm's length expenditure (or where expenditure is not incurred) in gaining or producing ordinary or statutory income. The guideline is substantially the same as the draft PCG 2019/D6, a [compendium](#) of comments is also available.

According to the guideline, the ATO will not allocate compliance resources to determine whether the non-arm's length income (NALI) provisions apply to a complying superannuation fund for the 2018-19,

2019-20 and 2020-21 income years where the fund incurred non-arm's length expenditure (as described in [LCR 2019/D3](#)) of a general nature that has a sufficient nexus to all ordinary and/or statutory income derived by the fund in those respective income years (for example, non-arm's length expenditure on accounting services if they are free or discounted).

Retrospective law and defined benefit income streams and death benefit rollovers

The [Treasury Laws Amendment \(2019 Measures No 3\) Act 2020](#) recently passed the final stages of Parliament and is now law. This Act makes miscellaneous amendments, commencing on 1 July 2017, to laws relating to capped

superannuation defined benefit income streams and death benefit rollovers by dependants. These are broadly to ensure that:

- the calculations in the tax law for determining the transfer balance debit that arises when a capped defined benefit income stream is commuted, whether fully or partially, operate as intended, and
- if a lump sum death benefit is rolled over by a dependant to a different fund the untaxed element created by the application of section 307-290 of the *Income Tax Assessment Act 1997* (Cth) will be correctly treated as non-assessable non-exempt income.

The ATO has also released [guidance](#) on the impact of the changes for calculating the debit which arises in an individual's transfer balance account when a member commutes a market linked pension which is a capped defined benefit income stream. As a result of these changes the ATO is reviewing its compliance approach where it had previously advised funds that it would not, at that time, take compliance action if a fund did not report the required transfer balance account events of the commutation and re-start a market linked pension, or reported a commutation amount other than nil. Funds will need to review the information already reported to the ATO and consider whether they need to amend any reporting in line with the legislation. The ATO will be contacting funds where these income streams will be commuted as part of a successor fund transfer (SFT) until August 2020, to work through how to practically manage the impacts and ensure the debit, and new credit, can be correctly calculated and reported as part of the SFT (see [CRT 031/2020](#)).

Work test and spouse contributions superannuation regulation

New Regulations ([Superannuation Legislation Amendment \(2020 Measures No 1\) Regulations 2020](#)) have been made to increase the age at which the superannuation work test starts to apply from 65 years to 67 years and also the cut-off age for spouse contributions from 70 years to 75 years. This brings the age limits into alignment with the general contribution rules. The changes apply to contributions made in the 2020-21 and later financial years.

Deferral of retirement income framework legislation

The Federal Government has [announced](#) plans to defer the introduction of the Retirement Income Covenant which establishes an additional obligation for trustees to formulate a retirement income strategy for their members which was previously scheduled to commence on 1 July 2020. The deferral of the Retirement Income Covenant will also allow drafting of this measure to be informed by the [Retirement Income Review](#) which is considering the incentives for people to self-fund their retirement, the fiscal sustainability of the system, the role of the three pillars (i.e. a means-tested Age Pension; compulsory superannuation; and voluntary savings, including home ownership) of the retirement income system, and the distributional impacts across the population and over time.

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Legislative Update

Since our last update, the following new Commonwealth tax and superannuation legislation has been introduced into Federal Parliament since our last update:

- [Treasury Laws Amendment \(2020 Measures No. 3\) Bill 2020](#) which was introduced to the House of Representatives on 12 June 2020 and since enacted:
 - extends the instant asset write off to allow a business with aggregated turnover of less than AUD500 million to immediately deduct the cost of a depreciating asset costing less than AUD150,000 where it is first used or installed ready for use for a taxable purpose by 31 December 2020. See also the Government's [media release](#),
 - implements the Federal Government's announcement that indexation of PAYG instalments will be suspended for the 2020-21 financial year in response to COVID-19, and
 - clarifies that the COVID-19 economic stimulus cash flow boost payment can apply to payments for which an amount must be paid to the Commissioner in respect of certain personal service income payments.

Commonwealth revenue measures registered as legislative instruments or regulations since the last monthly update include:

- [Income Tax Assessment Act 1997 – Cents per Kilometre Deduction Rate for Car Expenses 2020](#) sets 72 cents per kilometre for the income year commencing 1 July 2020 as the rate at which work-related car expense deductions may be calculated using the cents per kilometre method.

- [Notice of Indexation of the Penalty Unit Amount](#) provides notice that the value of the penalty unit amount will increase to AUD\$222, effective from 1 July 2020
- [Superannuation Guarantee \(Administration\) Amendment \(Jobkeeper Payment\) Regulations 2020](#) ensures that employers are not subject to additional superannuation guarantee obligations as a result of their participation or anticipated participation in the JobKeeper scheme.
- [Superannuation Legislation Amendment \(2020 Measures No. 1\) Regulations 2020](#) make changes to allow people aged 65 and 66 to make voluntary contributions to superannuation without having to meet the work test and increases the cut-off age for spouse contributions from 70 years to 75 years.
- [Taxation Administration Act Withholding Schedules 2020](#) makes the withholding schedules, specifying the amount, formulas and procedures to be used for working out the amount required to be withheld by an entity under the pay as you go (PAYG) system from 1 July 2020.
- [Taxation Administration \(Coronavirus Economic Response Package—Ancillary Funds\) Amendment Guidelines 2020](#) amends the *Public Ancillary Fund Guidelines 2011* and the *Taxation Administration (Private Ancillary Fund) Guidelines 2019* to support charitable giving by these funds in the 2019-20 and 2020-21 financial years in response to the effects of COVID-19.

Federal Parliament is now in recess and is next expected to resume sittings on 4 August 2020.

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Other News

HomeBuilder grant

The Government has [announced](#) that it will introduce a AUD25,000 grant for eligible owner-occupiers to build a new home or substantially renovate an existing home. Applicants will be subject to eligibility criteria, including income caps of AUD125,000 for singles and AUD200,000 for couples based on their latest assessable income. A national dwelling price cap of AUD750,000 will apply for new home builds, and a renovation price range of AUD150,000 up to AUD750,000 will apply to renovating an existing home with a current value of no more than AUD1.5 million.

The grant is not available for investment properties or to owner-builders. Additions to property such as tennis courts, swimming pools, sheds and garages that are unconnected to the property are excluded for renovation contract purposes. The HomeBuilder program will be implemented via a National Partnership Agreement, signed by the Commonwealth and state and territory governments.

ATO data matching program for COVID-19 economic response support

The Australian Taxation Office (ATO) will [collect data](#) related to the COVID-19 economic response including:

- JobKeeper payments to employees, sole traders or other individuals
- temporary early access to superannuation and
- temporary cash flow boosts for employers during the 2019-20 to 2020-21 financial years.

The objective of the program are to:

- ensure COVID-19 economic response provides timely support to affected workers business and the broader community
- undertake verification of applications and identify compliance issues
- implement treatment strategies to improve voluntary compliance, which may include educational and compliance activities as appropriate
- identify and educate those individuals and businesses who may be failing to meet their registration and/or lodgment obligations and assist them to comply
- help ensure that individuals and businesses are fulfilling their tax and superannuation reporting obligations.

Depreciation car limit for 2020-21

The ATO has [stated](#) that the depreciation car limit is AUD59,136 for the 2020-21 financial year. The car limit is the maximum value that can be claimed on depreciation of a car.

ATO draft effective lives of assets

The ATO has released draft effective life determinations for depreciating assets purchased (or otherwise first used or installed ready to use) on or after 1 July 2021 that are used in the following industries:

- [casino operations](#)
- [horse training \(racing\)](#)
- [non-metallic minerals mining](#).

Indexation of tax instalments for 2020-21 financial year suspended

The Federal Government has [announced](#) that the indexation of Pay As You Go (PAYG) income tax instalments (in addition to goods and services tax instalments) for the 2020-21 financial year have been suspended in response to COVID-19. Historical Gross Domestic Product (GDP) outcomes are normally used to index a range of instalment amounts annually to reflect anticipated income growth.

Tribunal considers treatment of cryptocurrency

The Administrative Appeals Tribunal (AAT) in [Seribu Pty Ltd v Commissioner of Taxation \[2020\] AATA 1840](#) held that the taxpayer, a company which dealt in bitcoin and a made a loss on those dealings, was not entitled to deduct that loss under the foreign exchange rules in Division 775 of the *Income Tax Assessment Act 1997* (Cth). The Tribunal found that bitcoin did not fall within the statutory definition of 'foreign currency' as it is not an official currency issued or recognised by a sovereign state.

COVID-19 and public ancillary funds

[Amendments](#) have been made to the Public Ancillary Fund Guidelines 2011 (PUAF Guidelines) and the Taxation Administration (Private Ancillary Fund) Guidelines 2019 (PAF Guidelines) to support by these funds in the 2019-20 and 2020-21 financial years in response to the effects of COVID-19. Public and private ancillary funds are types of ancillary trust funds that are eligible to be endorsed as deductible gift recipients. These funds do not directly engage in charitable activities but instead provide financial support for other deductible gift recipients to engage in those activities. Specifically,

the amendments encourage additional giving by these funds in those years by providing that those funds that make donations that sufficiently exceed the minimum required distributions under the Guideline benefit from a reduced minimum annual distribution rate in the 2021-22 financial year and potentially later financial years.

Increase in penalties for failing to lodge on time

The amount of the Commonwealth penalty unit will be adjusted for the Consumer Price Index (CPI) and increased from \$210 to \$222 from 1 July 2020. Penalty units are used to work out the amount of penalties for various tax offences including making false statements and failing to lodge documents on time.

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PwC's Monthly Tax Update

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