

September 2018

TaxTalk Monthly

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



Corporate Tax Update

Further progress on draft law on tax treatment of stapled structures

Treasury has been busy with the release of the exposure draft law that seeks to give effect to the Government's proposal from 27 March 2018 which addressed risks to the corporate tax base posed by stapled structures and similar arrangements, and limits access to concessions currently available to foreign investors for passive income.

Specifically, the [second stage of draft legislation](#) was released to reflect feedback received on the [first stage of draft legislation](#). In addition, this draft incorporated amendments to prevent foreign investors from accessing concessional Managed Investment Trust (MIT) tax rates on agricultural land as well as including changes to the treatment of residential housing held in an MIT. The complete package of law covers the following measures:

- ensure that converted trading income is subject to MIT withholding at the top corporate tax rate
- amend the thin capitalisation rules to prevent foreign investors 'double gearing' their investments
- limit the foreign pension fund withholding tax exemption for interest and dividends to portfolio investments
- create a legislative framework for a tax exemption for foreign governments on their passive income from portfolio investments, and
- ensure that investments in agricultural land and residential property (other than affordable housing) are subject to MIT withholding tax rate at the corporate tax rate.

Comments were due on 10 August 2018. See also the Government's [media release](#).

In addition, Treasury has released [draft legislation](#) on additional integrity rules that will apply to stapled entities that access the infrastructure concession and/or transitional arrangements. The conditions include:

- the extension of existing integrity rules that apply to MITs to ensure that all staples eligible for the transition rules or the infrastructure concession are required to comply with the existing non arm's length income rule, and
- the introduction of statutory caps on the amount of cross-staple rent that is able to access the concessional 15 per cent rate of withholding tax

(available under the MIT regime) for economic infrastructure projects during the transition or concession period.

Comments were due on 14 August 2018. See also the Government's [media release](#).

Guidance on deemed dividend rules for private companies

The Australian Taxation Office (ATO) has issued the following in relation to the application of the deemed dividend rules (Division 7A), which apply to private companies:

- Tax Determination [TD 2018/14](#), which indicates that the benchmark interest rate for Division 7A purposes for the income year that commenced on 1 July 2018 is 5.20 per cent per annum. This benchmark interest rate is relevant to determine if a private company loan made in the 2017-18 income year is taken to be a dividend, and to calculate the amount of the minimum yearly repayment for the 2018-19 income year on an amalgamated loan taken to have been made prior to 1 July 2018.
- Update to 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. The update extends the application of the pre-existing guidance to seven-year sub-trust arrangements so that it applies to those maturing in the 2019 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.

ATO guidance on company tax rate change

The ATO has updated Practical Compliance Guideline [PCG 2018/D5](#) which sets out the ATO's compliance and administrative approaches for small business corporate tax entities that have faced practical difficulties in determining their corporate tax rate and corporate tax rate for imputation purposes in the 2015-16 to 2017-18 income years. The Commissioner acknowledges that uncertainty may have arisen as a result of changes to the tax laws, and the subsequent release of Draft Taxation Ruling [TR 2017/D7](#) which deals with the 'carrying on a business' requirement which applied to the 2015-16 and 2016-17 income years. In light of this uncertainty, the Commissioner will apply the

following two approaches to assist affected corporate tax entities:

- For the 2015-16 and 2016-17 income years, a facilitative compliance approach will apply to the 'carrying on a business' test for corporate tax rate purposes
- For the 2016-17 and 2017-18 income years, a practical administrative approach will apply that allows corporate tax entities to choose a simplified method to inform members of the correct franking credit to which they are entitled.

This means that the Commissioner will not generally allocate compliance resources specifically to conduct reviews of whether corporate tax entities have applied the correct rate of tax or franked at the correct rate in the 2015-16 and 2016-17 income years.

Comments were due on 24 August 2018.

In addition, the ATO issued a draft Law Companion Ruling, [LCR 2018/D7](#), which provides guidance and examples to assist taxpayers to apply the new tests relevant to eligibility for a reduced company tax rate for the 2017-18 and later income years, including:

- determining which amounts are 'base rate entity passive income'
- the meaning of rent, interest and when a share of trust or partnership income is referable to an amount of base rate entity passive income, and
- how to calculate the corporate tax rate for imputation purposes.

Comments are due on 5 October 2018.

For further information concerning the company tax rate changes, refer to the [TaxTalk Alert](#) of August 2018.

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Employment Taxes Update

Appeal lodged in respect of payroll tax decision on amounts distributed via express trust (VIC)

Earlier this year, the Victorian Civil and Administrative Tribunal (the Tribunal) found in [The Optical Superstore Pty Ltd & Ors v Commissioner of State \[2018\] VCAT 169](#) that payroll tax was not payable on certain net consultation payments made to optometrists by the owner of the clinic and premises at which that the optometrists used to treat their customers. This was on the basis that the net

consultation fees were effectively held on trust for the optometrists, and the payments were therefore not considered to be for, or in relation to, services provided to the Applicant. Instead, only a small number of payments made by the Applicant to optometrists based directly on hours worked by the optometrists were considered wages for payroll tax purposes.

We understand that the Commissioner has lodged an appeal with the Supreme Court to review this decision with a hearing date in September 2018.

ATO draft guidance on expansion of taxable payments reporting system

The taxable payments reporting system (TPRS), which currently applies to businesses in the building and construction industry and Government entities, requires businesses to report payments they make to contractors for certain specified services to the Australian Taxation Office (ATO).

In support of the current proposal to expand the TPRS to additional industries, the ATO has released draft law companion ruling [LCR 2018/D6](#) which provides preliminary guidance on the proposed expansion of the TPRS to contractors in the courier and cleaning industries from 1 July 2018. Comments are due by 14 September 2018.

In addition, the ATO has also released [draft guidance](#) detailing how it is considering applying the proposed law announced in the 2018-19 Federal Budget, which would extend the TPRS to businesses in the road freight, security, investigation, surveillance, and information technology (IT) industries, with effect from 1 July 2019. A draft legislative instrument (and accompanying explanatory statement) has also been released that aims to exempt relevant businesses from needing to lodge a Taxable Payments Annual Report where less than 10 per cent of their relevant goods and services tax (GST) turnover is comprised of payments received for security, investigation, surveillance, or IT services. Comments were due on 31 August 2018.

Supreme Court of NSW extends power to issue third party debt recovery notices

The Supreme Court of NSW in [Fyna Projects Pty Ltd v Chief Commissioner of State Revenue \[2018\] NSWSC 1220](#) has refused to grant declaratory and injunctive relief sought by the plaintiffs in relation to the outcome of an audit, assessment and reassessment of liability under the *Payroll Tax Act*

2007 (NSW). The Court held that the Chief Commissioner of State Revenue's power to issue third party notices to the debtors of a payroll tax "taxpayer" did extend to members of a payroll tax group of which the taxpayer was a member.

The plaintiff has subsequently lodged a Notice of Appeal against this decision with the NSW Court of Appeal.

Superannuation Guarantee relief for certain visa holders

The Federal Government's consultation process for the draft [Superannuation Guarantee \(Administration\) Regulations 2018](#) ended on 15 August 2018.

The draft regulations were introduced to replace the existing *Superannuation Guarantee (Administration) Regulations 1993*, which were scheduled to sunset on 1 October 2018. Minor technical changes have been made in the draft regulations to remove redundant references and make consequential amendments required by recent updates to *Migration Regulations 1994*.

Under the draft regulations, employers of senior executives in Australia on temporary work visas will continue to be relieved of Superannuation Guarantee obligations for senior executives holding either a Subclass 482 (Temporary Skill Shortage) visa or the Subclass 400 (Temporary Work (Short Stay Specialist)) visa.

The new regulations are expected to be finalised prior to 1 October 2018.

PAYG withholding variation for performing artists

The ATO has issued a [legislative instrument](#) which continues the withholding arrangements for performing artists that are paid for performing in a promotional activity by varying Pay As You Go (PAYG) withholding to a flat rate of 20 per cent.

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Global Tax Update

Latest news from international tax and transfer pricing

New multinational laws now enacted

Australia's hybrid mismatch rules have now been enacted (the [Treasury Laws Amendment \(Tax Integrity and Other Measures No. 2\) Act 2018](#)). With the new law having effect for income years commencing on or after 1 January 2019, we recommend that all Australian taxpayers with cross-border transactions consider the potential impact of the hybrid mismatch rules sooner rather than later. Refer to our [TaxTalk Insights](#) for further information about the new rules.

In addition, Australia has given the force of law to the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* following the enactment of [Treasury Laws Amendment \(OECD Multilateral Instrument\) Act 2018](#). This now clears the way for the Multilateral Instrument to take effect in Australia from as early as 1 January 2019 (for example, in relation to withholding taxes under the New Zealand and United Kingdom), subject to its ratification by Australia's treaty partners that have also chosen to adopt the Multilateral Instrument.

Draft law on thin capitalisation Budget measures

Treasury has [released](#) for comment draft legislation that proposes to implement several changes to Australia's thin capitalisation rules that were announced by the Government in the 2018-19 Australian Federal Budget. The changes:

- require entities to align the value of their assets for thin capitalisation purposes with the value included in their financial statements, and
- ensure that foreign controlled Australian consolidated entities and multiple entry consolidated groups that have foreign operations are treated as both outward and inward investing entities.

These changes are proposed to apply from income years commencing on or after 1 July 2019.

Comments were due on the draft legislation by 17 August 2018. See also the Government's [media release](#).

ATO draft determinations addressing application of thin capitalisation rules

The Australian Taxation Office (ATO) has issued the following draft tax determinations which address certain aspects of the application of the thin capitalisation rules:

- Draft taxation determination [TD 2018/D4](#) sets out how an entity must value its 'debt capital' for the purposes of Division 820 of the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997). According to the draft determination, an entity's debt capital must be valued in its entirety in the manner required by the accounting standards.
- Draft taxation determination [TD 2018/D5](#) identifies the type of costs which are debt deductions within scope of subparagraph 820-40(1)(a)(iii) of the ITAA 1997. The draft tax determination confirms that all deductible costs of raising finance through debt capital, incurred directly in relation to the debt capital, and all deductible costs directly incurred in maintaining the financial benefit received in association with the debt capital, are debt deductions.

Refer to this [TaxTalk Alert](#) dated 1 August 2018 for further detail about these draft determinations. Comments on both draft tax determinations were due on 31 August 2018.

Update to cross-border financing PCG to deal with derivatives

The ATO has updated Practical Compliance Guideline [PCG 2017/4](#) which outlines its compliance approach to tax issues associated with cross-border related party financing arrangements and related transactions. The updated PCG now includes draft Schedule 2 which sets out specific risk indicators for

related party derivative arrangements that are used to hedge or manage the economic exposure of a company or group of companies. Comments were due on 31 August 2018. Refer to this [TaxTalk Alert](#) dated 1 August 2018 for further detail.

Updated PCG on simplified transfer pricing record keeping options

The ATO has published an update to Practical Compliance Guideline [PCG 2017/2](#) which sets out simplified transfer pricing record keeping options that reflect the types of transactions or activities the ATO believe are low-risk in the context of international related party dealings. This update provides that the minimum interest rate for the 2019 income year that is applicable in working out eligibility for the transfer pricing record keeping options for a small related party outbound loan (ie combined cross-border loan balance of AUD50 million or less for the Australian economic group) is 3.7 per cent.

US tax reform developments

To keep up to date with the latest developments, news and implications of tax reform in the United States (US), visit PwC's dedicated website. Updated regularly, to provide response to developments as they occur, it brings together insights from business specialists across the globe for US inbound and outbound organisations navigating change. Some recent updates to note include:

- [Tax reform readiness – Implications for US tax treaties](#)
- [Tax reform offers accounting method planning opportunities](#)
- [Tax reform readiness – BEAT mechanics and selected issues](#)
- [Tax reform readiness – State and local tax compliance considerations](#)
- [IRS issues lengthy proposed rules on 'toll tax' under amended Section 965](#)
- [House Ways and Means Chairman Brady releases Tax Reform 2.0 outline](#)
- [Tax reform readiness – Using partnerships in deal structures after tax reform](#)
- [Preliminary highlights of the proposed 'toll tax' regulations under amended Section 965](#)

OECD and BEPS developments

In the [communiqué](#) from the G20 Finance Ministers and Central Bank Governors Meeting held on 21-22 July 2018 in Buenos Aires, Argentina, G20 Finance Ministers reaffirmed the importance of the worldwide implementation of the base erosion and profit shifting (BEPS) package and committed to working together to seek a consensus-based solution to address the impacts of the digitalisation of the economy on the international tax system by 2020, with an update in 2019. The Ministers also called on all jurisdictions to sign and ratify the multilateral Convention on Mutual Administrative Assistance in Tax Matters.

The Organisation for Economic Cooperation and Development (OECD) is [seeking input](#) for the Stage 1 peer reviews of Argentina, Chile, Colombia, Croatia, India, Latvia, Lithuania and South Africa on specific issues relating to access to the Mutual Agreement Procedure (MAP), clarity and availability of MAP guidance and the timely implementation of MAP agreements for each of these jurisdictions. Comments were due on 24 August 2018.

In other developments:

- Antigua and Barbuda have [signed](#) the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#).
- Ukraine has [signed](#) the [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#).

Hong Kong enacts new BEPS and transfer pricing law

Hong Kong has commenced to deliver on the OECD BEPS initiatives with the enactment of a new BEPS and transfer pricing Ordinance which introduces a transfer pricing regulatory regime and documentation requirement into Hong Kong tax law. The Ordinance implements certain minimum standards (Actions 5, 13, and 14) under the OECD's BEPS Action Plan. For further information, refer to PwC's [Global Tax Insights](#).

Germany extends non-resident capital gains tax to shares in foreign real estate-rich corporations

Recently published German draft legislation seeks to extend the German non-resident taxation rules on capital gains from the disposal of shares in a German corporation to gains from the disposal of shares in a foreign corporation that is deemed to be 'real estate-rich'. For further information, refer to PwC's [Global Tax Insights](#).

 [Explore PwC's global tax research and insights](#)

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Indirect Tax Update

IGT Review into GST Refunds

The Inspector General of Taxation (IGT) has [released](#) his [report](#) into the Australian Taxation Office's (ATO) verification of Goods and Services Tax (GST) refunds. Overall, the IGT has found that the ATO's administration of GST refunds has operated efficiently with the vast majority of refunds released without being stopped for verification. Moreover, where refunds are stopped, the majority were processed and released within 14 to 28 days.

The IGT made five recommendations (comprising 16 parts) to the ATO which were aimed at:

- developing a framework for continuous improvement of its automated risk assessment tools,
- streamlining its guidance to staff and implementing tools to assist them in complying with their obligations under section 8AAZLGA of the *Taxation Administration Act 1953*,
- enhancing information requests to taxpayers and providing a channel for pre-emptive provision of such information,
- improving its notification of when taxpayers' objection rights to the retention of refunds has been triggered and assisting them to lodge such objections effectively, and
- raising awareness of staff and taxpayers about financial hardship issues, appropriately considering them and enabling automated partial release of refunds.

The ATO has agreed in full or in part with all five recommendations (11 out of 16 parts). See also the ATO's [media release](#) issued in response.

One of the IGT's recommendations was that the Government consider amending section 8AAZLGA of the *Taxation Administration Act 1953* to allow the Commissioner, in appropriate cases, to effectively investigate and address risks of fraud where the seriousness of which has been established by means such as obtaining a Federal Court order. In response, the [Government](#) notes the recommendation and has indicated that it will consider options that balance the integrity of the GST system and the prompt issuing of GST refunds, and that careful consideration will be given to any impact on the ability of the ATO to conduct covert taxpayer reviews in cases of deliberate and egregious taxpayer fraud.

Draft law to remove luxury car tax on re-imported cars refurbished overseas

Treasury has [released](#) draft legislation to remove liability for luxury car tax from cars re-imported following service, repair or refurbishment overseas. This change was announced in the 2018-19 Federal Budget, and is proposed to take effect from 1 January 2019. Comments were due on the draft law by 8 August 2018.

Draft law to collecting tobacco duties and taxes at the border

Treasury has [released](#) draft legislation to support the crackdown on illicit tobacco. Specifically from 1 July 2019, importers will be required to pay all duty and tax liabilities when tobacco enters the country, rather than when it leaves a licensed warehouse and enters the domestic market. This will reduce the potential for leakage from warehouses to the black market. Comments were due on the draft law by 22 August 2018. See also the Government's [media release](#).

Illicit Tobacco Taskforce

The Government has [announced](#) the Illicit Tobacco Taskforce which will target the AUD600 million dollars in tobacco duty which was forgone in 2015-16 due to the illicit tobacco market. The taskforce combines the operational, investigative and intelligence capabilities of the Australian Border Force, Department of Home Affairs, Australian Criminal Intelligence Commission, Australian Transaction Reports and Analysis Centre, Commonwealth Director of Public Prosecutions and the ATO.

Conveyancers and GST withholding for certain taxable supplies of property

The Tax Practitioners Board has released [guidance](#) for conveyancers who are not tax agents assisting their clients with new GST withholding requirements on certain taxable supplies of new residential premises or potential residential land.

GST on sanitary products

The Government has [announced](#) that it will remove GST on sanitary products. The Federal Treasurer will take the proposal to the next meeting of the state and territory Treasurers.

Update on Australia-Peru free trade agreement

The [Parliamentary Joint Standing Committee on Treaties](#) has released and tabled a [report](#) which recommends that the Australia-Peru Free Trade Agreement be ratified and binding treaty action be taken.

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Personal Tax Update

Tribunal finds taxpayer assessable in relation to ESS

The Administrative Appeals Tribunal (AAT) in [*Fox v Commissioner of Taxation \[2018\] AATA 2791*](#) has affirmed the Commissioner's decision to include an amount of the taxpayer's assessable income in relation to interests that were acquired under an employee share scheme (ESS). The Tribunal rejected the taxpayer's argument that she was coerced or unduly influenced into signing the ESS offer letters as they failed to provide evidence to substantiate the claims.

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Tribunal finds taxpayer not entitled to deduction for certain meal allowance expenses

The AAT in [*Mitchell v Commissioner of Taxation \[2018\] AATA 2507*](#) has held that a taxpayer employed as a site surveyor was not eligible to deduct certain meal allowance expenses as limited evidence was provided to support the claim. The Tribunal only permitted a deduction equal to the amount of the overtime meal allowance that was included in the taxpayer's assessable income.

State Taxes Update

Revenue NSW issues ruling on GST withholding

From 1 July 2018, purchasers of new residential premises or residential land may need to withhold an amount that would otherwise be payable to the vendor on account of the Goods and Services Tax (GST). In view of this new law, Revenue NSW has issued [*Revenue Ruling No. DUT 047*](#) which clarifies that duty is still payable on the GST component of the purchase price, even if GST withholding applies and the purchaser pays the withheld amount directly to the Australian Taxation Office (or to the vendor via bank cheque made out to the Commissioner of Taxation) instead of paying that amount to the vendor.

Tribunal NSW land tax exemption did not apply

The NSW Civil and Administrative Tribunal in [*Carberry v Chief Commissioner of State Revenue \[2018\] NSWCATAD 157*](#) has found that the taxpayer was not entitled to the principal place of residence

exemption from land tax in relation to a property. The Tribunal held that the taxpayer did not meet the requirements of clause 6 of Schedule 1A to the *Land Tax Management Act 1956* (NSW) which provides a concession for unoccupied land intended to be the owner's principal place of residence.

Tribunal finds no entitlement to Victorian charitable duty exemption

The Victorian Civil and Administrative Tribunal in [*Rotary Club of Melbourne Inc v Commissioner of State Revenue \[2018\] VCAT 1257*](#) has held that the association was not a body established for charitable purposes and as such was not exempt from duty under section 45 of the *Duties Act 2000* (VIC) at the time of the transfer of relevant property. While acknowledging the social and networking activities undertaken by the association, the Tribunal was of view that this went 'beyond the purposes accepted by the law as charitable'.

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Superannuation Update

ATO finalises ruling on First Home Super Saver scheme

The Australian Taxation Office (ATO) has issued law companion ruling [LCR 2018/5](#) which provides guidance on the operation of the First Home Super Saver (FHSS) Scheme, designed to allow individuals who make voluntary contributions into super on or after 1 July 2017, to withdraw those contributions (up to certain limits) and an amount of associated earnings for the purpose of purchasing their first home.

ATO's super fund reporting protocol guidance

The ATO has issued the following protocols for superannuation providers and suppliers who will be reporting:

- [Contributions](#)
- [Successor fund transfer reporting](#)

ATO speech on super reforms

The ATO's Deputy Commissioner James O'Halloran in a [keynote address](#) to the Superannuation Industry Engagement Forum, discussed the roadmap for change in the superannuation environment which includes superstream and broader reform phases. Notably, the areas expanding the ATO remit include:

- administrative responsibility for the compassionate release of superannuation
- continued commitment to the Small Business Superannuation Clearing House
- the improved enforcement capacity of the ATO to monitor Superannuation Guarantee (SG) payments, and

- the imminent introduction of Single Touch Payroll and its key connection to SG reporting and reporting by funds of SG payments.

Full Federal Court finds sole purpose test not breached

The Full Federal Court in [Aussiegolfa Pty Ltd \(Trustee\) v Commissioner of Taxation \[2018\] FCAFC 122](#) has allowed the taxpayer's appeal, in part against the decision of the [Federal Court](#) which had held that a self-managed superannuation fund that invested in a property leased to a related party was in breach of the sole purpose and in-house assets tests of the *Superannuation Industry (Supervision) Act 1993* (Cth). The Full Federal Court concluded that the primary judge was correct in finding the units held by the trustee of the fund constituted an investment in a "related trust" of the fund and the primary judge was correct to conclude that the units did not constitute an investment in a widely held unit trust. The full Federal Court confirmed the breach of the in-house asset rules. However, the Court concluded that the primary judge erred in finding that the leasing of a property at market rent to a related party would cause the self-managed fund to breach the sole purpose test.

Senate inquiry into economic security for women in retirement

The Government has released its [response](#) to the [Senate inquiry](#) into the economic security for women in retirement. The Government noted various recommendations made in the report but did not agree with the committee's recommendation to revise the current schedule for the increase in the Superannuation Guarantee (SG) rate to 12 per cent, and to ensure the gradual increase in the SG rate is implemented earlier than the current timetable. The

SG rate is legislated to gradually increase to 12 per cent by July 2025.

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Legislative Update

Federal Parliament resumed for the spring session of Parliament on 13 August 2018.

Commonwealth revenue measures introduced into Parliament or registered as legislative instruments or regulations since the last issue of TaxTalk include:

- The [Customs Amendment \(Pacific Agreement on Closer Economic Relations Plus Implementation\) Bill 2018](#) and [Customs Tariff Amendment \(Pacific Agreement on Closer Economic Relations Plus Implementation\) Bill 2018](#), which propose to amend the *Customs Act 1901* and *Customs Tariff Act 1995* to implement the Pacific Agreement on Closer Economic Relations (PACER) Plus, were introduced into the House of Representatives on 16 August 2018.
- [Customs Tariff Amendment \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation\) Bill 2018](#) and [Customs Amendment \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation\) Bill 2018](#), which seek to implement the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the TPP-11) and introduce new rules of origin for goods imported into Australia from a Party to the TPP-11, were introduced into the House of Representatives on 23 August 2018.

The following key tax Bills have completed their passage through Parliament:

- [Treasury Laws Amendment \(Enterprise Tax Plan Base Rate Entities\) Bill 2017](#) which amends the *Income Tax Rates Act 1986* to ensure that from the 2017-18 income year, a corporate tax entity will not qualify for the lower corporate tax rate if more than 80 per cent of its assessable income for that income year is passive income.
- [Customs Amendment \(Illicit Tobacco Offences\) Bill 2018](#) which creates two new offences in respect of imported illicit tobacco (based on recklessness) and allows officers of Customs to investigate certain new illicit tobacco offences.
- [Treasury Laws Amendment \(OECD Multilateral Instrument\) Bill 2018](#) which amends the *International Tax Agreements Act 1953* to give force of law in Australia to the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*. See also the Government's [media release](#).
- [Treasury Laws Amendment \(Tax Integrity and Other Measures No 2\) Bill 2018](#) which, among other things, implements the OECD hybrid mismatch rules.

Other Commonwealth revenue measures that were registered as legislative instruments or regulations since the last issue of TaxTalk, include:

- [Notice of Substituted Rates of Customs Duty for Excise-Equivalent Goods – Notice \(No. 3\) 2018](#) for certain excise-equivalent goods from 1 August 2018.
- [Notice of Substituted Rates of Excise Duty – Notice No. 3 \(2018\)](#) sets out the substituted rate of excise duty for certain goods from 1 August 2018.
- [Legislation \(Exemptions and Other Matters\) Amendment \(2018 Measures No. 2\) Regulations 2018](#) amend the Principal Regulation to provide for, and clarify, exemptions from sunseting for

particular instruments, including the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Accounts Regulations 1997*.

- [Corporations Amendment \(Asia Region Funds Passport\) Regulations 2018](#) which amends the *Corporations Regulations 2001* and other miscellaneous regulations to implement the Asia Region Funds Passport in Australia, including measures to ensure that the disclosure requirements for foreign passport funds products are the same as those that currently apply to managed investment products.

Let's talk

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Other News

New tax concession for drought affected farmers

The Government has [announced](#) that it will support farmers investing in fodder storage as part of the instant depreciation initiative. This measure will be available for fodder storage assets first used or installed ready for use from 19 August 2018, and complements the AUD\$20,000 instant asset write-off already available for small businesses. Legislative changes will be made to give effect to this measure. The Australian Labor Party has [indicated](#) it will support the announced measures.

ATO's new data matching programs

The Australian Taxation Office (ATO) has updated its data matching program to include the following:

- [Sharing Economy Accommodation 2016-17 to 2019-20 financial years](#): The ATO will collect data under notice to identify individuals that have, or may be, engaged in providing accommodation services through an online platform. The ATO will also acquire details of all payments made by the platform/s to accommodation providers including payments made by international entities. The data will be acquired for the 2016-17 to 2019-20 financial years.
- [Rental Bond 20 September 1985 to 2019-20 financial years](#): The ATO will collect data under notice to identify individuals that have income tax reporting obligations for income producing properties or have a Capital Gains Tax (CGT) event arising from the sale of real property for the period 20 September 1985 to the 2019-20 financial year.

- [Department of Human Services – specified benefits and entitlements 2017-18 to 2019-20 financial years](#): The ATO will acquire details of individuals in receipt of Paid parental leave payments and Medicare entitlement statements from the Department of Human Services (Centrelink and Medicare) for the 2017-18, 2018-19 and 2019-20 financial years.

High Court rules in matter regarding distribution of franking credits to trust beneficiary

The High Court in [Federal Commissioner of Taxation v Thomas \[2018\] HCA 31](#) has unanimously held that the [Full Federal Court](#) had erred in concluding that “directions” given by the Supreme Court of Queensland pursuant to section 96 of the *Trusts Act 1973* (Qld) determined the application of Division 207 of the *Income Tax Assessment Act 1997* (Cth). The Full Federal Court had held that the beneficiary of the trust was entitled to the benefit of the franking credits for the relevant years, notwithstanding that the allocation of franking credits was disproportionate to the distribution of the franked dividends. The High Court rejected the taxpayers’ ‘alternative construction’ of the resolutions that the franked distributions were ‘notionally allocated’ to match the purported and separate distribution of the franking credits. The Supreme Court of Queensland in the first instance held that trustee resolutions were effective in distributing franking credits to the beneficiaries of the trust.

Reforms to combat illegal phoenix activity

Treasury has released [exposure draft legislation](#) which gives effect to the Government’s 2018-19 Federal Budget measures to combat illegal phoenix activity. The proposed reforms relate to corporations and tax laws and include specific reforms to:

- introduce new phoenix offences that target those who conduct and those who facilitate illegal phoenix transactions
- prevent directors from backdating their resignations to avoid personal liability
- prevent a sole director from resigning and leaving a company as an empty corporate shell with no director
- extend the director penalty provisions to make directors personally liable for their company’s goods and services tax and related liabilities
- expand the ATO’s existing power to retain refunds where there are tax lodgments outstanding, and
- restrict the voting rights of related creditors of the phoenix operator at meetings regarding the appointment or removal and replacement of an external administrator.

Comments are due by 27 September 2018.

Trust vesting

Taxation Ruling [TR 2018/6](#) provides ATO guidance on amending the vesting date of a trust and the consequences of a trust vesting. According to the Ruling, once the vesting date has passed, the trust has vested and it is no longer possible for a trustee to change the vesting date. Although no CGT consequences happen on amending the vesting date through the valid exercise of a power in a trust deed or on approval of a relevant court, the income tax consequences that arise on, and after, the vesting of a trust depend on the terms of the deed. Vesting of itself may, but need not, cause a CGT event to happen.

Updated FIRB application checklist

The Foreign Investment Review Board (FIRB) has updated its [application checklist](#). An [application tax checklist](#) is included as an appendix and identifies the tax information that may be requested by the ATO during the application process. For large investment transactions, particularly infrastructure related transactions, it is expected that certain information will be required by the ATO.

ATO Corporate plan 2018–19

The ATO has released its [2018-19 Corporate plan](#) that outlines the priorities for the ATO for the year ahead, with strategic objectives that reflect its ambition over the long term, through to 2024. The ATO has developed two aspirations for its journey to 2024 – to build trust and confidence in the tax and superannuation systems and to create a streamlined, integrated and data-driven future.

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Editorial

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