

June 2017

TaxTalk Monthly

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



Corporate Tax Update

Stapled structures review period extended

A week out from last month's Federal Budget, the Treasurer [announced](#) that the timeline for the review on policy options for Stapled Structures will be extended to the end of July 2017.

The Treasurer said the extension "will allow more time to formulate relevant options that minimise unintended consequences". This is in recognition of "the economic significance of stapled structures in the Australian economy and (the fact) that this is a complex and sensitive issue".

ATO guidance on over-franking in 2016-17 income year because of tax rate change

On 22 May 2017, the Australian Taxation Office (ATO) released a draft [Practical Compliance Guideline PCG 2017/D7](#) which sets out a practical compliance approach for small business companies that may have over-franked a distribution prior to the enactment of the new company tax rate change (following the enactment of *Treasury Laws Amendment (Enterprise Tax Plan) Act 2017* which became law on 19 May 2017).

According to the PCG if a corporate tax entity fully franked a distribution during its 2016-17 income year based on the 30 per cent corporate tax rate when the entity's tax rate for that income year may in fact be 27.5 per cent because of the law change, the amount of the franking credit on the distribution statement provided to members may be incorrect. The draft Guideline sets out a practical compliance approach that corporate tax entities may choose to use to inform members of the correct amount of franking credit attached to their distribution. The approach may reduce compliance costs for corporate tax entities by providing an alternative to seeking an exercise of the Commissioner's discretion to allow amendment of distribution statements.

For further information about the newly enacted company tax rate changes, refer to [TaxTalk Alert](#) on 28 April 2017.

AAT rejects R&D applications for an advance/overseas finding

The Administrative Appeals Tribunal (AAT) in [DZXP, KRQD and QJJS and Innovation and Science Australia \[2017\] AATA 576](#) has dismissed an application for review of the decision of Innovation and Science Australia (Innovation Australia) in relation to applications for an advance/overseas finding made by subsidiary members of multiple entry consolidated (MEC) groups in respect of certain overseas research and development (R&D) activities. In dismissing the application, the Tribunal agreed with Innovation Australia that the incorrect entities had applied for the advance/overseas findings, and that the "head entities" of the MEC groups should have made the application.

AAT finds that mining operations were not R&D activities

The AAT in [Rix's Creek Pty Limited; Bloomfield Collieries Pty Limited v Innovation Australia \(General\) \[2017\] AATA 645](#) has affirmed decisions made by Innovation Australia that activities carried out by the applicant in relation to mining operations were not R&D activities within the meaning of section 73B of the ITAA 1936 as it was not convinced that the claimed activities were carried on for the purpose of acquiring new knowledge or creating new or improved materials, products, devices, processes or services.

The Tribunal noted the importance of documentary evidence to substantiate R&D activities, although this is not a statutory requirement, and stated that "documentary evidence is an expected feature of an activity that is systematic, investigative and experimental. Documentation is necessary to record the activity undertaken, its purpose, progress and, of course, the results of the activities and the evaluation of those results. Without such documentation, it is near impossible to establish the progression of the activities undertaken and that the purpose of the activities was to generate new knowledge in the form of new or improved materials, products, devices, processes or services".

Incorrectly claiming the Wine Grapes Levy as R&D expenditure

The ATO and the Department of Industry, Innovation and Science (DIIS) are [warning](#) about a scheme where some promoters are advocating that companies who pay the compulsory Wine Grapes Levy, can register the activity with DIIS or simply claim the levy, as all or part of a notional deduction in calculating their entitlement to a R&D tax offset.

The ATO advise that the way R&D commissioned by Wine Australia is conducted means that the levy cannot be claimed in calculating a refundable or non-refundable R&D tax offset for the wine producer. The levy can usually be claimed by a wine producer as an ordinary business deduction.

Draft ruling on taxation of rights and retail premiums under renounceable rights offers

Draft Taxation Ruling [TR 2017/D3](#), issued on 10 May 2017, sets out the Commissioner's preliminary view about the taxation of rights granted, and retail premiums paid, to retail shareholders in connection with renounceable rights offers where shares are held on capital account. Shareholders that are covered by the draft ruling are not required to include anything in their assessable income upon the grant of the entitlement. Any retail premium received is treated as the realisation of a CGT asset. The draft ruling does not cover the application of Australia's tax treaties.

Comments on the draft ruling can be made until 9 June 2017.

Draft ruling on when a limited partnership 'credits' an amount to a partner

Draft Taxation Ruling [TR 2017/D4](#), issued on 17 May 2017, sets out the Commissioner's preliminary view as to when a corporate limited partnership (CLP) is taken to 'credit' an amount to a partner in that partnership within the meaning of section 94M of the ITAA 1936. According to the draft ruling, a CLP 'credits' an amount to one of its partners if it:

- applies or appropriates its resources to confer a benefit on the partner that is not subject to a condition precedent, and

- is legally enforceable by the partner, and is separate and distinct from the partner's existing interest in the CLP and its assets.

A mere credit entry in a CLP's accounts is not a crediting within the meaning of section 94M unless it records an underlying act or transaction that meets the above requirements. However, a CLP does not need to make a distribution or pay an amount to a partner in order for it to credit an amount to that partner.

Comments can be made on the draft ruling by 30 June 2017.

Full Federal Court finds "buy-back reserve" account is not a share capital account

The Full Federal Court in [Cable & Wireless Australia & Pacific Holding BV \(in liquidatie\) v Commissioner of Taxation \[2017\] FCAFC 71](#) has unanimously dismissed the taxpayer's appeal against the decision of the Federal Court and held that a debit entry to a buy-back reserve did not record a transaction reducing a "share capital account" and accordingly, it was correctly treated as a dividend that was subject to withholding tax.

The substantive issue in this case related to the correct characterisation for taxation purposes of an amount debited to the buy-back reserve account as part of a share buy back transaction. This characterisation turned on whether the buy-back reserve account was a share capital account for the purposes of the definition in section 6D of the ITAA 1936.

The Full Federal Court agreed with the approach taken by the primary judge in relation to the meaning of "share capital account" in the context of the relevant transactions and accounts. The Court provided general observations relating to the approach taken by the High Court in [Commissioner of Taxation v Consolidated Media Holdings Ltd \[2012\] HCA 55](#) (Consolidated Media), which dealt with a similar issue, and provided various points to distinguish Consolidated Media from the current case before the Court. In particular the following observations were made in relation to the current case before the Court:

- The buy-back reserve was an account of equity, not a share capital account.
- The "contributed equity" or share capital account did not require for its understanding any reference to the buy-back reserve.

- The only return of capital was the proportionate return of capital being the proportion of shares bought back multiplied by the share capital account balance of the company. This was the amount debited to the share capital account, but not the amount debited to the buy-back reserve. According to the Court, this latter additional amount was a return on capital rather than a return of capital.
- The rulings the taxpayer sought and obtained from the Commissioner, the buy-back Implementation Agreement, and the company's financial accounts and statements all reflect the commercial, economic and legal reality that the debit to the buy-back reserve was not and was not seen to be a reduction or a return of capital.
- Even though the buy-back reserve concerned shares, this did not make it a share capital account. The concept of "capital" is a reference to the value or amount that shareholders had originally contributed.
- The Court distinguished Consolidated Media stating that the "buy-back reserve in that case was both a record of a transaction reducing share capital and a record of Crown's financial position in relation to its share capital. Contrastingly, in the present case the debit entry to the buy-back reserve did not record a transaction reducing share capital. Moreover, the reserve and the debit entry recorded

Optus' financial position in relation to part of its equity, but not share capital or as described in the accounts, "contributed equity".

Commonwealth grant treated as an assessable recoupment

The Federal Court in [Denmark Community Windfarm Ltd v Commissioner of Taxation](#) has held that a Commonwealth grant was an assessable recoupment under section 20-20(2) of the *Income Tax Assessment Act 1997* (ITAA 1997). The Court found that the amounts were received as compensation for an "expense" incurred by the company and although the expense being compensated for was on capital account, this did not prevent the grant from being characterised as a payment by way of indemnity.

The Court also held that the grant was an assessable recoupment under section 20-20(3) of the ITAA 1997 as the amounts were received in respect of a loss or outgoing incurred in relation to depreciating assets, which were deductible under Division 40 of the ITAA 1997. The Court held that, even though the taxpayer had claimed depreciation deductions for the relevant asset under the small business capital allowance provisions found within Subdivision 328-D of the ITAA 1997, the fact that this provision is not listed in the table in section 20-30 of the ITAA 1997 was irrelevant.

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Employment Taxes Update

Black Economy Taskforce interim report released

The Federal Government has [released](#) the Black Economy Taskforce's [interim report](#). The Government has accepted the following recommendations identified for immediate action in the 2017-18 Federal Budget as part of its Tax Integrity package:

- Extending the Taxable Payment Reporting system (TPRS) to two high-risk industries - cleaning and couriers - to ensure payments made to contractors in these sectors are reported to the ATO from 1 July 2018 with the first annual report required to be lodged by August 2019.
- Banning the manufacture, distribution, possession, use or sale of sales suppression technology. This technology allows businesses to understate their income, and has been identified as a threat to the integrity of the tax system both in Australia and internationally.
- Providing funding for the ATO audit and lodgement activities to better target black economy risks.

To help inform the recommendations for the Taskforce's final report (due in October 2017) interested parties can make submissions on the interim report until 30 June 2017.

Senate Committee's Report on Superannuation Guarantee non-payment

The Senate Economics References Committee has released its [Report on Superannuation Guarantee \(SG\) non-payment](#). Key points made by the Committee include:

- The current approach of the ATO to identify and address SG non-compliance is inadequate.
- There is a compelling need for a reliable SG gap figure produced yearly in order to track rates of SG non-payment, analysing which policies are effective, and ultimately minimising the problem.

- The current SG Charge (SGC) framework, with its reliance on employer self-reporting, should be reviewed in order to ensure that SGC penalties are strong enough to act as a proper deterrent.
- Moving SG compliance from the 'paper age' to the 'digital age' will enable a greater focus on proactive methods. This will in turn increase the effectiveness of efforts to detect and remedy SG non-compliance.

The Committee has made 32 recommendations intended to address the significant problem of SG non-compliance.

New payroll tax measures in Victoria

The [2017-18 Victorian Budget](#), released on 2 May 2017, affirmed tax measures announced in its lead up and also housing affordability measures announced earlier this year. New payroll tax measures announced include:

- A reduction in the payroll tax rate to 3.65 per cent for businesses with payrolls that comprise at least 85 per cent wages associated with regional employees.
- An increase in the threshold under which businesses can opt to make annual payroll tax payments from \$10,000 to \$40,000 in annual payroll tax liabilities.
- The bringing forward of previously announced increases in the payroll tax threshold by one year. The payroll tax threshold will now be increased to \$625,000 in 2017-18 and to \$650,000 in 2018-19.

The [State Taxation Acts Amendment Bill 2017](#) (Vic) to give effect to these measures has since been introduced into the Victorian Legislative Assembly.

Application of payroll tax penalties in respect of failure to register and lodge returns (NSW)

In *Advance Pallets Pty Ltd v Chief Commissioner of State Revenue [2017] NSWCATAD 128* the Tribunal confirmed the earlier decision of the Chief Commissioner that it was not appropriate to remit interest or penalty tax in respect of the applicant's failure to register and lodge payroll tax returns, and to make timely payment of payroll tax.

The Tribunal held that the illness of an executive of the company was not a circumstance beyond the company's control as there were other individuals

within the business that should have been able to ensure the applicant's payroll tax obligations were met. The Tribunal stated that to find otherwise would blur the legal distinction between the company (as a legal person) and its directors and managers.

Car parking FBT threshold for the 2017-18 FBT year

The ATO has released Taxation Determination [TD 2017/14](#) which indicates the car parking threshold for the FBT year commencing on 1 April 2017 is set at \$8.66.

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Global Tax Update

Latest news from international tax and transfer pricing

Update on Australian country-by-country reporting Local Files

The ATO has published further guidance on the Australian Country-by-Country (CbC) Local File, including guidance on the electronic filing format; guidance on the provision of international related-party (IRP) agreements within Part B of the CbC Local File; and further details on the administrative concession which permits early filing of Part A of the CbC Local File, instead of providing certain transfer pricing disclosures in the International Dealings Schedule (IDS) of the income tax return. Refer to PwC's global [Tax Insights](#) publication for further information.

Draft ATO guidance on cross-border related party financing

The ATO has released draft Practical Compliance Guideline [PCG 2017/D4](#) which addresses cross-border related party financing arrangements. The guidance sets out a multifaceted framework for how the ATO differentiates risk (according to six colour-coded risk zones) and how it tailors its compliance approach according to the features of the related party financing arrangement, the profile of the parties and the choices and behaviours of the multinational group. Refer to this [TaxTalk Alert](#) for further information.

Labor's multinational tax avoidance package

The Australian Labor Party has [announced](#) a series of reforms aimed to target tax avoidance by multinational companies. The package - [Their Fair Share](#) - includes measures that will:

- remove the safe harbour and arm's length debt tests, leaving only the worldwide gearing ratio available for thin capitalisation purposes
- increase funding for compliance activity by the ATO
- remove tax advantages and inconsistencies between MEC groups and tax consolidated groups by accepting recommendations in the 2015 Treasury [discussion paper](#)
- restore the \$100 million threshold for public reporting by the Commissioner of Taxation of certain tax data for private companies, and
- appoint a community sector representative to the Board of Taxation.

Australia - Hong Kong Free Trade Agreement

The Minister for Trade, Tourism and Investment has [announced](#) the launch of negotiations for the Australia-Hong Kong Free Trade Agreement with the Hong Kong Secretary for Commerce and Economic Development. During the negotiations stakeholders can lodge [submissions](#) on the potential opportunities and impacts of a free trade agreement with Hong Kong.

OECD developments

Recent developments from the Organisation of Economic Co-operation and Development (OECD) include:

- A [status update](#) in relation to implementing CbC Reporting under the Base Erosion and Profit Shifting (BEPS) Action 13 minimum standard, through [activations of automatic exchange relationships](#) under the Multilateral Competent Authority Agreement on the Exchange of CbC Reports. As of May 2017, there are over 700 bilateral exchange relationships activated with respect to more than 30 jurisdictions committed to exchanging CbC Reports, with first exchanges scheduled to take place in 2018.

- Details of the [jurisdictions](#) which will bilaterally exchange financial account information as required under the OECD's Multilateral Competent Authority Agreement (MCAA) for the Common Reporting Standard (CRS). The relationships shown include those under the framework of Article 6 of the Multilateral Convention and the CRS MCAA, as well as exchange relationships based on bilateral agreements and the EU framework. As of May 2017, there are over 1800 bilateral exchange relationships activated with respect to more than 60 jurisdictions committed to the CRS, with first exchanges scheduled to take place in September 2017.
- [Launch](#) of a disclosure facility on the Automatic Exchange Portal which allows interested parties to report potential schemes to circumvent the CRS.
- The [United Arab Emirates](#), [Lebanon](#) and [Kuwait](#) have signed the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#).

UN updates its Practical Manual on Transfer Pricing for Developing Countries

On 7 April 2017, the United Nations (UN) released the second edition of its Practical Manual on Transfer Pricing for Developing Countries, which is an update to incorporate aspects of the changes to the OECD Transfer Pricing Guidelines following the OECD/G20 BEPS Project. Refer to PwC's global [Tax Insights](#) for further information.

US Tax Court rejects IRS transfer pricing adjustments

The United States (US) Tax Court in *Amazon.com, Inc. v. Commissioner* rejected the Internal Revenue Services (IRS) preferred approach to pricing cost-sharing buy-in payments as inconsistent with the arm's length standard, employing reasoning that has implications for related-party transfers of intangible property in general. Refer to PwC's global [Tax Insights](#) publication for further information.

US IRS provides guidance on collecting foreign tax identification numbers

The US IRS has released a series of Frequently Asked Questions (FAQs) to provide guidance on collecting foreign tax identification numbers (TINs) on beneficial owner withholding certificates (e.g.,

Forms W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*, and W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*). The FAQs were issued in response to comments received from stakeholders on regulations issued in December 2016 that imposed sudden and unexpected burdens on withholding agents regarding their obligation to collect foreign TINs on withholding certificates beginning 1 January 2017. Refer to PwC's global [Tax Insights](#) publication for further information.

'Brexit' and implications for income tax accounting

On 30 March 2017, the United Kingdom (UK) Government gave formal notice of its intention to leave the European Union (EU). This notice triggered the process of negotiating the UK's exit, which is likely to last at least two years. Existing tax reliefs and exemptions that apply to transactions between UK entities and entities in other EU member states might cease to apply when the UK's exit finally occurs. The tax legislation, if any, that will replace those reliefs and exemptions is unknown at this stage. Refer to this [IFRS bulletin](#) which addresses the potential implications for income tax accounting.

New Zealand immigration changes

On 19 April 2017, New Zealand's Immigration Minister outlined several further proposed and

confirmed changes to the country's immigration rules. The changes are intended to ensure that New Zealand's immigration policy settings achieve the desired outcome of attracting the right people with the right skills to fill genuine skill shortages and contribute to growing the economy. Refer to PwC New Zealand's [Immigration Alert](#) for further information.

India publishes its first Advance Pricing Agreement Annual Report

The Central Board of Direct Taxes of India published the first India Advance Pricing Agreement (APA) Annual Report. The APA Report contains statistics and performance details of the Indian APA programme for the five years of its existence from financial year 2012/13 through to 2016/17. Refer to PwC's global [Tax Insights](#) for further information.

Taxation of certain property sales by non-permanent residents of Japan

The scope of taxation for non-permanent residents (NPR) of Japan increased with effect from 1 January 2017 so that income from the sale of certain personal property located outside of Japan (other than real estate property) is taxable in Japan even if the proceeds are not remitted into Japan. However, an exemption of the capital gains taxation for NPRs introduced in the 2017 Tax Reforms provides some relief for income from the sale of securities outside of Japan from 1 April 2017. Refer to PwC's global [Insights](#) publication for further information.

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Indirect tax update

GST Revenue Sharing Determination

The [Determination of the GST Revenue Sharing Relativities for 2017-18](#) in accordance with the *Federal Financial Relations Act 2009* instrument has been published. This instrument determines the GST Revenue Sharing Relativities for 2017-18.

GST on low value goods

The [Senate Economics Legislation Committee](#) has tabled its [report](#) on the *Treasury Laws Amendment (GST Low Value Goods) Bill 2017*. The Committee recommends that the Bill be passed, but that the implementation date be delayed to 1 July 2018. The Committee also urged the Government to note the concerns raised in relation to alternative models which have been suggested.

Inquiry into distribution of GST

The Treasurer has [announced](#) that the Productivity Commission will undertake an inquiry into the impact on the national economy of Australia's system of horizontal fiscal equalisation which underpins the distribution of GST revenue to the States and Territories. Public consultation will be undertaken as part of the inquiry, and the

Government encourages the States and any other interested parties to participate. The Productivity Commission is due to report to Government by 31 January 2018. The Terms of Reference are available [here](#).

Addendums to rulings

- [MT 2006/1A4 - Addendum](#): *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*. The Addendum reflects amendments made to the *A New Tax System (Australian Business Number) Act 1999* and *A New Tax System (Goods and Service Tax) Act 1999* by the *Tax and Superannuation Laws Amendment (2016 Measures No.1) Act 2016*.
- [TR 2002/9A3 - Addendum](#): *Income tax: withholding from payments where recipient does not quote ABN*. The Addendum reflects amendments made to the *A New Tax System (Goods and Services Tax) Act 1999* by the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* and *Tax and Superannuation Laws Amendment (2015 Measures No. 2) Act 2015*.

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Personal Tax update

AAT upholds decision to disallow deductions for work-related car expenses

The Administrative Appeals Tribunal has affirmed the decision of the Commissioner in the case *Rafferty v Taxation and Commercial Division* to disallow deductions claimed by the taxpayer in relation to work-related car expenses on the basis that they were private in nature. The Tribunal held that the taxpayer was not required to transport protective clothing equipment to and from the workplace as secure locker facilities were provided by the employer.

Taxation Determination on main residence exemption

The ATO has published the following Taxation Determination which deals with the application of the capital gains tax (CGT) main residence exemption:

- **TD 2017/13:** According to the Determination, the main residence CGT exemption will not be available for a dwelling that is a separate CGT asset for any part of the dwelling's ownership period before it becomes the main residence unless the taxpayer has made a valid choice under subsection 118-150 of the ITAA 1997 to treat the dwelling as the main residence during some or all of the period when the dwelling was being constructed.

Interest income on a bank account

The ATO has released Taxation Determination **TD 2017/11** which states that Interest income on a bank account is assessable to the person(s) who beneficially own the money in the account. This Determination consolidates the ATO views previously expressed in a number of other ATO guidance products:

- **IT 2486:** Children's Savings accounts
- **TD 92/106:** Who should be assessed to interest earned on a joint bank account?
- **TD 92/182:** A taxpayer appoints another person as a joint signatory to operate a bank account in the taxpayer's name, if she becomes ill or is absent from Australia for any length of time. The taxpayer retains sole beneficial entitlement to the money in the bank account. Is the appointee assessable on any of the interest income derived?
- **TD 93/148:** are monetary gifts received by a child or any interest earned on investing such money treated as 'excepted assessable income'?

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State Taxes Update

Victorian State Budget

The [State Taxation Acts Amendment Bill 2017](#) (Vic), introduced into the Victorian Legislative Assembly on 2 May 2017, gives effect to the various measures in the [Victorian State Budget](#), including the Homes for Victorians' strategy. The Bill proposes to amend Victoria's taxation and valuation laws including the *Duties Act 2000*, *First Home Owner Grant Act 2000*, *Land Tax Act 2005*, *Payroll Tax Act 2007*, and the *Taxation Administration Act 1997*.

New duty and land tax changes in ACT

The [Revenue Legislation Amendment Bill 2017](#) (ACT) has passed the ACT Legislative Assembly with amendments. The Bill amends the *Duties Act 1999*, *Land Tax Act 2004* and *Rates Act 2004* to give effect to decisions arising from the 2015-16 and 2016-17 ACT Budget which include:

- changes to the method for calculating rates and land tax for residential unit subdivisions
- the repeal of insurance duty legislation, and
- a technical change to the rebate on rates for pensioners.

Victorian duty assessed on changes in beneficial ownership

The following recent stamp duty cases in Victoria considered whether certain transactions resulted in a "change in beneficial ownership" of property that resulted in a dutiable transaction:

- The Supreme Court of Victoria in [Rakmy Pty Ltd v Commissioner of State Revenue](#) held that the transaction by which property ceased to be held by the Appellant as trustee of one trust (the first trust) and commenced to be held by the Appellant as trustee of a superannuation fund (which held 100% of the units in the first trust at the time of the transaction) involved a "change in beneficial ownership" such that the transaction is a dutiable transaction. The Court did however find that the Appellant was entitled to a proportionate concession from duty in relation to the value of the property pursuant to section 36B(3) of the *Duties Act 2000* (Vic).

- The Victorian Civil and Administrative Tribunal in [Halabi v Commissioner of State Revenue](#) has affirmed the stamp duty assessment issued by the Commissioner of State Revenue on the transfer of shares in a land rich company as the applicant failed to provide evidence demonstrating that there was no change in beneficial ownership.

Land tax cases

The following cases concern the assessment of land tax:

- The Supreme Court of Victoria – Court of Appeal in [CDPV Pty Ltd v Commissioner of State Revenue](#) has dismissed the appeal against the decision of the Supreme Court of Victoria in a case concerning the primary production land tax exemption. The Supreme Court of Victoria had previously denied the primary production land tax exemption on the basis that the Applicant was not able to prove that the land was used primarily for cultivation for the purpose of selling the produce of cultivation.
- The QLD Civil and Administrative Tribunal in [Riverside Parklands Pty Ltd v Commissioner of State Revenue](#) has confirmed the decision of the Commissioner of State Revenue to disallow the applicant's objection in relation to the reassessment of land tax. The Tribunal held that for the purpose of determining the "averaged value" of land, no valuations existed for the previous two financial years as the land has been subdivided and there was a change to the title description.
- The ACT Civil and Administrative Tribunal in [Vincentia Sth Pty Ltd v Commissioner for ACT Revenue](#) has affirmed the decision of the Commissioner for ACT Revenue to disallow the applicant's objection to a determination of the unimproved value of the applicant's land. The Tribunal held that the land was Commonwealth land and exempted from being rateable under section 8(b)(vii) of the *Rates Act 2004* (ACT) until the date of the first Crown lease over the land. As the land was rezoned for commercial use when it became rateable, the higher valuation at the time it became rateable was correct.

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Superannuation update

Exposure Draft: Income tax relief for transfers within a fund to a MySuper product

On 13 April 2017, Treasury issued exposure draft [legislation](#) to extend the asset roll-over relief for mandatory transfers to a MySuper product within a super fund. The relief is also available to the interposed entities that transfer assets pursuant to the mandatory transfer.

Funds intending to rely on this roll-over relief should monitor the progress of this draft legislation. Submissions closed on 27 April 2017.

Exposure Draft: Technical corrections to the Sustainable Super measures

On 12 April 2017, Treasury issued exposure draft [legislation](#) to amend the transfer balance cap, the concessional contributions cap, transition to retirement income stream (TRIS) rules and the objectives of superannuation.

The proposed changes include:

- Enabling additional transfer balance credits and debits to be prescribed through regulations.
- Bringing forward the application date for the changes that were introduced in relation to death benefit roll-overs.
- Clarifying that the concessional contributions cap refers to the 'basic' concessional contribution cap rather than the unused cap.

- Enabling a TRIS to be in the retirement phase where the recipient of the income stream has satisfied a condition of release with nil cashing restrictions.
- Extending the period for which an asset supporting a TRIS can cease to be a segregated current pension asset, to include 1 July 2017.

There are a number of technical issues that need clarification. These changes not only impact the taxation of funds but also members. Funds and, in particular, staff that provide advice to members should be aware of the changes and the impact on members. Submissions closed on 24 April 2017.

Implementation support – changes to TRIS

The ATO issued Practical Compliance Guideline [\(PCG 2017/3\)](#) which outlines the ATO's compliance approach for some APRA regulated superannuation funds, pooled superannuation trusts (PSTs) and life insurance companies that hold segregated pension assets and are facing practical difficulties in complying with recent legislative amendments affecting various TRIS products during the transition period. Broadly, where a fund applies the methods outlined by the ATO in PCG 2017/3 to determine its assessable income or its PAYG instalment income, the ATO will not apply compliance resources to review these calculations for the 2017-18 income year. A similar approach will be applied where a fund continues to have co-mingled assets supporting the payment of both TRIS and income streams after the commencement of the 2017-18 income year.

Funds that have segregated assets will need to determine if the ATO's concession is applicable to them. In any event, the system changes to comply with the new rules will need to be implemented by the end of 30 June 2018 in order to come within the ATO compliance concession.

Exposure Draft: Expanding the rate of capped defined benefit income streams

On 13 April 2017, Treasury issued draft regulations that expand the range of capped defined benefit income streams under the transfer balance cap to ensure pensions that cannot be practically commuted are treated as capped defined benefit income streams under the transfer balance cap. This allows large pensions to be subject to additional tax instead of forced commutation. Submissions closed on 4 May 2017.

Commutation of a death benefit income stream before 1 July 2017

The ATO has released [Practical Compliance Guideline \(PCG\) 2017/6](#) which outlines the circumstances in which the ATO will not apply compliance resources to review whether a Self-Managed Superannuation Fund (SMSF) has satisfied the requirement to cash out a death benefit in this situation where the roll-over occurred prior to 1 July 2017.

New transfer balance cap - payment splits

From 1 July 2017, a \$1.6 million cap applies to the total amount that can be transferred and held in the

tax-free retirement phase for account-based pensions. Special rules apply for payment splits arising from a divorce or relationship breakdown. The ATO has provided [guidance](#) regarding this measure including information on what affected individuals might need to do and including examples.

SMSFs and compliance

At a recent superannuation conference, Assistant Commissioner Kasey Macfarlane [presented](#) and discussed key issues and developments for SMSFs in the context of their compliance obligations. The key areas of compliance focus for the ATO in relation to SMSFs that were discussed include:

- New SMSF registrations
- SMSFs with outstanding annual return lodgements
- SMSFs with unrectified regulatory contraventions reported by registered SMSF auditors
- SMSF auditor quality and independence, and
- Tax planning arrangements and other non-commercial transactions involving SMSFs.

A number of initiatives that the ATO has undertaken to assist SMSF trustees to comply with their regulatory and income tax obligations were also discussed, along with issues particularly relevant to compliance with the new superannuation changes that come into effect on 1 July 2017.

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Legislative update

Since our last edition, Federal Parliament commenced its Winter Session on 9 May 2017. Commonwealth revenue measures introduced into Parliament or registered as legislative instruments or regulations since our previous TaxTalk publication include:

- [Treasury Laws Amendment \(Enterprise Tax Plan No. 2\) Bill 2017](#), introduced into the House of Representatives on 11 May 2017, proposes to give effect to the remaining elements of the Government's *Enterprise Tax Plan* to progressively lower the corporate tax rate to 25 per cent for all corporate tax entities by the 2026-27 income year. This Bill follows the passage of [Treasury Laws Amendment \(Enterprise Tax Plan\) Act 2017](#) which had the effect of implementing a corporate tax rate reduction but only for companies carrying on a business and with aggregated turnover of up to \$50 million over the next decade.
- [Treasury Laws Amendment \(Medicare Levy and Medicare Levy Surcharge\) Bill 2017](#), introduced into the House of Representatives on 24 May 2017, proposes to increase the Medicare levy and Medicare levy surcharge low-income thresholds and "phase-in" limits for individuals and seniors. This measure gives effect to the proposal which was announced in the 2017-18 Federal Budget.
- [Treasury Laws Amendment \(2017 Measures No. 2\) Bill 2017](#), introduced on 25 May 2017, proposes to make changes to the superannuation measures enacted by the [Treasury Laws Amendment \(Fair and Sustainable Superannuation\) Act 2016](#) to support their integrity and ensure the law operates as intended and amend the insolvency law provisions in the *Bankruptcy Act 1966* (Cth) and *Corporations Act 2001* (Cth).
- [Treasury Laws Amendment \(Accelerated Depreciation For Small Business Entities\) Bill 2017](#), introduced on 25 May 2017, proposes to

give effect to the 2017-18 Federal Budget announcement to extend by 12 months to 30 June 2018 the capital allowance small business concession which operates to allow an immediate deduction for depreciating assets which cost less than \$20,000 and for amounts to be included in the second element of a depreciating asset's cost and general small business pools where the amount is less than \$20,000. After 30 June 2018, the relevant threshold will revert to \$1,000.

- The [Fuel Tax \(Road User Charge\) Determination 2017](#) sets the rate of the road user charge for fuel tax purposes at 25.8 cents per litre from 1 July 2017.

Income tax return season for the 2017 income year is soon to start as we draw close to the end of the current financial year. In this respect, the following legislative instruments were registered on 15 May 2017 that require the lodgment of various returns to the Commissioner of Taxation including those relating to the lodgment of income tax returns for the 2017 income year:

- **Legislative Instrument:** Requirement to lodge a return for the year of income ended 30 June 2017 under the *ITAA 1936*, the *ITAA 1997*, the *Income Tax (Transitional Provisions) Act 1997*, the *Taxation Administration Act 1953 (TAA 1953)*, the *Superannuation Industry (Supervision) Act 1993*, the *Higher Education Support Act 2003* and the *Trade Support Loans Act 2014*.
- **Legislative Instrument:** Requirement to lodge a return for the year of income ended 30 June 2017 under the *ITAA 1936* and the *TAA 1953* – Department of Human Services – parents with a child support assessment.

If you have queries in relation to tax return lodgment obligations for the 2017 year, contact your usual PwC adviser.

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Other news

Labor's 2017-18 Federal Budget response

In the [Budget Reply speech](#) by the Federal Leader of the Opposition, Bill Shorten, and in the [address](#) to the National Press Club by Chris Bowen, Shadow Treasurer, it was stated that the Opposition will:

- support the Government's Bank Levy
- support the increase in the Medicare levy but restrict it to the top two tax brackets
- extend the Temporary Budget Repair levy
- target multinational companies by closing loopholes
- reform negative gearing and capital gains tax
- cap the amount an individual can claim as a deduction for managing their tax affairs to \$3,000, and
- introduce a new set of laws to target those who aggressively minimise their tax.

Petroleum Resource Rent Tax Review

The Government has released the [report](#) of the review into the operation of the Petroleum Resource Rent Tax (PRRT), crude oil excise and associated Commonwealth royalties. The report highlights improvements that can be made to the PRRT over the longer term, and does not recommend changes

to the crude oil excise or Commonwealth royalty schemes. As the recommendations did not have any immediate material impact on last month's Federal Budget, the Government will continue to accept comments on the recommendations and provide a considered response in the next few months.

Supporting small business set-up

The Minister for Small Business has [released](#) the [Government's response](#) to the final report of the Productivity Commission's inquiry into [Business Set-up, Transfer and Closure](#). The Government has supported the vast majority of the report's recommendations which were designed to address barriers to business entries and exits to drive efficiency and economic growth.

Re-appointment of Commissioner of Taxation

The Treasurer and Minister of Revenue and Financial Services have [announced](#) the re-appointment of Chris Jordan as the Commissioner of Taxation for a second term to conclude 29 February 2024. Mr Ramez Katf was also appointed as the Second Commissioner of Taxation from 1 May 2017 to 30 April 2024. Mr Katf will also continue in his role as Chief Information Officer at the ATO.

Taxation revenue statistics for 2015-16

The Australian Bureau of Statistics has released the [Taxation Revenue statistics for 2015-16](#). Total taxation revenue collected in Australia increased by \$18,587m (4.2 per cent) from \$446,137m in 2014-15 to \$464,724m in 2015-16. This was driven by a \$6,506m (2.5 per cent) increase in taxes on income and \$5,656m (5.4 per cent) increase in taxes on provision of goods and services. In relation to the

tax mix for the 2015-16 financial year, taxes on income represented 57 per cent of total taxation revenue for all levels of government, and taxes on the provision of goods and services (including the goods and services tax (GST)) represented 23.7 per cent.

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