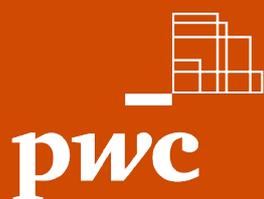


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PwC's Monthly Tax Update

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

March 2021



Corporate tax update

No procedural unfairness in AAT's denial of R&D tax incentive

The Federal Court in [H2O Exchange Pty Ltd v Innovation and Science Australia \[2021\] FCA 11](#)

found no procedural unfairness in the decision of the Administrative Appeals Tribunal (AAT). The AAT found that a taxpayer's development of an online platform for trading water entitlements was not eligible for the research and development (R&D) tax incentive.

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Employment taxes update

Guidance on deductions for employees' travel expenses

The Australian Taxation Office (ATO) has issued the following guidance on the treatment of employee travel-related expenditure:

- [TR 2021/1](#) which explains when an employee can deduct transport expenses. Generally, expenses incurred for travel between workplaces are deductible whereas ordinary travel between work and home are not.
- Draft taxation ruling [TR 2021/D1](#) (which replaces [TR 2017/D6](#)), which describes deductibility of accommodation and food and drink expenses, fringe benefits tax (FBT) implications, and the difference between a travel allowance and a living-away-from-home allowance benefit.
- Draft Practical Compliance Guideline [PCG 2021/D1](#) which sets out the ATO's practical compliance approach in making a determination as between employees travelling on work and employees living at a location away from their normal residence.

The closing date for making comments on both drafts is 19 March 2021. For further information concerning these new ATO guidance products, refer to our [Tax Alert](#).

ACT 2020-21 Budget

The ACT Chief Minister and Treasurer, Mr Andrew Barr, handed down the territory's [Budget for 2020-21](#) on 9 February 2021. A range of payroll tax deferrals and exemptions have been introduced in response to COVID-19 related hardship, as described on the [ACT Revenue Office website](#). This includes the following measures:

- ACT universities are now able to apply to defer payroll tax for up to 18 months from 1 January 2021, with an option to extend to 24 months. Deferrals will be capped at \$10 million per university, provided on a case-by-case basis and expected to be repaid by 30th June 2027.
- The payroll tax exemption for wages paid to new apprentices or trainees will be extended to 30 June 2021.

- All ACT businesses with group Australia-wide wages of up to \$10 million will continue to have the option to defer their 2020-21 payroll tax, interest free, until 1 July 2022.
- The Government will extend the payroll tax waivers/exemptions for businesses that have been unable to trade or only operate on a very limited basis, and month-to-month assistance available for payroll tax payable in January to June 2021. Businesses unable to trade are expected to self-assess their eligibility for the exemption and are still required to lodge their payroll tax returns for the specified period accordingly.

JobMaker Hiring Credit: data-matching program

A [notice of amendment](#) to the COVID-19 economic response data-matching program has been issued by the Commissioner of Taxation to cover information relevant to the JobMaker Hiring Credit as part of its data-matching program with Services Australia. Additional information regarding income support payments for applicants of JobMaker Hiring Credit between 7 October 2020 and 6 October 2021 is required. In addition, the data-matching for details of incarcerated individuals has also been extended to 6 October 2021.

Change to fringe benefits tax balancing payment due date

The 28 May due date for the FBT balancing payment has been changed to align with the lodgment date of 25 June for employers using tax practitioners who lodge FBT returns electronically. This change will take effect from the (current) 2021 FBT year and is in response to feedback received from Industry and Tax practitioner representatives. No deferral request is required – the ATO systems (and website) will be updated accordingly in the coming weeks. If lodgment of an FBT return is by paper, the payment due date is still 21 May.

ATO update on the impact of COVID-19 on car parking and motor vehicle fringe benefits

The ATO has updated their [COVID-19 guidance](#) relating to car parking and vehicles.

No car parking fringe benefit will arise if:

- a work car park is closed due to COVID-19, as no car space will have been available for use by the employee for more than 4 hours between 7am and 7pm on that day

- all commercial parking stations within a one km radius of business premises are closed on a particular day due to COVID-19, or
- the reduced rates at commercial parking stations on 1 April 2020 within a one km radius of the business premises for all-day parking were less than \$9.15.

The updated website also provides further guidance relating to cars which were returned to the employer's business premises during the period of COVID-19 restrictions. A car fringe benefit will no longer arise where:

- the car is returned to your business premises
- your employee cannot gain access to the car, and
- your employee has relinquished an entitlement to use your car for private purposes.

Greater choice of super for employees

Following legislative changes, workplace determinations and enterprise agreements made on or after 1 January 2021 must offer employees the right to choose their super fund. Employer provided superannuation must be paid into the nominated fund chosen by the employee. If no fund is nominated by the employee, superannuation can be paid into a default fund. For further information, see the [ATO's statement](#).

Changes to approved form for single touch payroll

A new [legislative instrument](#) amends the type of information that the approved form for purposes of single touch payroll (STP) reporting will require. This instrument will facilitate the changes to the approved form that are required as a result of changes to the way superannuation guarantee in relation to amounts salary sacrificed to superannuation are calculated and reported, and enables voluntary report of child support obligations through STP. The ATO has [confirmed](#) that mandatory reporting under the expanded STP reported data will commence from 1 January 2022.

STP reporting and temporary exemption for small employers

The ATO has [clarified](#) the changes to the STP reporting requirements for small employers with closely held payees and for micro employers that apply from 1 July 2021. Specifically, small employers must report their closely held payees through STP either quarterly or monthly. Furthermore, the eligibility requirements for micro employer quarterly reporting concessions will

change and will only be available to micro employers who:

- report through a registered tax professional, and
- meet certain eligibility requirements which now include the need for exceptional circumstances to exist.

ATO data-matching program – update to use of STP data

The Commissioner of Taxation has given [notice](#) of an updated version of its protocols for the data-matching program relating to STP data that is shared between the ATO and Services Australia (Centrelink and Child Support). This update aims to assist Services Australia to modernise the way it works to deliver a simple, helpful, respectful and transparent customer experience through a range of minor enablements.

Appeal news – Downer and Moffet special leave rejected

The High Court has refused the Chief Commissioner's (NSW) application for special leave to appeal against the decision of the Supreme Court of NSW (Court of Appeal) in *Chief Commissioner of State Revenue v Downer EDI Engineering Pty Ltd* [2020] NSWCA 126.

The Court has also refused application for special leave to appeal against the full Federal Court's decision in *Dental Corporation v Moffet* [2020] FCAFC 118. The full Federal Court decision previously handed down found that Dental Corporation had a superannuation guarantee obligation under s12(3) of *Superannuation Guarantee (Administration) Act 1992* (Cth), despite Moffet's agreement with Dental Corporation being in the form of a facility and administration style agreement. The ATO is yet to formally respond in relation to the potential impact of this decision on key industries, including the medical industry.

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Global tax update

Latest news from international tax and transfer pricing

COVID-19: ATO compliance approach for permanent establishments of foreign companies extended

The ATO has [advised](#) that it will extend its 'safe harbour' compliance approach in relation to permanent establishments (PEs) created in Australia due the effect of travel restrictions as a result of COVID-19 until 30 June 2021. This compliance approach will apply if:

- the foreign company did not otherwise have a PE in Australia before the effects of COVID-19
- the temporary presence of employees in Australia continues to solely be as a result of COVID-19 related travel restrictions
- those employees temporarily in Australia will relocate overseas as soon as practicable following the relaxation of international travel restrictions, and
- the foreign company has not recognised those employees as creating a PE or generating Australian source income in Australia for the purpose of the tax laws of another jurisdiction.

From 1 July 2021 this approach will cease to apply and any affected company will be required to consider whether ongoing arrangements give rise to a PE in Australia. At this stage, it is unclear whether there will be any further extensions.

ATO review of withholding tax obligations on interest paid overseas

The ATO has [announced](#) a new private groups compliance campaign focusing on non-resident withholding tax relating to interest expenses paid overseas for the 2018 and 2019 income years. Specifically, the ATO will be examining whether taxpayers who have paid interest to a non-resident have lodged a PAYG annual report and paid withholding tax, amongst meeting other obligations.

COVID-19 and OECD guidance on transfer pricing

On 18 December 2020, the Organisation for Economic Co-operation and Development (OECD) issued [guidance](#) to provide policy recommendations on the transfer pricing implications of the COVID-19 pandemic. The OECD guidance, which represents the consensus view of the 137 members of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), is intended to help address the transfer pricing challenges faced by taxpayers in years impacted by the pandemic. The OECD's guidance primarily focuses on the practical application of the arm's length principle in four priority issues:

- comparability analysis
- losses and the allocation of COVID-19 specific costs
- government assistance programs; and
- advance pricing agreements.

For further insights including the comparative with the ATO position, refer to our [Tax Alert](#).

COVID-19: OECD guidance on tax treaties

The OECD has provided updated [guidance](#) on tax issues associated with temporary dislocation of individuals during COVID-19, primarily pertaining to creation of permanent establishments, home offices, changes of residence (entities and individuals and the application of tie-breaker rules to dual residents) and income from employment (i.e. payments under stimulus packages), stranded workers, cross-border (frontier) workers, and teleworking from abroad.

Treasury review of foreign investment reforms

The Treasury is conducting an [evaluation of the foreign investment reforms](#) that commenced on 1 January 2021. The review is required to be completed by 10 December 2021.

The evaluation is considering the impact that the reforms and their implementation have had on foreign investment in Australia and the broader Australian economy, and whether an appropriate balance is struck between foreign investment and protecting Australia's national interests.

Update on Multilateral Convention

Croatia and Malaysia have [deposited](#) their instrument of ratification for the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI).

For Croatia and Malaysia, the MLI will enter into force on 1 June 2021. Note that Australia only has a double tax agreement with Malaysia (not Croatia).

International Compliance Assurance Program

The [International Compliance Assurance Program](#) (ICAP) is a voluntary risk assessment and assurance program to facilitate open and co-operative multilateral engagements between multinational groups and tax administrations. ICAP is designed to support the effective use of transfer pricing documentation, including the Country-by-Country report, providing a faster, clearer and more efficient route to improved multilateral tax certainty. A newly released [handbook](#) contains information on the process for ICAP and incorporates the experience from the first pilot launched in January 2018 and the most recent pilot with 19 tax administrations that was announced in March 2019. The handbook remains a working document.

Other OECD updates

The OECD has also published the following updates relating to its ongoing work to tackle BEPS:

- [Review of harmful tax practices – a Peer Review Transparency Framework](#) document sets out the new terms of reference, methodology and questionnaires for conducting the annual review of jurisdictions' compliance with the BEPS Action 5 transparency framework for the 2021-2025 period.
- [Dispute resolution – Final batch of stage 1 peer review reports](#) evaluating the efforts of the final batch of 14 countries to implement BEPS Action 14 on dispute resolution mechanisms. The reports contain almost 340 targeted

recommendations that will be followed up in stage 2 of the peer review process.

- [Developing Capacities in Times of COVID-19](#) which provides an update on the Global Forum's capacity-building program and activities carried out in 2020 in the context of both the exchange of information on request and automatic exchange of financial account information standards.

US and global 2021 Tax Policy Outlook

[PwC's 2021 Tax Policy Outlook](#) navigates the potential effects of changing policies in the US and around the world. In this report you will find an in-depth discussion on how the following issues may impact your business – balance of power, US tax policy, global tax policy, trade policy, US state tax policy, and what it means for your business.

Indian Budget

The Indian Finance Minister recently presented the Union Budget 2021-22. The Budget contains several measures that aim to attain tax certainty, facilitate tax administration, and reduce tax dispute, including a provision to create a new board for advance rulings. Ease of doing business remains a government priority. The Indian Budget continues to encourage investments and contains plans for privatisation of public sector undertakings and monetisation of infrastructure assets. Refer to this [PwC Insight](#) that highlights the key Budget 2021 tax

proposals affecting foreign investors and multinational entities doing business in India.

Addendum to excise ruling

The ATO has issued an [addendum](#) to Excise Ruling [ER 2012/1](#) which considers the meaning of the expression 'manufactured or produced' and which addresses legislative amendments that relate to specific circumstances relating to repackaging of beer and the blending exemptions for fuel.

ATO guidance on basic method to calculate fuel tax credits for heavy vehicles

The ATO has issued Practical Compliance Guideline [PCG 2021/2](#) that provides a simplified apportionment method for calculating the amount of diesel fuel used in heavy vehicles on and off public roads. A fuel tax credit entitlement is reduced by the amount of the road user charge to the extent that the fuel is used for travel on a public road. The guideline, which applies to diesel acquired on or after 1 October 2020, sets out a simplified apportionment method for working out the fuel tax credit entitlement for taxable fuel used for 'travelling' on a public road. It also only applies to a 'heavy vehicle' that is one that has a gross vehicle mass of greater than 4.5 tonnes (or, if acquired before 1 July 2006, has a gross vehicle mass of 4.5 tonnes or more). Note that this simplified method is only recommended for businesses with a reasonable expectation that their total fuel tax credit entitlement for the current year will be less than \$10,000.

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Personal tax update

Taxpayer denied release from tax debt

The AAT in [ZCSB v FC of T \[2021\] AATA 138](#) affirmed the Commissioner of Taxation's decision that the taxpayer would not suffer serious hardship if required to satisfy their tax debt. The Tribunal had regard to the relevant authorities and noted that, in assessing whether serious hardship is established, consideration must be given to whether the taxpayer, if required to pay the tax debt would experience financial difficulties which are serious, however not necessarily at the level of causing destitution. Having regard to the three tests that assist in determining

whether a tax debt should be released in full or in part as set out in the Commissioner's Practice Statement PSLA 2011/17 – the income/outgoings test, the assets/liabilities test, and other relevant factors – the Tribunal was not satisfied on the basis of the evidence before it, that the taxpayer met the onus on him to establish that if he were required to meet his tax liability, it would result in serious hardship. Furthermore, the Tribunal found that even if the payment of the taxpayer's liabilities would result in serious hardship, there is no basis upon which it would be appropriate for it to exercise the discretionary power to release the taxpayer from his tax debt.

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State taxes update

ACT 2020-21 Budget

The ACT Chief Minister and Treasurer, Mr Andrew Barr, handed down the territory's [Budget for 2020-21](#) on 9 February 2021. Physical and economic recovery from COVID-19 driven by support of the ACT public health management network, investment in education and infrastructure spending form the basis of the [ACT 2020-21 Budget](#). Average annual economic growth for the next four year is forecast to be 2.7 per cent and employment growth is forecast to average 1.7 per cent.

From a land tax perspective:

- there is an increase in the number of properties (from 125 to 250 properties) that will be able to access assistance under the Affordable Community Housing Land Tax Exemption – Pilot scheme offering landlords a land tax exemption if they rent properties at below 75 per cent of the market rate through an eligible Community Housing provider
- the COVID-19 residential tenancy relief will be extended until 30 June 2021 for residential landlords who reduce rents by at least

25 per cent for tenants who have been impacted by COVID-19 where they can apply for a land tax and rates rebate of 50 per cent of the rent reduction, up to \$1,300 per quarter. Applications can be made until 31 August 2021 and the form is available on the [ACT Revenue Office website](#).

Payroll tax measures were also announced (see Employment taxes section).

NSW Land tax: Rulings on accommodation exemptions

Revenue NSW issued the following rulings that explain the guidelines of when certain land used to provide housing is exempt from land tax or eligible for a reduction in the taxable land value for the 2021 land tax year, subject to conditions and guidelines:

- [LT 108](#) which describes the exemption or reduction for land primarily used to provide boarding house accommodation, and
- [LT 109](#) which applies to land situated within a 5 kilometre radius of 1 Martin Place that is used to provide low-cost rental accommodation.

NSW guidelines for land tax discount for new build-to-rent housing projects

The NSW Treasurer has released the [Guidelines](#) indicating whether a property is being used and occupied for a build-to-rent property. Eligible build-to-rent properties will receive a 50 per cent reduction in land value for land tax purposes from the 2021 land tax year until 2040.

Victorian land tax relief

The State Revenue Office of Victoria has provided [information](#) on the eligibility criteria and application process for 2021 land tax relief measures including:

- land tax reduction and deferral for landlords, including those with properties that have multiple tenancies, and commercial owner-occupiers, and
- vacant residential land tax waiver for 2021.

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Superannuation update

Superannuation transfer balance cap to increase

The transfer balance cap, a lifetime limit on the amount of superannuation that can be transferred into retirement phase income streams, including most pensions and annuities, is set to [increase](#) from 1 July 2021 from \$1.6 million to \$1.7 million.

The increased cap will only apply to individuals who start their first retirement phase income stream after 1 July 2021. Otherwise, a cap of between \$1.6 million and \$1.7 million will apply, depending on the circumstances:

- \$1.6 million if, at any time between 1 July 2017 and 30 June 2021, the balance of the account was \$1.6 million or more
- between \$1.6 and \$1.7 million in all other cases, based on the highest ever balance of the individual's transfer balance account.

Other related caps and limits such as co-contribution are also [affected](#).

APRA releases 2021 policy and supervision priorities

The Australian Prudential Regulation Authority (APRA) released its [Policy Information Paper](#) that sets out its policy priorities for the next 12 to 18 months that will strengthen the framework through new and revised standards and guidance. In superannuation, APRA is supporting the Government's *Your Future, Your Super* reforms to improve member outcomes, and progressing enhancements to the prudential framework in the key areas of insurance in superannuation, investment governance and governance.

In its [Supervision Information Paper](#), it lists improving outcomes for members as a core supervisory priority. This includes addressing areas of MySuper underperformance, taking enforcement action where appropriate and providing greater transparency.

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Legislative update

Since our last update, Federal Parliament resumed sittings on 2 February 2021. The following new Commonwealth tax and superannuation legislation were introduced into Federal Parliament:

- [Treasury Laws Amendment \(Your Future, Your Super\) Bill 2021](#), which was introduced into the House of Representatives on 17 February 2021, proposes to implement reforms to:
 - amend the *Superannuation Guarantee (Administration) Act 1992* (Cth) to limit the creation of multiple superannuation accounts for new employees
 - amend the *Superannuation Industry (Supervision) Act 1993* (Cth) to require APRA to conduct an annual performance test for MySuper products, and
 - ensure that trustees act in the best financial interests of the beneficiaries.

The following key tax and superannuation related bills have completed their passage through Parliament:

- [Customs Amendment \(Product Specific Rule Modernisation\) Bill 2021](#) which streamlines how the product-specific rules of origin of 6 of Australia's Free Trade Agreements (FTAs) are given effect domestically.
- [Customs Tariff Amendment \(Incorporation of Proposals and Measures\) Bill 2020](#) which provides a free rate of duty for medical and hygiene products used to combat COVID-19, removes the AUD12,000 special customs duty on used and second-hand motor vehicles that are Peruvian originating goods or that are Trans-Pacific Partnership originating goods, and inserts new notes and repealing redundant provisions in the *Customs Tariff Act 1995* (Cth).

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Other news

CPI for December 2020 quarter

The Consumer Price Index (CPI), a measure of the average change in price paid by consumers for a basket of goods and services, [rose to 117.2](#) in the December 2020 quarter, up from 116.2 the previous quarter.

Serious Financial Crime Taskforce Results

In December 2018 the Federal Government provided \$182 million to the ATO over four years from 2019-20 to extend the Serious Financial Crime Taskforce (SFCT). From its inception on 1 July 2015 to [30 September 2020](#) the SFCT completed 1,287 audits and reviews, sentenced 12 people, raised \$996 million in tax liabilities, and collected \$384 million. These four indicators have not changed in the [most recent quarterly update](#) to December 2020. The current focus of the SFCT is on:

- cybercrime (technology enabled crime) affecting the tax and superannuation systems
- offshore tax evasion
- illegal phoenix activity, and
- serious financial crime affecting the ATO-administered measures of the Commonwealth Coronavirus Economic Response Package.

ATO rates performance as a regulator good in 2019-20

As part of the Government's regulatory reform agenda, the government released its Regulator Performance Framework which is an element of the government's commitment to reduce the cost of unnecessary or inefficient regulation imposed on individuals, business and community. As a regulator, the ATO is required to self-assess its performance against the Regulator Performance Framework. In its [latest assessment](#), overall the ATO achieved positive results for 16 of 35 metrics, and assessed its performance as 'good' for five out of six key performance indicators (KPIs) in use. The ATO's performance was 'satisfactory' in the KPI related to 'clear, targeted and effective' communication with regulated entities, and they intend to focus on rebuilding trust in the tax and superannuation systems.

Paper PAYG and GST quarterly instalment notices from June 2021

As part of the ATO's digital improvement program, it stopped issuing paper quarterly PAYG and GST instalment notices for businesses that had a digital preference on ATO systems. The September 2020 quarterly instalment notice was the last time issued in paper form to these clients. However, in response to feedback regarding issues that have arisen in changing from paper to digital notices, as an [interim approach](#), the ATO has returned to issuing paper PAYG and GST quarterly instalment notices starting with the June 2021 quarterly notices.

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