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PwC's Monthly Tax Update

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

October 2021



Corporate Tax Update

New Jobkeeper disclosure obligations

As a result of recent legislative amendments to the *Corporations Act 2001* (Cth) ([Treasury Laws Amendment \(2021 Measures No. 2\) Act 2021](#)) listed entities are required to disclose certain information to the market operator regarding JobKeeper payments received by the listed entity and any of its subsidiaries. Specifically, for each relevant financial year, the listed entity must disclose:

- the listed entity's name and ABN
- the number of individuals for whom a JobKeeper payment was received for a JobKeeper fortnight that ended in the financial year
- the total sum of all JobKeeper payments received in a JobKeeper fortnight that ended in the financial year, and
- whether the entity has made any voluntary repayments to the Commonwealth in respect of any payments received by the entity in the financial year and if so, the sum of those payments.

The disclosure must be made within 60 days of lodging a financial report for the relevant year with Australia Securities and Investments Commission (ASIC), or where the financial report for the relevant year has already been lodged with ASIC, within 60 days of commencement of the relevant legislation (which was 14 September 2021). There is also a requirement to provide updated information if the entity becomes aware of an error in its original disclosure.

Opportunity to provide feedback on 2018-19 round of the JMEI

The Department of Industry, Science, Energy and Resources has [released](#) a discussion paper seeking feedback on the 2018-19 round of the Junior Minerals Exploration Incentive (JMEI) that allows companies to convert a portion of their tax losses to credits that may be distributed to investors. In particular, the Department is seeking feedback on additional exploration or prospecting activities resulting from the JMEI and what evidence is available to assess the impact of the JMEI.

In summary in the 2018-19 income year, available exploration credits were capped at \$25,000,000. However with unallocated credits carried forward from the 2017-18 year, the full amount of exploration credits available for allocation for the 2018-19 round was \$31,532,069. The 2018-19 year involved an over-subscription.

Submissions in response to the consultation are due by 15 October 2021.

Exposure draft legislation on offshore petroleum levy

Treasury has released [exposure draft](#) legislation in relation to the temporary levy on offshore petroleum production that was announced to recover the Commonwealth's costs of decommissioning the Laminaria-Corallina oil fields. The levy will be administered by the Australian Taxation Office (ATO) and will be imposed at a rate of 48 cents per barrel of oil produced in each levy year.

Submissions in response to the exposure draft materials were due by 23 September 2021.

ATO's Top 100 monitoring and maintenance approach

The ATO has [released](#) further information on the 'Monitoring and Maintenance Approach' it will adopt for Top 100 taxpayers that attain an overall high assurance rating under a Justified Trust review.

Under the approach, the ATO will conduct an annual review of tax outcomes for the relevant year with the taxpayer expected to proactively engage on significant or new transactions, or material changes, before they occur. This annual review will consider:

- the last Tax Assurance Report (TAR) issued
- financial statements
- tax return disclosures and accompanying schedules, such as the international dealings schedule (IDS) and reportable tax position (RTP) schedule
- country-by-country (CBC) reporting statements; and
- any other relevant information for the income year under review.

The ATO will continue to request documentation such as financial statements (if not publicly available), the statement of taxable income, supporting working papers, and evidence supporting the tax treatment of significant or new transactions and material changes. It will also continue to meet with taxpayers on a regular basis throughout the year to maintain a contemporary understanding of business performance, key transactions and areas of focus.

A Justified Trust review will be conducted every third year to reaffirm that the taxpayer continues to pay the right amount of tax. The ATO may also conduct a refreshed Justified Trust review where:

- there has been a fundamental business change (a takeover, for example) such that there is a new business operation we need to obtain assurance over, or

- it has reason to consider that its trust should no longer be maintained.

The assurance activities for the refresh year will resume a whole-of-business approach, covering the tax outcomes of the entirety of the taxpayer's economic activities and applying the four pillars of Justified Trust.

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Employment Taxes Update

NSW payroll tax COVID-19 relief

In addition to previously announced payroll tax measures, Revenue New South Wales (NSW) has [extended](#) the due date for all businesses to lodge and pay their 2020-21 NSW annual payroll tax reconciliations to 14 January 2022. Businesses also have the option of deferring their monthly payments for the July to December 2021 return periods until 14 January 2022.

Upon lodging the 2020-21 annual reconciliation, businesses will have the option of paying the outstanding liability in full or entering into a new support payment arrangement. Further details on how to enter into a payment arrangement will be provided by Revenue NSW in November 2021.

In addition, businesses with grouped Australian wages of \$10 million or less that were eligible for a 2021 COVID-19 Business Grant or JobSaver grants will have their annual payroll tax liability reduced by 50 per cent. More information on this measure will be provided when the 2021-22 payroll tax reconciliation becomes available.

NSW payroll tax and payments made to medical practitioners

The NSW Civil and Administrative Tribunal has found in [Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue \[2021\] NSWCATAD 259](#) that payments made to medical practitioners by the taxpayer who operated a business comprising of medical centres were subject to payroll tax. The payments represented 70 per cent of the claims made by Medicare for a particular doctor where the remainder was retained by the taxpayer in respect of a service fee for the provision of premises, medical support and administrative services.

The Tribunal was satisfied that the agreements between the taxpayer and the medical practitioners are "relevant contracts" within the meaning of section 32 of the *Payroll Tax Act 2007* (NSW). The Tribunal found that there was a clear relationship between the provision of the services and the payments with the availability of the Medicare benefits to the doctors as a direct consequence of the provision of the services and an indirect relationship between the provision of the services and the payments made by the taxpayer.

Furthermore, it was found that neither the capacity in which the “employer” received the amounts which were paid on to the “employees”, nor the ownership of the funds transferred, were relevant considerations in applying the words of the statute. Accordingly, the payments were “for or in relation to the performance of work relating to” the agreements, as required by section 35 of the *Payroll Tax Act 2007* (NSW).

For more details on the latest employment taxes developments within the medical industry, please see our article [Deep dive: Employment tax complexities for healthcare practitioner arrangements](#).

NSW payroll tax and employment agency contract provisions

In [E Group Security Pty Ltd v Chief Commissioner of State Revenue \[2021\] NSWSC 1190](#), the NSW Supreme Court was asked to consider whether arrangements with security guards across a number of different industrial sectors constituted employment agency contracts under which either the taxpayer or its wholly-owned subsidiaries were liable for payroll tax. The key question before the Court was whether the security guards were procured “in and for the conduct of the client’s business”, which the Court considered would require the security guards to have been sufficiently integrated into the client’s business to be seen as an addition to the client’s workforce.

The taxpayer’s position focused on the fact that under the *Security Industry Act 1997* (NSW), as a master licence holder it was expressly prohibited from delegating its functions to another person who was not the holder of the relevant class of licence for security services. The majority of the taxpayer’s clients did not hold the required license for this purpose and were therefore unable to perform security services under law. The taxpayer represented that the personnel of its clients did not provide directions or instructions to the taxpayer’s security guards and the clients were not responsible for making decisions about security activities. The taxpayer argued that by reason of this separate command, control and reporting structure, its security guards could not be said to be integrated into the clients’ workforces.

The Court ultimately found in favour of the taxpayer, in that the arrangements did not constitute employment agency contracts for payroll tax purposes. In making the assessment of whether the security guards were procured in and for the conduct of the clients’ business, the Court stated that it was irrelevant whether the services were integral or essential to the client’s business, nor was it relevant to consider whether the client could have performed the tasks itself.

The key consideration was whether the workers in question were sufficiently integrated into the client’s business. While the capacity to direct or control the tasks performed or the manner in which they are to be performed was a relevant consideration, this factor alone will not necessarily be determinative in all cases.

Furthermore, the Court found that the internal arrangement whereby wholly-owned entities of the taxpayer that paid the security guards did not result in these entities being taken to “procure” the services of the security guards for the taxpayer. Instead, these entities were considered by the Court to perform a payroll function only and that the security guards were solely procured by the taxpayer. As such, no employment agency contracts arose between the taxpayer and its wholly owned entities.

Victorian payroll tax due dates for deferred 2020–21 liabilities

Certain employers with Victorian payrolls up to \$10 million are eligible to defer their 2020–21 payroll tax liability until the 2021–22 financial year. The deferred liability, as determined by an employer’s 2020–21 annual reconciliation, is due for payment in quarterly instalments as follows:

- at least 25 per cent of the 2020-21 liability on 7 September 2021
- at least 50 per cent of the 2020-21 liability on 7 December 2021
- at least 75 per cent of the 2020-21 liability on 7 March 2022
- any outstanding balance of the 2020-21 liability on 7 June 2022.

Employers that did not lodge their annual reconciliation by 27 August 2021 are not eligible for the deferral and will be required to make payment for any tax owing immediately.

Victorian payroll tax COVID-19 relief for universities

The Victorian Government has [announced](#) that universities that received payroll tax deferrals in the 2020 calendar year will not be required to settle the tax liability until the 2024 calendar year. Deferrals will also be granted for 2021-22 university payroll tax liabilities.

Tasmania payroll tax COVID-19 relief for tourism and hospitality

The Tasmanian and Commonwealth Governments have [announced](#) a significantly expanded support program for Tasmanian businesses impacted by border closures. The additional support includes payroll tax relief for tourism and hospitality industry businesses where there has been a 30% reduction in turnover in the September 2021 quarter.

SA payroll tax and film production

The [Statutes Amendment \(Budget Measure 2021\) Bill 2021](#) (SA), among other things, proposes amendments to remove the payroll tax exemption and ex-gratia scheme for wages paid in connection with a feature film produced in SA with effect from 1 July 2021.

Employment Taxes – What's new?

During the month, a number of articles were released by our Employment Taxes specialists covering a range of current employment taxes issues facing our clients. Our most recently published articles include:

- [What's trending? Increased employer focus on the governance and risk mitigation of contractor engagement.](#)
- [What's trending? Wage trust remains a key Government and Regulator focus.](#)
- [What's emerging? Single Touch Payroll – phase 2 reporting. Will it reshape the future of audits?](#)

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Global Tax Update

Update on ATO's proposed ruling on software and royalty payments

In response to community feedback, the Australian Taxation Office (ATO) has [indicated](#) that draft Ruling [TR 2021/D4](#) which deals with the circumstances in which receipts from the licensing and distribution of software will be royalties as defined under Australian domestic tax law will be updated. Refer to our previous [Tax Alert](#) which examines the draft ruling and the key implications.

Specifically, a revised draft ruling is expected to issue to provide clarity of the Commissioner of Taxation's view on the application of Australia's double tax agreements to relevant cases and the circumstances where the final Ruling will apply before its date of issue. The draft Ruling will also be

updated to include amended and new examples, including an example where a receipt requires apportionment. The final ruling is now scheduled for release in early 2022.

Consultation on expanding Australia's tax treaty network

Federal Treasury is undertaking [consultation](#) on expanding Australia's tax treaty network and the key outcomes that should be sought in treaty negotiations. The government is planning to enter into ten new and updated tax treaties by 2023 with negotiations with India, Luxembourg and Iceland underway and plans to commence negotiations with Greece, Portugal and Slovenia next year. Submissions may be made up until 31 October 2021.

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Indirect Tax Update

GST margin scheme and non-monetary consideration

In [*WYPF v Federal Commissioner of Taxation \[2021\] AATA 3050*](#) the Administrative Appeals Tribunal (AAT) considered the goods and services tax (GST) liability on sales of apartments in a residential development carried out in the Australian Capital Territory and specifically whether, for margin scheme purposes, certain works constructed by the taxpayer were part of the consideration for the acquisition of the development land and whether the 'passing on' provisions in the GST law applied to any overpaid GST. The Tribunal found that consideration for the acquisition of a long-term lease for the purposes of the margin scheme did not include building works required by the lease.

The taxpayer was required to pay \$14 million to the Australian Capital Territory Land Development Authority for the grant of a lease under which it was required to complete development at its own cost. Subsequent 99-year leases were then entered into upon completion of preparatory works and which required the taxpayer to undertake building works within a four year period.

The taxpayer accounted for GST by treating the initial \$14 million as consideration for the acquisition of the land, without deducting the value of any construction when calculating the margins on sales. The taxpayer subsequently objected to its assessments claiming it had overpaid GST. The Commissioner of Taxation denied the claim on the basis that the works conducted after entry into the 99-year leases were for the taxpayer's own benefit and were not non-monetary consideration for the

acquisition of the land. The Commissioner also argued that the taxpayer was not entitled to a refund of any overpaid GST amounts as it had passed on overpaid GST to purchasers of the development.

The AAT agreed with the Commissioner's position that the preparatory works were non-monetary consideration for the acquisition of the land but that the subsequent building works did not constitute non-monetary consideration. Although the obligation to carry out the building works was a condition of the leases, the Tribunal found the works were not constructed 'in response to' the supply of the leases which was sufficient to conclude the building works were not non-monetary consideration for the applicant's acquisition of the leases.

In relation to whether overpaid GST had been passed on to the final purchasers of the development, the AAT held that overpaid GST had not been passed on due to the context of the taxpayer's conservative approach to calculating GST and having adopted market pricing for the sale of the apartments.

Casino junket tour operator's commissions and rebates

The Full Federal Court found for the Commissioner in [*FC of T v Burswood Nominees Ltd as trustee for Burswood Property Trust & Anor \[2021\] FCAFC 151*](#) finding that commissions and rebates paid to junket tour operators by the taxpayer casinos, or by the junket tour operators to the casinos, were not consideration for or in connection with gambling supplies or monetary prizes and as such were not to be taken into account in calculating the global GST amounts under section 126-10 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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Personal Tax Update

ATO focus on undeclared foreign income

The Australian Taxation Office (ATO) has issued [Taxpayer Alert 2021/2](#) which relates to arrangements of concern that involve an Australian tax resident who attempts to evade taxation on foreign assessable income by disguising funds received from overseas as a gift or loan. TA 2021/2 describes the features of typical arrangements that the ATO is concerned with and provides a number of examples. The ATO will undertake reviews and audits and actively engage with taxpayers who have entered into these arrangements.

In addition, it has indicated that as part of that process, it will be using its exchange of information powers to gather information from other countries, including the foreign assessable income derived by taxpayers in those countries, and use other sources of information, such as data from the Australian Transaction Reports and Analysis Centre (AUSTRAC) and data obtained via the Common Reporting Standard and the Foreign Account Tax Compliance Act.

Non-deductible travel expenditure

The Administrative Appeals Tribunal (AAT) has held in [Mfula v Federal Commissioner of Taxation \[2021\] AATA 3067](#) that travel expenses incurred by a medical practitioner were non-deductible on the basis that they were private in nature.

The taxpayer was employed by a medical locum agency and undertook assignments at various hospitals around Australia. Under the taxpayer's employment agreement, his employer would provide accommodation and flight costs when travelling interstate or to regional areas. The taxpayer also separately worked as a sole trader as an assistant surgeon at a Melbourne hospital.

The taxpayer had claimed deductions for meal expenses and incidental expenses and for car expenses on the basis that his personal residence was his primary place of business and he was travelling between workplaces when travelling to work.

The Tribunal found that the travel was a necessary precondition to or prerequisite of performing the work that was productive of the assessable income. His contractual obligations had either not commenced or had ceased when he was travelling to and from the relevant hospital. This can be contrasted to the *John Holland case* where the employees were 'on work' when they were travelling to the place where the primary work would be performed. The taxpayer's travel was travel 'to' work and not travel 'on' work.

If the taxpayer was regarded as 'travelling for work' and therefore entitled to a deduction for food and drink and incidental expenses while he was working at the respective hospitals, the AAT was not satisfied that he had substantiated his expenses in accordance with Division 900 of the *Income Tax Assessment Act 1997* (Cth).

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State Taxes Update

COVID-19 support measures continue

With extended lockdowns and travel restrictions in place across many jurisdictions in Australia, a range of State and Territory support measures are in place. These include specific grants and other cash flow support or relief measures. To see a summary of the current funding and cash flow programs that are available to certain affected businesses across the various States and Territories, refer to our [webpage](#).

Western Australian Budget and COVID-19 legislation

The 2021-22 Western Australian (WA) Government Budget was [delivered](#) on 9 September 2021 by Premier and Treasurer Mark McGowan. The WA Government expects to receive revenue of \$38.3 billion in 2021-22 predominantly from the resources sector, but also through the property market, vehicle sales and the labour market.

There were minimal changes to WA's State tax regimes, other than the following key tax measures:

- a proposed extension of the off-the-plan stamp duty rate which previously provided a 75 per cent transfer duty rebate up to a maximum of \$50,000 to owner-occupiers and investors that entered into an off-the-plan contract to purchase an apartment between 23 October 2019 and 23 October 2021. The rebate will be extended at a reduced rate of 50 per cent, up to a maximum of \$50,000 until 23 October 2023; and
- the continuation of exemptions from land tax for eligible properties destroyed by the Wooroloo bushfire and Cyclone Seroja disasters.

WA COVID-19 and other related tax relief measures

The WA Parliament has passed the [Finance Legislation Amendment \(Emergency Relief\) Act 2021](#) that allows certain tax relief measures to be declared by the WA Treasurer and administered by the Commissioner of State Revenue without the requirement to pass legislation. The tax relief measures may only be declared in response to a state of emergency or public health state of emergency declared under relevant legislation (such as COVID-19) and relief measures may be enacted for a period of two years or for more than 12 months after an emergency has ended. This measure will ensure the WA Government can provide further COVID-19 relief as it considers

necessary, or tax or grant relief in response to any other emergencies in WA.

NSW ruling on outstanding landholder duty

Revenue New South Wales (NSW) has issued Revenue Ruling [DUT 051](#) that outlines how the Commissioner administers the lodgment of caveats on land as a result of outstanding landholder duty. The ruling was issued in response to changes that applied to relevant landholder acquisitions made on or after 24 June 2020 such that if any landholder duty (including interest or penalty tax) is payable, there will be a charge on the land of the landholder for which a caveat can be registered.

The ruling explains that caveats will generally only be registered where a default has occurred after the Commissioner of State Revenue has issued notices to the acquirer of the interest and any jointly and severally liable parties. Any caveat will be withdrawn once the tax liability, including interest and penalties, has been paid.

NSW duty rebate on electric vehicles

The NSW Treasurer has [announced](#) that purchasers of new electric vehicles from 1 September 2021 will be able to claim rebates worth \$3,000 and refunds on stamp duty retrospectively if legislation underpinning the NSW Government's Electric Vehicle Strategy passes in its entirety when NSW Parliament resumes. Under this measure, electric vehicle purchasers will be able to apply for a refund for the following:

- stamp duty on eligible battery and hydrogen fuel cell vehicles priced up to \$78,000;
- a rebate of \$3,000 for the first 25,000 eligible vehicles under \$68,750.

Victorian ruling on land development

The State Revenue Office of Victoria has issued [public ruling DA-064](#) on the meaning of land development for Victorian transfer duty purposes. DA-064 refers to the six limbs of the definition of land development in the *Duties Act 2000* (VIC) and notes that land development is broadly the process of altering the state or the use of the land and there is no need to demonstrate an increase in value or change in utility in respect of five of the limbs. DA-064 then discusses and lists various activities that would fall within the meaning of each limb, including examples.

SA and electric vehicles

The South Australian (SA) Government has [announced](#) a subsidy for motorists who purchase new electric vehicles. This measure is subject to passage of the [Motor Vehicles \(Electric Vehicle Levy\) Amendment Bill 2021](#) which also extends by up to five years the introduction of the proposed Electric Vehicle Road User charge from 1 July 2022 to 1 July 2027, or when the sale of electric vehicles reaches 30 per cent of new motor vehicle sales in SA, whichever is earlier.

SA Budget legislation

The [Statutes Amendment \(Budget Measure 2021\) Bill 2021](#) has been introduced into the SA Parliament which includes the following measures that were announced in the 2021-22 SA Budget:

- a 50 per cent reduction in the taxable value of land for eligible build to rent projects commenced after 1 July 2021; and
- the removal of certain payroll tax exemptions for wages paid in connection with film production.

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Superannuation Update

APRA guidance on COVID-19 payments and the work test

The Australian Prudential Regulation Authority (APRA) has [released](#) guidance on its view that recipients of the Pandemic Leave Disaster Payment or COVID-19 Disaster Payment are not automatically considered to be “gainfully employed” for the purposes of satisfying the work test. Under the work test, individuals between the ages of 67 and 74 must be gainfully employed to be eligible to make superannuation contributions.

APRA's guidance is based on key attributes of these payments which provide that an individual must not be working to be eligible for the Pandemic Leave Disaster Payment and the COVID-19 Disaster Payment is a personal income supplement rather than an employer based wage subsidy as was the case with Jobkeeper payments.

Treasury consultation on default insurance exclusions

Treasury has [released](#) a consultation paper as part of its review on whether occupational exclusions in relation to default life and Total and Permanent

Disability (TPD) insurance in MySuper products are necessary or appropriate. An occupational exclusion is where default insurance cover is not available for certain occupations that have been classified as high risk by an insurer. The consultation paper is seeking to understand the views of interested parties relating to these occupational exclusions and what changes may be required to the regulatory framework. Responses to the consultation paper are due by 14 October 2021.

MySuper performance results released

APRA has [released](#) the results of its performance tests for 76 MySuper products. Trustees of products that failed the test are required to write to members and inform them of the outcome and provide members with details of the ATO's YourSuper comparison tool. APRA is engaging with trustees of products that are at risk of failing the performance test next year to improve performance and understand contingency plans.

The ATO's YourSuper comparison tool helps individuals to compare [MySuper products](#) and choose a super fund that meets their needs.

APRA Connect and the Superannuation Data Transformation project

APRA Connect, APRA's new platform for collecting superannuation data, [went live](#) on 13 September 2021. Entities should have nominated their initial Regulatory Reporting Administrator for the launch of APRA Connect as there is no data transfer between the test and live environments of APRA Connect.

APRA has published further [frequently asked questions \(FAQs\)](#) clarifying issues raised by

Registrable Superannuation Entities as part of Phase 1 of the Superannuation Data Transformation project.

APRA has also [determined](#) ten [reporting standards](#) for phase 1 of the Superannuation Data Transformation intended to enhance data reported to APRA by superannuation trustees. These standards cover expanding the collection to include all products and investment options, improved data on performance, fees and costs, asset allocation classifications, insurance arrangements, expenses and member demographics. Previous FAQs issued by APRA have been incorporated into these reporting standards.

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Legislative Update

Since our last update, the following Commonwealth tax legislation was introduced into Parliament:

- [Customs Amendment \(Regional Comprehensive Economic Partnership Agreement Implementation\) Bill 2021](#) and the [Customs Tariff Amendment \(Regional Comprehensive Economic Partnership Agreement Implementation\) Bill 2021](#), which were introduced into the House of Representatives on 1 September 2021, together implement the Regional Comprehensive Economic Partnership Agreement (RCEP), which includes Australia, China, Japan, New Zealand, the Republic of Korea, and the ten members of the Association of Southeast Asian Nations (ASEAN) being Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. The Bills include measures to:
 - introduce new rules of origin for goods imported from a party to the RCEP; and
 - providing for new rates of duty on RCEP originating goods.

The following Bill has completed its passage through Parliament and is now law:

- [Treasury Laws Amendment \(2021 Measures No. 2\) Act 2021](#) which amends the income tax law to:
 - remove the concessional tax treatment and interest withholding tax exemption for offshore banking units (OBUs) and close the regime to new entrants, and
 - require that, as a precondition for deductible gift recipient (DGR) endorsement, a fund, authority or institution must be a registered charity, an Australian government agency or operated by a registered charity or an Australian government agency, and

following amendments to the Corporations law that were made during the Bill's passage through Parliament requires a listed entity to give to each relevant market operator a notice if the listed entity, or a subsidiary of the listed entity, received a JobKeeper payment for a financial year.

- [Treasury Laws Amendment \(2021 Measures No. 6\) Act 2021](#) which amends the income tax law to:
 - make refunds of large scale generation shortfall charges non-assessable non-exempt income;

- remove the requirement for actuarial certificates when calculating exempt pension income where all fund members are in their retirement phase; and
- create an information sharing mechanism between family law courts and the Australian Taxation Office (ATO) to improve identification of superannuation assets in family law proceedings.

Commonwealth revenue measures registered as legislative instruments since our last update include:

- [Taxation Administration \(Data Sharing— Relevant COVID-19 Business Support Program\) Amendment Declaration \(No. 1\) 2021](#) that adds programs in South Australia and the Australian Capital Territory as relevant COVID-19 business support programs for the purposes of the sharing of information between the ATO and state revenue authorities. Revenue NSW and Queensland Treasury's Office of State Revenue were also listed as administering agencies of previously declared programs following administrative changes in those jurisdictions.

Parliament resumes sittings on 18 October 2021.

Let's talk

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Other News

OECD urges tax reform in Australia

In its latest [Economic Survey of Australia](#), the Organisation for Economic Cooperation and Development (OECD) has urged Australia to undertake genuine tax reform to tackle mounting public debt as a result of the COVID-19 pandemic. It notes that tax reform will be necessary to reduce Australia's reliance on taxing personal incomes, which leaves public finances vulnerable to an ageing population. This could be achieved by increasing the Goods and Services Tax (GST) rate or broadening the base while offsetting any regressive effects through additional personal income tax cuts; reducing private pension tax breaks, and reducing the capital gains tax discount. In addition, the OECD considers that more state governments should replace stamp duty with a well-designed recurrent land tax. The Government has [responded](#) to the recommendations from the OECD welcoming the findings of the Economic Survey.

ATO update on tax avoidance taskforce

The Australian Taxation Office (ATO) has [published](#) an update on the ongoing work of the Tax Avoidance Taskforce. According to the report, over \$4.5 billion in liabilities were raised and \$2.5 billion in cash was collected during the 2020-21 financial year. As part of its work, the Taskforce engaged with 468 of the Top 500 taxpayer population, 930 of the Top 1,000 large public groups and commenced 130 combined assurance reviews.

For the 2021-22 financial year, the Taskforce plans to focus on:

- large advisors who promote tax avoidance schemes and engage in uncooperative behaviour;
- engagement with Top 500 and Next 5,000 taxpayers;
- continuing with the Top 1,000 combined assurance review (CAR) program

- taxpayers using complex trust structures and distribution flows to exploit the use of trusts; and
- the small number of wealthy individuals continuing to engage in tax avoidance behaviours.

ATO focus on fuel tax credits scheme

The ATO has issued [Taxpayer Alert TA 2021/3](#) which flags arrangements of concern where telematics technology products are being marketed to taxpayers for fuel tax credit purposes where the analysis of data from the products leads to an incorrect apportionment of fuel tax credits. In particular, the ATO is concerned with a number of practices, such as the incorrect classification of roads or locations, inadequate sample sizes that do not represent a client's fleet, use of incorrect assumptions, failure to reconcile with source documentation, failure to account for the limitations of software and incorrect use of ATO simplified methods.

ATO draft protocol on legal professional privilege

The ATO has released for consultation its [draft protocol on legal professional privilege](#) (LPP) which contains the ATO's recommended approach for identifying communications covered by LPP and making LPP claims to the ATO. This draft protocol has been developed to assist taxpayers and their advisers when making LPP claims in response to requests for information the ATO makes under its formal information gathering powers.

Comments can be made on the draft protocol by 31 October 2021.

IGTO update on business tax debts and report on JobKeeper deferrals

In the latest edition of [IGoT news](#), the Inspector-General of Taxation and Taxation Ombudsman (IGTO) has advised that the ATO has commenced reporting business tax debts to credit reporting agencies if a business owes at least \$100,000 and this amount has been outstanding for more than 90 days. However, the ATO will not report tax debts if the business engages with the ATO including, for example, if the business agrees to a payment arrangement or formally disputes the debt. If a business makes a complaint to the IGOT about the debt, the ATO will not report the debt until the IGOT has completed its investigation. The IGOT does not have the power to compel the ATO to take any particular actions, however it will issue findings and recommendations. IGOT recommends engaging with the ATO by organising payment or formally

disputing the debt as the best way to prevent the debt being reported.

The IGTO also [released](#) its latest report '[An Investigation into the ATO's administration of JobKeeper enrolment deferral decisions](#)'. The report summarises the IGTO's investigations into complaints from taxpayers who requested a deferred enrolment in the JobKeeper stimulus measure but were rejected by the ATO. In particular, the report highlights that in rejecting many requests, the ATO was not observing the 'fair and reasonable threshold' that was required by the Commissioner of Taxation's instructions to ATO staff contained in Practice Statement Law Administration [PS LA 2011/15](#) on lodgment obligations, due dates and deferrals.

Other key findings of the report show that the ATO only granted deferred JobKeeper enrolment requests if there were exceptional circumstances that matched a list of ATO specified circumstances and provided guidance materials to staff which confined deferred enrolments to those exceptional circumstances. As a result of complaints by taxpayers and the investigations by IGTO, the ATO has overturned its initial decisions in a number of cases and confirmed to the IGTO that the 'fair and reasonable threshold' should be applied.

Cash flow boost scheme

The Administrative Appeals Tribunal (AAT) has held in [MJ and IT Pty Ltd v Federal Commissioner of Taxation \[2021\] AATA 3250](#) that the taxpayer company had entered into a scheme for the sole or dominant purpose of accessing the cash flow boost stimulus measure by recording a single payment to its sole director in the final week of March 2020. Although the AAT upheld the taxpayer's argument that the payment had been constructively received by the director following the recording of the expense and the subsequent set-off against the director's loan in the accounts, it found in favour of the Commissioner of Taxation that the March payment would not have happened if the parties were at arm's length or the cash flow boost did not exist. The circumstances showed that the taxpayer had the sole or dominant purpose of increasing the amount payable under the cash flow boost.

Exposure draft regulations to reduce red tape for charities

The Federal Treasury has released [exposure draft regulations](#) on reforms aimed at reducing red tape and increasing the transparency of the charity sector. The draft regulations implement recommendations from the Australian Charities and Not-for-profits Commissioner Legislation Review 2018, including:

- an increase to revenue thresholds used in the definitions of small, medium and large registered charities;
- requiring all registered charities to disclose related party transactions in their annual financial reports; and

- exempting some charities from the requirement to disclose remuneration paid to responsible persons and senior executives as related party transactions.

Responses to the draft regulations may be provided up until 8 October 2021.

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Editorial

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