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PwC's Monthly Tax Update

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

June 2021



Corporate Tax Update

Extension of temporary full expensing and loss carry back

In the 2021-22 Federal Budget, it was [announced](#) that the temporary full expensing measures, allowing eligible businesses to deduct the full cost of eligible depreciating assets, and the temporary loss carry back measure will be extended by one year.

This will allow the full cost of eligible depreciating assets acquired from 7:30pm (AEDT) on 6 October 2020 and first used or installed ready for use by 30 June 2023, instead of the original deadline of 30 June 2022, to be deducted. For further details on temporary full expensing, refer to PwC's [Tax Alert](#).

The extension of the temporary loss carry back measures will allow eligible companies to carry back tax losses from the 2022-23 income year to offset previously taxed profits as far back as the 2018-19 income year. Refer to PwC's [Tax Alert](#) for further details on the temporary loss carry back measures.

Changes to tax treatment of ESS

The Government has [announced](#) as part of the 2021-22 Federal Budget a number of changes to the existing employee share schemes (ESS) rules and regulatory requirements which are intended to remove unnecessary impediments and compliance burdens. One of the main changes is that it will remove the cessation of employment as a taxing point for ESS. This measure will ensure that employees that leave their employment will not be subject to tax on unvested awards. The proposed measure also contains a number of changes to disclosure and licensing requirements that will include the removal of these requirements for many companies where they do not charge or lend to the employees to whom they offer ESS.

For further details, refer to [PwC's Federal Budget Insights and Analysis](#).

Patent box regime for medical and biotech innovations

The Government [announced](#) in the 2021-22 Federal Budget that it will introduce a "patent box tax regime" to encourage innovation in Australia by taxing corporate income derived from certain medical and biotech patents at a concessional effective corporate tax rate of 17 per cent (compared to the current headline corporate tax rate of 30 per cent for large businesses and 25 per cent for small to medium companies from 1 July 2021).

The patent box concession is proposed to apply from income years starting on or after 1 July 2022, but only in respect of granted patents which were applied for after 11 May 2021.

For further details, refer to [PwC's Federal Budget Insights and Analysis](#).

Other Federal Budget innovation measures

In other 2021-22 Federal Budget measures, the Government [announced](#) that it will introduce a 30 per cent refundable Digital Games Tax Offset for eligible businesses that spend a minimum of AUD 500,000 on qualifying Australian games expenditure. The offset will not be available for the development of games that contain gambling elements or that cannot obtain a classification rating. The Government will consult with industry from mid-2021 to inform the criteria and definition of qualifying expenditure.

Furthermore, taxpayers will have the option to self-assess the effective life of intangible depreciating assets or to depreciate the asset over its statutory effective life. It is proposed to apply to eligible assets such as patents, registered designs, copyrights and in-house software acquired on or after 1 July 2023.

For further details, refer to [PwC's Federal Budget Insights and Analysis](#).

Junior Minerals Exploration Incentive extended

The Federal Government has [announced](#) that it will extend the Junior Minerals Exploration Incentive (JMEI), which was due to end in 2020-21, for four more years. The JMEI is a tax credit arrangement which allows junior mineral exploration companies to turn losses generated from expenditure on greenfields minerals exploration in Australia into tax credits that can be distributed to Australian resident investors. The extension of the program will see it continue through to the 2024-25 income year with AUD 100 million in additional funding. For further details, refer to [PwC's Federal Budget Insights and Analysis](#).

Technical amendments to tax laws

Exposure draft legislation and regulations have been [released](#) covering proposed minor and technical amendments to taxation laws.

The exposure draft materials contain a number of amendments, including the following taxation measures:

- clarification that a country by country reporting (CbC) entity is to provide a statement on the global operations and pricing policies of other members of the CBC reporting group for the income year to which the statement relates rather than the previous income year
- clarification of how a company may change its loss carry back choice
- ensuring a franking credit arises for a company in particular circumstances where the company's tax offset refund is subsequently reduced
- clarification that capital works are included within the requirement to spend AUD 100 million on certain assets for the purposes of the alternative test for eligibility for the temporary full expensing measure; and
- expanding the operation of the modified tax cost setting rule currently applying to finance leases to cover all leases where the joining entity is a lessor or lessee of a depreciating asset.

Comments on the exposure draft materials were due on 25 May 2021.

R&D activities and coal exploration

The Full Federal Court in [Coal of Queensland Pty Ltd v Innovation and Science Australia](#) [2021] FCAFC 54 has found that a series of activities that potentially would make the extraction and processing of coal deposits within an exploration area economically viable did not constitute core or supporting research and development (R&D) activities. The activities included conducting surveys, drilling to validate survey results and providing samples for analysis by experts.

The Full Court found that the experts agreed before the Administrative Appeals Tribunal that the outcome of the activities "could have been determined in advance and did not generate any new knowledge" which was supported by the evidence.

Online R&D portal

A new R&D tax incentive [portal](#) is available for companies to apply to register eligible R&D activities using a redesigned online registration form. The online registration form includes rewritten questions with updated 'help' text and has primarily been designed to help companies demonstrate their eligibility for the R&D tax incentive.

Board of Tax to review dual-agency administration model

The Board of Taxation will conduct a [review](#) into the dual-agency administration model for the R&D tax incentive, further to the government's announcement in the 2021–22 Federal Budget. The Board's aim is to identify opportunities to reduce duplication between the Australian Taxation Office (ATO) and Industry Innovation and Science Australia (IISA), simplify administrative processes, or otherwise reduce the compliance costs for applicants.

The Board has been requested to report to the Government by 30 November 2021.

Report on Australia as a technology and financial centre

The Senate Select Committee on Australia as a Technology and Financial Centre has tabled its [second interim report](#) on financial and regulatory technology. The report contained a number of recommendations including the following tax related measures:

- the research and development tax incentive be amended to allow the use of different assessment methodologies and allow for quarterly payments to successful applicants
- the Government consider the establishment of a separate software-specific tax incentive scheme, and
- the Government consider abolishing interest withholding tax, consistent with recommendations from the Johnson Review.

The Committee has also published an [issues paper](#) outlining the committee's intended direction for the final phase of the inquiry and some specific areas of interest. This paper seeks options to replace the offshore banking unit (OBU) regime with an Incremental Business Activity Rate (IBAR) as set out in the Low Report ([Making Australia an Internationally Competitive Financial Centre & Attracting Asia-Pacific Business Headquarters to Australia](#), January 2021) and how Australia can market its strengths to position itself globally as a technology and finance centre having regard to the competitiveness of Australia's existing tax and regulatory regimes, especially as applied to inbound international investment, imports, and immigration. The deadline for submissions to this latest paper is 30 June 2021.

The final report of the select committee is due on 30 October 2021.

Deduction allowed for exploration rights

The Federal Court has held that a party to joint venture agreements in relation to a natural gas project was entitled to a tax deduction under Division 40 of the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997) for the cost of acquiring an additional proportional interest in statutory titles collectively held by the project's participants (which conferred authority to explore for petroleum) in [Shell Energy Holdings Australia Limited v Commissioner of Taxation \[2021\] FCA 496](#). This case considers a range of issues such as what is a mining, quarrying or prospecting right (MQPR), what is use of an MQPR, what is exploration or prospecting and when is an MQPR 'first used' for exploration and prospecting.

The Court concluded that from the time of approval and registration in early November 2012, the taxpayer became the holder of intangible assets comprising the additional proportional interest in each of the statutory titles that it had acquired under the Asset Exchange Agreement with another project participant for consideration of cash and an assignment of other petroleum interests. The intangible assets were depreciating assets because each was a mining, prospecting or quarrying right, specifically because each intangible asset was an interest in the statutory titles which conferred a right to explore for petroleum.

Receiver's obligation for post-appointment tax liabilities

The ATO has finalised Taxation Determination [TD 2021/5](#) which considers a receiver's obligation to retain money for post-appointment tax liabilities under section 254 of the *Income Tax Assessment Act 1936* (Cth). The Commissioner considers that

when income, profits or capital gains are derived by the receiver acting as the entity's agent, the receiver must retain enough money to pay the resulting taxation liability. This obligation to retain only applies to money that has come to the receiver in their capacity as agent for the entity. Once an income tax assessment has been made, the obligation to retain remains ongoing. The Determination applies to years of income commencing both before and after 19 May 2021, its date of issue.

Applying for a director ID

The following legislative instruments extend the application period in which an individual is required to apply for a Director Identification (ID) Number if the individual becomes an eligible officer in the period starting when the director ID legislation commences and ending 31 October 2021:

- [Corporations \(Transitional\) Director Identification Number Extended Application Period 2021](#), and
- [Corporations \(Aboriginal and Torres Strait Islander\) \(Transitional\) Director Identification Number Extended Application Period 2021](#).

The introduction of a director ID requirement is one Government initiative to promote good corporate conduct, and to deter and penalise illegal phoenixing. The director ID will require all company directors to confirm their identity via a unique identifier.

Specifically, these instruments provide that new eligible officers can apply for a director ID under the *Corporations Act 2001* (Cth) until 30 November 2022, if the individual becomes an eligible officer in the period from 4 April 2021 to 31 October 2021, and for new directors appointed under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) before 31 October 2022 to obtain a director ID as late as 30 November 2023.

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Employment Taxes Update

Victorian payroll tax changes

As part of the [2021-22 Victorian State Budget](#), delivered on 20 May 2021 by Treasurer Tim Pallas, a number of payroll tax measures were announced. This includes the following changes effective from 1 July 2021:

- the payroll tax-free threshold will increase from AUD 650,000 to AUD 700,000
- the regional employer rate of payroll tax will reduce from 2.02 to 1.2125 per cent.
- the threshold for reporting payroll tax annually will increase from AUD 40,000 to AUD 100,000.

Furthermore, from 1 January 2022, a new revenue mechanism will be introduced to provide funding for mental health services in the form of a Mental Health and Wellbeing Levy which will be implemented as a payroll tax surcharge on wages paid in Victoria. For businesses with national payrolls over AUD 10 million a year, the rate is 0.5% and an additional 0.5 per cent for businesses with national payrolls above AUD 100 million. The surcharge rates will be paid on the Victorian share of wages above the relevant threshold. Existing payroll tax exemptions for private schools, hospitals, charities, local councils, and wages paid for parental and volunteer leave will apply for the levy.

Legislation to give effect to these measures, [State Taxation and Mental Health Acts Amendment Bill 2021](#), has already been introduced into the Victorian Parliament.

Super guarantee changes coming

The legislated increase to the superannuation guarantee (SG) rate to ten per cent from the existing 9.5 per cent will take effect from 1 July 2021. This increase will require employers to contribute an additional half per cent to meet their SG obligations for the financial year ending 30 June 2022. Whether this constitutes an additional employer funding requirement or is funded from existing remuneration costs will depend on whether employers operate a 'salary plus superannuation' arrangement (incremental additional superannuation cost) or a 'total employment cost' arrangement (funds the superannuation increment by way of a reduction to existing salary entitlements).

We strongly recommend that employers should start planning how this SG increase will be implemented and communicated to employees. For a discussion of some of the issues to consider refer to our previous [Tax Alert](#).

In other forthcoming SG changes, in the 2021-22 Federal Budget, the Government [announced](#) that, effective from the start of the first financial year after enactment of the enabling legislation (expected to have occurred prior to 1 July 2022), the existing AUD 450 per month minimum salary or wages threshold that resulted in low income employees not receiving any SG support will be removed.

New South Wales payroll tax relief for new jobs

The [Payroll Tax Amendment \(Jobs Plus\) Bill 2021](#) has been introduced into and passed by the New South Wales (NSW) Parliament with amendments. The measure operates to exempt employers from liability to payroll tax on wages that are subject to Jobs Plus agreements. The amendments made to the Bill include a reduction in the threshold number of jobs required to apply for relief (i.e. reduces the threshold from 30 to 20 jobs for areas outside the metropolitan area). For a summary of the NSW Jobs Plus program, refer to our previous [Tax Alert](#). The legislation also provides that wages funded by the Aged Care Workforce Retention Grant Opportunity program continue to be exempt from payroll tax.

New South Wales wage theft legislation

The [Tax Administration Amendment \(Combating Wage Theft\) Bill 2021](#) has been introduced to the NSW Parliament to give effect to the Government's previous [announcement](#) to crack down on wage theft.

The Wage Theft Bill amends the *Taxation Administration Act 1996* (NSW) to provide further measures to deter the underpayment of wages, including by increasing penalties for certain offences and creating an offence of knowingly evading or attempting to evade tax, and by allowing:

- further powers to the Chief Commissioner of State Revenue to allow payroll tax liabilities to be reassessed and recovered after five years in certain circumstances of underpayment of wages
- tax officers to disclose information to the Commonwealth Fair Work Ombudsman in certain circumstances, and
- information to be publicly disclosed in certain circumstances.

No FBT on airport car parking

In [Virgin Australia Airlines Pty Ltd v Commissioner of Taxation \[2021\] FCA 523](#), the Federal Court has found that aircrafts (not the home base airports)

were the primary place of employment for flight and cabin crew which resulted in the employer not liable to pay fringe benefits tax (FBT) for car parking facilities that were located near home base airports and provided to flight and cabin crew. The Court found that the amount of time spent performing duties at the home base terminal (or any other terminal which is visited by crew on a particular day) is far outweighed by the time spent performing duties on the aircraft(s) during a daily roster. Business premises can include an aircraft and that was considered to be the primary place of their employment "from which or at which the employee performs duties".

FBT car parking threshold for 2021-22 FBT year

The Australian Taxation Office has advised that the car parking threshold for the FBT year commencing 1 April 2021 is AUD 9.25 (up from AUD 9.15). For this and other key FBT thresholds for the year commencing 1 April 2021, refer to this [ATO listing](#).

FBT and New Zealand sporting teams

As part of the 2021-22 Federal Budget, the Government [announced](#) that it would ensure that New Zealand maintains primary taxing rights for

FBT purposes in relation to sporting teams and staff that have resided in Australia for more than 183 days as a result of the circumstances that have eventuated from the COVID-19 pandemic. The measure will apply to the 2020-21 and 2021-22 income and fringe benefits tax years.

QLD payroll tax on common law employment arrangements

In [Compass Group Education Hospitality Services Pty Ltd & Anor v Commissioner of State Revenue \(Qld\) 2021 QCA 98](#) the Queensland Court of Appeal has found that the taxpayers did not procure the services of their employees under employment agency contracts but rather they were common law employers. Under the arrangement, the taxpayers entered into contracts to provide to a school and hospital suitably qualified staff to perform agreed services, supervise the staff and ensure compliance with occupational health and safety requirements. The Court rejected the appellants' contentions that since the payroll tax law applies to a common law employer, and the dictionary definition of "wages" does not apply in respect of an employment agency contract, they were entitled to an exemption under section 13J of the *Payroll Tax Act 1971* (QLD). The Court found that the employees' remuneration for their services was subject to QLD payroll tax.

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Global Tax Update

Latest news from international tax and transfer pricing

ATO early engagement service for inbound investors

As part of the 2021-22 Federal Budget, the Government has [announced](#) that the Australian Taxation Office (ATO) will introduce a new early

engagement process to provide certainty to foreign investors investing in Australia. The new early engagement service is intended to operate within commercial timeframes, integrate with the tax aspects of the Foreign Investment Review Board approval process and be tailored to the needs of

each investor. With consultation during May and June 2021, the new service is expected to be available from 1 July 2021.

Update to information exchange countries for MITs

As part of the 2021-22 Federal Budget, the Government [announced](#) that the list of countries with which Australia has an exchange of information agreement for the purposes of applying the lower managed investment trust (MIT) withholding tax will be updated to include further countries.

Specifically from 1 January 2022, residents of Armenia, Cabo Verde, Kenya, Mongolia, Montenegro and Oman (new "information exchange countries") will be eligible for the 15 per cent withholding tax rate on fund payments from MITs instead of the default withholding tax rate of 30 per cent, applicable to certain fund payments made to a recipient in an "information exchange country".

Tax treaty update

As part of the 2021-22 Federal Budget, it was [announced](#) that AUD 6 million in funding would be provided for the Treasury and ATO to accelerate the program of tax treaty negotiations.

The Joint Standing Committee on Treaties has [tabled a report](#) supporting three treaty actions, including a new tax information exchange agreement with Timor-Leste. A new tax information exchange agreement with Timor-Leste will allow the two countries to exchange information for the purpose of administering taxes associated with the Timor Sea Maritime Boundaries Treaty.

ATO compliance guidance on intangible arrangements

The ATO has issued draft practical compliance guideline [PCG 2021/D4](#) on cross-border arrangements connected with intangibles. The draft PCG covers a broad range of issues including intangible transfers, the development, enhancement, maintenance, protection and exploitation (DEMPE) functions, and the characterisation of intangible payments. There is a significant focus on transfer pricing, and the ATO notes that numerous other Australian tax laws may also be relevant, including capital gains tax (CGT), withholding tax, the general anti-avoidance rules (GAAR), and diverted profits tax (DPT).

The draft PCG outlines a framework for how the ATO proposes to assess whether arrangements involving intangibles will be considered high, medium or low risk. Any taxpayer that has related party arrangements involving intangibles, or those that are considering potential new intangible arrangements, should consider the ATO's views in

the PCG and in particular the importance of maintaining robust documentation and evidence for arrangements. Refer to PwC's [Tax Alert](#) for more information.

ATO's approach to permanent establishments and COVID-19

The ATO has updated [Taxation Ruling TR 2002/5](#) which considers what is 'a place at or through which a person carries on any business' in the definition of permanent establishment (PE) in subsection 6(1) of the *Income Tax Assessment Act 1936* (Cth).

The ruling has been updated to provide an example of the international travel restrictions in response to COVID-19 as an extraordinary circumstance where a presence in Australia of more than six months may not constitute temporal permanence giving rise to a permanent establishment. The updated ruling notes that temporal permanence remains a question of fact and degree.

Draft update to OECD Model Tax Convention

The Organisation for Economic Cooperation and Development (OECD) has issued a [draft update](#) to its commentary on the Model Tax Convention on Income and on Capital. The update is in relation to Article 9 on the taxation of transactions between associated enterprises, and is intended to clarify its application, especially as it relates to domestic laws on deductions for interest. These changes are expected to be included in the next update to the Model Tax Convention.

OECD and COVID-19

The OECD has also issued the following reports on tax administrators and tax policy responses to COVID-19:

- [Tax Administration: Digital Resilience in the COVID-19 Environment](#), which considers the impact of digitalisation of tax administration in dealing with the COVID-19 crisis, with a particular focus on taxpayer services, compliance risk management, remote working, IT systems and providing support for wider government.
- [Tax Policy Reforms 2021 – Special Edition on Tax Policy during the COVID-19 Pandemic](#), which provides an overview of the tax measures introduced during the COVID-19 crisis across almost 70 jurisdictions, including all OECD and G20 countries and 21 additional members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting.

Other OECD updates

In other OECD news:

- The [Taxing Wages 2021](#) annual report analyses taxes paid on wages in OECD countries. The report covers income taxes, social security contributions, payroll taxes and cash benefits, and illustrates how these taxes and benefits are calculated in each member country and examines how they impact household incomes.
- A report on the [Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration](#) is aimed at assisting tax authorities in designing and implementing an effective value added tax policy response to the growth of the sharing and gig economy.
- The Conference of the Parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) has [approved an opinion](#) in accordance with Article 32 of the MLI. The opinion contains a series of guiding principles for addressing questions about the interpretation and implementation of the MLI

Update to UN Model Convention

The Committee of Experts on International Cooperation in Tax Matters of the United Nations (UN) has approved recommended language to be adopted in the UN Model Tax Convention (MTC) in response to Automated Digital Services (ADS). The OECD has been working to achieve consensus in G20 member states and the 139 countries that comprise the Inclusive Framework on redesigning the existing tax system to meet the challenges of the digitalising economy (Pillar One and Pillar Two proposals). The UN's tax committee has recommended an alternative set of rules, about which countries could bilaterally agree for ADS. Accordingly, this update will only have an impact when two contracting states negotiate (or renegotiate and amend) a tax treaty between them. Therefore, it may have less widespread effect than any consensus to which countries agree in discussions being led by the OECD in conjunction with the G20 and the Inclusive Framework member countries. Refer to this PwC [Insight](#) for further details.

US Tax updates

On 28 April 2021, United States President Joe Biden called on Congress to enact the newly released USD1.8 trillion "American Families Plan" and the previously released USD2.3 trillion "American Jobs Plan". These tax plans are intended to be paid for by tax increases on higher income individuals, increasing the corporate tax rate to

28 per cent and changing international tax rules. Refer to this [PwC Insight](#) for further details.

Excise relief for small distillers and brewers

The federal government has [announced](#) that eligible brewers and distillers will be able to receive a full remission of excise paid up to an annual cap of AUD 350,000. This is an increase from the entitlement of a refund of 60 per cent up to an annual cap of AUD 100,000.

Heavy vehicle road user charge

In the 2021-22 Federal Budget, the government [announced](#) that it will increase the heavy vehicle road user charge from 25.8 cents per litre to 26.4 cents per litre from 1 July 2021. As the Road User Charge is collected via the Fuel Tax Credit System, it will result in a decrease in Fuel Tax Credit entitlements for business operating fleets of heavy on-road vehicles.

Regulations to facilitate free trade agreements

The [Customs Amendment \(Product Specific Rule Modernisation\) Regulations 2021](#) have been made to facilitate consequential amendments following the *Customs Amendment (Product Specific Rule Modernisation) Act 2021* (the PSR Modernisation Act). The PSR Modernisation Act amends the *Customs Act 1901* (Cth) to facilitate and streamline the way in which the product specific rules of origin (PSRs) of six of Australia's free trade agreements (FTAs) are given effect domestically. These six FTAs are the:

- Australia-United States Free Trade Agreement (AUSFTA)
- Thailand-Australia Free Trade Agreement (TAFTA)
- Australia-New Zealand Closer Economic Relations Agreement (ANZCERTA)
- Australia-Chile Free Trade Agreement (ACLFTA)
- Malaysia-Australia Free Trade Agreement (MAFTA); and
- Korea-Australia Free Trade Agreement (KAFTA).

The purpose of the Regulations is to repeal the relevant parts of each regulation that prescribe PSRs for each agreement. The Regulations also make technical amendments to each regulation to align them more closely with the FTA they implement, to reflect modern drafting practice and for consistency across the regulations.

Duty import where goods are re-exported

The *Customs By-laws* [No 2100073](#) and [No 2100072](#) have been made to prescribe goods for the

purposes of item 21 to schedule 4 of the *Customs Tariff Act 1995* that can be imported into Australia for repair or alteration, and are to be re-exported, at the dutiable rate of "Free". Where the imported item is classified as a superyacht, it must be re-exported within 12 months of the date of entry.

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Indirect Tax Update

GST legislative determinations on EFTPOS interchange services

The following legislative instruments have been made by the Commissioner of Taxation relating to goods and services tax (GST) and the acquisition of EFTPOS interchanges services:

- The [Goods and Services Tax: Waiver of Adjustment Note Requirement \(eftpos Interchange Services Reports\) Determination 2021](#) that provides that an adjustment note is not required to be held before attributing a

decreasing adjustment relating to the acquisition of EFTPOS interchanges services so long as the requirements of the determination are satisfied.

- The [Goods and Services Tax: Waiver of Tax Invoice Requirement \(eftpos Interchange Services Reports\) Determination 2021](#) that provides that a tax invoice is not required to be held before attributing an input tax credit for EFTPOS interchange services so long as the requirements of the determination are satisfied.

These instruments commenced on 21 May 2021.

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Personal Tax Update

Reforms for individual tax residency

As part of the 2021-22 Federal Budget it was [announced](#) that the individual tax residency rules would be replaced with a new, modernised framework, following the review undertaken by the Board of Taxation 'Reforming Individual Tax Residency Rules - A Model for Modernisation'. Under the proposed residency test, an individual will be an Australian tax resident if they are physically present in Australia for 183 or more days in a year. This primary test will be supplemented by secondary tests looking at objective criteria, such as whether an individual has the right to permanently reside in Australia, whether they have Australian accommodation or have family located in Australia, that may deem the individual to be a tax resident.

The measure will have effect from the first income year after the date of Royal Assent of the enabling legislation. For further details, refer to [PwC's Federal Budget Insights and Analysis](#).

Low and middle income tax offset extended

The Government announced in the 2021-22 Federal Budget that it will extend the Low and Middle Income Tax Offset until 30 June 2022 from the previous expiry date of 30 June 2021. This benefit ranges from AUD 255 for taxpayers earning less than AUD 37,000 and up to AUD 1,080 for workers earning between AUD 48,000 and AUD 90,000. The tax offset then phases out for taxpayers earning up

to AUD 126,000. For further details, refer to PwC's Federal Budget Insights and Analysis.

Other Federal Budget measures

In other [2021-22 Federal Budget measures](#) the Government announced that:

- the exclusion that prevents the first AUD 250 of self-education expenses being deductible for income tax purposes will be removed with effect from the first income year after the date of Royal Assent of the enabling legislation
- New Zealand maintains primary taxing rights in relation to sporting teams and support staff that have resided in Australia for more than 183 days as a result of the circumstances that have eventuated from the COVID-19 pandemic. The measure will apply to the 2020-21 and 2021-22 income years.

Superannuation benefits paid to ex-defence force members

The ATO has issued draft legislative instruments [MS 2021/D1](#) and [MS 2021/D2](#) that specify alternative methods for calculating the tax-free and taxable components of superannuation benefits paid to ex-defence force members. These instruments follow the decision of the Full Federal Court in *Federal Commissioner of Taxation v Douglas [2020] FCAFC 221* that found certain invalidity benefits to be superannuation income streams benefits or superannuation lump sum benefits.

Comments on the draft legislative instruments are due by 2 June 2021.

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State Taxes Update

Victorian Budget

The [2021-22 Victorian State Budget](#) was delivered on 20 May 2021 by Treasurer Tim Pallas. As with the previous Victorian Budget, the 2021-22 Budget focuses on recovery from the economic impact of

COVID-19. Whilst reform of state taxes has, in more recent times, been the focus for some States and Territories, the Treasurer considered this topic to be "off the agenda" for the time being while Victoria's budgetary position "settles in". Instead, this Budget

focuses on Victoria's economic recovery, with a heavy emphasis on tax increases.

The Victorian Government is expecting Victoria's economy to grow by 6.5 per cent in 2021-22. Taxation revenue is expected to grow by an annual average rate of 6.9 per cent a year over the forward estimates, reflecting an improved outlook and what the Government refers to as "targeted revenue initiatives". Net debt is expected to reach AUD 102.1 billion this financial year and grow to AUD 156.3 billion by the end of the forward estimates.

From a duties perspective, the following measures were announced:

- for contracts entered into from 1 July 2021, a new duty rate will be introduced for "high value" transactions (for all types of dutiable transactions). The duty payable will be increased from a maximum general rate of 5.5 per cent to AUD 110,000 plus 6.5 per cent of dutiable value in excess of AUD 2 million. Relevant arrangements entered into before this date are expected to be grandfathered.
- the off-the-plan concession eligibility threshold for land transfer duty will increase to AUD 1 million for home buyers (for contracts entered into from 1 July 2021 to 30 June 2023). Consistent with the eligibility requirements, the property must be the principal place of residence for at least one of the purchasers.
- from 21 May 2021 to 30 June 2022, a concession of 100 per cent of land transfer duty payable will be available for contracts entered into to purchase new residential property in the Melbourne region with a dutiable value of up to AUD 1 million when the property has been unsold for 12 months or more since completion. A 50% concession will be available for contracts entered into from 1 July 2021 to 30 June 2022 for purchases of new residential property that have been unsold for less than 12 months. This concession does not apply to any foreign purchaser additional duty.

From a land tax perspective, from 1 January 2022:

- a new land tax rate will be introduced. The rate will increase by:
 - 0.25 percentage points to 1.55 per cent for taxable landholdings exceeding AUD 1.8 million; and
 - 0.3 percentage points to 2.55 per cent for taxable holdings exceeding AUD 3 million
- the land tax-free threshold will increase from AUD 250,000 to AUD 300,000. However, no change will be made to the tax-free threshold for properties held through a trust (The trust rate scale will remain unchanged)

- the land tax concession reserved for charities, clubs and associations will no longer apply to private gender-exclusive clubs
- the vacant residential land tax exemption for new developments will be extended to apply for up to two years.

A new windfall gains tax is also set to apply from 1 July 2022, equivalent to an amount of up to 50 per cent associated with planning decisions to rezone land that create an uplift in land valuations above AUD 100 000. The tax will be applied to the total value uplift for windfalls above AUD 500,000, with the tax phasing in from AUD 100,000.

The [State Taxation and Mental Health Acts Amendment Bill 2021](#) has already been introduced into the Victorian Parliament to give effect to most of these and other measures (other than the windfall gains tax, for which only limited details are currently available). See also the employment taxes section of this update for the payroll revenue measures announced in the Budget. Further information about the Victorian budget is available in this [Tax Alert](#).

Northern Territory Budget

The [2021-22 Northern Territory Government Budget](#) was delivered on 4 May 2021 by Treasurer Michael Gunner. The focus of the Budget is "Leading the Comeback" and bringing more investment to the Northern Territory with land releases, the introduction of dedicated Commissioners for Infrastructure, Investment, and Major Projects, and building a manufacturing precinct, as well as support for opportunities for growth through resources, renewables, tourism and parks. For the 2021-22 Budget, there is an estimated AUD 1.36 billion deficit. Net debt is projected to be AUD 9 billion in 2021-22, increasing to AUD 11.41 billion by 2024-25.

From a tax perspective, changes to revenue policy in the 2021-22 Budget will mainly affect gambling taxes, with an increase to the maximum annual tax cap applicable to bookmakers and betting exchanges from 500,000 to 1 million revenue units; a reduction in the rate of bookmaker and betting exchange tax on gross monthly profits from ten to five per cent and an expansion of bookmaker and betting exchange tax to total monthly betting profits, including sports and other betting, in addition to racing betting.

Other changes to revenue laws introduced prior to the 2021-22 Budget include:

- narrowing the types of expenditure able to be deducted as operating costs from mineral royalty payments for mining companies
- modernising the delegation provisions contained in the *Mineral Royalty Act 1982* (NT), and

- amending the *Taxation Administration Act 2007* (NT) to improve the legislative framework governing special tax return arrangements for conveyancing agents.

In addition, two stamp duty concessions – the Territory home owner discount and the senior, pensioner and carer concession – will expire on 30 June 2021.

NSW landholder duty and wind farm assets

The Supreme Court of New South Wales has held in [SPIC Pacific Hydro Pty Ltd v Chief Commissioner of State Revenue \(NSW\) \[2021\] NSWSC 395](#) that wind farm assets were tenant's 'fixtures' and were accordingly, dutiable assets. The assets consisted of wind farm turbines, a switchyard, substation, control building, hardstands, meteorological masts and roads. The Court found that the relevant authorities showed that whether an item of plant or equipment on land is a chattel or a fixture depends on the degree and object of annexation (i.e. objective intention with which the item was put in place), and that the wind towers and other generation and transmission infrastructure were fixtures because they were substantially attached to the land, and were affixed to the land for the purposes of its better enjoyment or use as a wind farm.

Note that the particular acquisition in this case predated the amendments to the *Duties Act 1997* (NSW) in the form of section 147A that provides that land for the purposes of landholder duty includes anything fixed to the land, regardless of whether it is a fixture at common law (and similar amendments had previously been made in most other Australian States and Territories). As a result, the fixture/chattel classification has limited future relevance in a stamp duty context. However, the classification of assets as fixtures or chattel continues to be important in determining whether assets are Taxable Australian Real Property under Division 855 of the *Income Tax Assessment Act 1997* (Cth).

This decision also raises a number of questions about the appropriate valuation methodology to be used when valuing fixtures from both a stamp duty and income tax perspective. Both the Commissioner and the taxpayer had put forward valuations using a Depreciated Optimised Replacement Cost (DORC) methodology. However, the Court rejected this approach based on the statutory context, preferring instead a profit rental approach. This is a departure from the valuation approach commonly used for most leasehold improvements and non-building plant and equipment on freehold land for both stamp duty and income tax purposes and creates uncertainty regarding whether this alternative

approach should also apply in the statutory context of the amended stamp duty laws (in New South Wales and elsewhere, that now include the express deeming provisions) or the income tax legislation.

For further information please see this [Tax Alert](#).

NSW Ruling on Build to Rent land tax arrangements

Revenue New South Wales (Revenue NSW) has released [Revenue Ruling G 014](#) setting out when an eligible build to rent property will qualify for the 50 per cent reduction in land value for land tax purposes. This concession applies from the 2021 land tax year to 2040. The Ruling sets out requirements relating to the labour force used in the construction, how a proportionate reduction in the concession may be applied and the restrictions on subdivision that apply.

Victorian land tax exemption

The Victorian Court of Appeal has held in [Lifestyle Investments 1 Pty Ltd v Commissioner of State Revenue \[2021\] VSCA 107](#) that two parcels of land used as caravan parks were not wholly exempt from land tax on the basis the land was only used in part as registered caravan parks.

The whole of each parcel of land was registered as a caravan park in accordance with the *Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2010*, however each caravan park was developed on a staged basis and some stages were still under development at the time of the land tax assessment.

The majority of the Court of Appeal considered that while registration of the land as a caravan park was necessary to attract the exemption in section 77 of the *Land Tax Act 2005* (Vic), section 77 also required that the whole of the land was actually used as a caravan park. To the extent that the whole of the land was not used as a caravan park, an apportionment was required to be carried out to determine the extent of the land subject to the land tax exemption.

Northern Territory special arrangements

The [Taxation Administration Amendment Bill 2021](#) has passed the Northern Territory Parliament. The Bill contains improvements to the special arrangement provisions in the *Taxation Administration Act 2007* (NT) where the Commissioner of Territory Revenue may grant a taxpayer approval to access certain exemptions for lodging returns. It provides the Commissioner of Territory Revenue with further powers to grant special arrangements and imposes penalties for

failing to comply with an approved special arrangement.

Australian Capital Territory revenue legislation

The [Revenue Legislation Amendment Bill 2021](#) (ACT) was introduced and passed the Australian Capital Territory Parliament. The Bill, makes a number of amendments to ACT taxation legislation including:

- the removal of the current expiry date of 30 June 2021 for the affordable community housing land tax exemption
- conveyance duty concessions for pensioners who have a disability purchasing residential shares in not-for-profit supportive housing properties
- the application of penalty tax provisions under the *Taxation Administration Act 1999* (ACT) to overdue and unpaid rates on land owned by corporations and trusts, and

- a number of minor and technical amendments to clarify and simplify tax administration, including among other things, rectifying an error in drafting that applies duty to acquisitions of interests in short- and long-term commercial leases; clarifying when duty must be paid on the acquisition of an option over dutiable property; excluding corporations and trustees from exemptions on land tax involving an owner's principal place of residence.

South Australian land tax for discretionary trusts

The [Land Tax \(Discretionary Trusts\) Amendment Bill 2021](#) (SA) has been introduced to the South Australian Parliament to provide an additional 12 months for trustees of discretionary trusts to nominate designated beneficiaries to avoid land tax surcharges. The Bill was introduced to address issues caused by delays in taxpayers receiving their land tax assessments for the 2020-21 year.

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Superannuation Update

Federal Budget superannuation measures

A number of measures were announced as part of the 2021-22 Federal Budget in relation to superannuation including:

- **increase** to the amount of voluntary contributions that can be released under the First Home Super Saver Scheme that allows for home buyers to save for a deposit inside of their superannuation fund, from AUD 30,000 to AUD 50,000. This measure is proposed to apply from the start of the first financial year after enactment of the amending law (expected to be 1 July 2022). The Government will also make minor technical changes to the legislation underpinning the Scheme, which will apply retrospectively from 1 July 2018.

- expand the superannuation "downsizer" scheme that allows an individual to make a non-concessional contribution from the proceeds of selling their principal residence that was owned for ten or more years so that it applies to individuals aged 60 years or over (in place of the existing minimum 65 year age limit). This measure is proposed to apply from the start of the first financial year after enactment of the amending law (expected to be 1 July 2022).
- abolish the work test for individuals aged between 67 and 74 years so they will be able to make non-concessional contributions (including under the bring-forward rules) or under salary sacrifice arrangements subject to the existing cap rules. This measure is proposed to apply from the start of the first financial year after enactment of the amending law (expected to be 1 July 2022).

- relax the residency requirements for SMSFs and small APRA Regulated Funds (SAFs) through an extension of the central management and control safe harbour test from two years to five years and remove the active member test for both SMSFs and SAFs. This measure is proposed to apply from the start of the first financial year after enactment of the amending law (expected to be 1 July 2022).
- allow members of SMSFs with legacy pensions such as market-linked, life-expectancy and lifetime products to convert these products into contemporary pensions such as the Account based pension product. Individuals will be able to exit these products with any reserves for a two-year period following the enactment of the enabling legislation.

For further details of these measures, refer to [PwC's Federal Budget Insights and Analysis](#).

Supporting draft regulations for Your Future, Your Super reforms

The *Your Future, Your Super* reforms that are scheduled to commence on 1 July 2021, require trustees of registrable superannuation entities and self-managed superannuation funds (SMSFs) to act in the best financial interests of beneficiaries, limit the creation of multiple superannuation accounts for new employees, hold underperforming funds to account and strengthen protections around the retirement savings of members, among a series of other reforms. The primary legislation to support the reforms are included in the [Treasury Laws Amendment \(Your Future, Your Super\) Bill 2021](#), which is currently before Parliament.

Exposure draft regulations and the accompanying explanatory statement to support the measures have been [released](#) for comment. The proposed regulations aim to:

- Outline the methodology for the annual performance test and re-opening test, as well as requirements for notifications to members.
- Prescribe the definition of a "stapled fund", including tie-breaker rules for determining which fund is to be an employee's stapled fund where they have multiple existing funds.
- Specify the formulas as a basis for ranking products on the YourSuper comparison tool.
- Set out the manner in which the portfolio holdings disclosures are organised.
- Prescribe the information that must be included with the notice of an Annual Members' Meeting.
- Further strengthen the prohibition on funds offering inducements to employers.

Comments were due by 25 May 2021.

Draft law for calculating exempt current pension income

Treasury has released [exposure draft law and explanatory materials](#) that seek to give effect to the Government's 2019-20 Budget measure to reduce costs and simplify reporting for superannuation funds by streamlining some administrative requirements for the calculation of exempt current pension income (ECPI). Specifically, the draft law provides amendments to the *Income Tax Assessment Act 1997* (Cth) to:

- provide choice for superannuation fund trustees to use their preferred method of calculating ECPI, where the fund is fully in the retirement phase for part of the income year, but not for the entire income year, and
- remove a redundant requirement for superannuation funds to obtain an actuarial certificate when calculating ECPI, where the fund is fully in the retirement phase for all of the income year.

Comments can be made on the proposed measures by 18 June 2021.

Super data transformation reporting and APRA guidance

The Australian Prudential Regulation Authority (APRA) has published [frequently asked questions \(FAQs\)](#) on the Reporting Standards of phase 1 of the Superannuation Data Transformation. Under the new reporting standards, the due date for the first submission of the majority of all the new superannuation forms is 30 September 2021. APRA expects to continue to release FAQs on a regular schedule until that first due date.

APRA has also [released](#) further information to assist entities, including superannuation funds, in preparing for APRA Connect which is the new data collection solution for reporting entities to lodge entity information and regulatory data with APRA. The first data collections to be introduced in APRA Connect once it goes live will be the Superannuation Data Transformation collections. A test environment is planned to be available from 17 June 2021 with entities expected to log in and become familiar with its functionality from this date.

SMSFs and pension payments

The Australian Taxation Office (ATO) has released [guidance](#) for SMSFs that are making account based pension payments. The guidance confirms that once a pension commences, there is an ongoing requirement for the trustee of a complying superannuation fund to ensure the pension standards in the super laws, including meeting the

minimum pension payment requirements, are satisfied.

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Legislative Update

Federal Parliament resumed sittings on 11 May 2021, which was the day that the [Federal Budget](#) was handed down. Since our last update, the following new Commonwealth tax and superannuation legislation has been introduced into Federal Parliament:

- [Treasury Laws Amendment \(2021 Measures No. 3\) Bill 2021](#), which was introduced into the House of Representatives on 13 May 2021, amends the income tax law to:
 - increase the low-income threshold for the Medicare levy and Medicare levy surcharge in line with movements to the Consumer Price Index;
 - make certain payments to thalidomide survivors exempt from income tax;
 - make certain disaster recovery grants non-assessable non-exempt income; and
 - provide for certain entities to become deductible gift recipients.
- [Treasury Laws Amendment \(2021 Measures No. 4\) Bill 2021](#), which was introduced into the House of Representatives on 26 May 2021, proposes amendments to tax law to give effect to a number of 2020-21 and 2021-22 Federal Budget announcements including measures to:
 - provide employers with an exemption from fringe benefits tax on providing training or education to a redundant, or soon to be

redundant, employee for the purpose of assisting that employee to gain new employment (applicable to benefits provided on or after 2 October 2020)

- extend the operation of the junior minerals exploration incentive for a further four years to continue to encourage mineral exploration companies to undertake greenfields minerals exploration in Australia through to the 2024-25 income year
- provide a targeted capital gains tax (CGT) exemption for CGT events that occur on entering into, varying or terminating formal written arrangements under which an older person or person with a disability acquires, varies or disposes of a granny flat interest (applicable from the first 1 July after the Bill receives Royal Assent)
- amends the *International Tax Agreements Act 1953 (Cth)* to disregard days spent in Australia due to COVID-19 by New Zealand sportspersons on teams participating in cross-border competitions and their support staff in determining whether income derived from such competitions is taxable in Australia
- make the low and middle income tax offset available in the 2021-22 income year.

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Other News

Who might be required to lodge a 2021 income tax return?

The following legislative instruments set out which persons and entities might be required to lodge an income tax return for the year ending 30 June 2021:

General Notice of persons and entities that are required and exempt from the requirement to lodge an income tax return for the income year ended 30 June 2021.

[Notice of Requirement for Parents with a Child Support Assessment](#) of their obligation to lodge an income tax return for the income year ended 30 June 2021.

TOFA hedging rules

A measure [announced](#) in the 2021-22 Federal Budget is that technical amendments will be made to the taxation of financial arrangements (TOFA) provisions to allow the hedging rules to apply on a whole of portfolio basis. The amendments will also ensure that taxpayers are not subject to taxation on unrealised gains and losses unless an election is made, correcting some unintended outcomes. For further details, refer to [PwC's Federal Budget Insights and Analysis](#).

Small business debt

The Government [announced](#) in the 2021-22 Federal Budget that small businesses with aggregated turnover of less than AUD 10 million will be able to apply to the Administrative Appeals Tribunal (AAT) to pause or modify ATO debt recovery actions, such as garnishee notices and the recovery of General Interest Charge or related penalties until the underlying dispute is resolved by the AAT.

Exemptions from third party reporting regime

The Australian Taxation Office (ATO) has published a draft legislative instrument [TPRE 2021/D1, Taxation Administration Excluded Classes of Transactions and Entities for Third Party Reports on Shares and Units Determination 2021](#), to exempt certain entities from the third party reporting regime. The exempted entities include companies with shares listed for quotation on an Australian financial market, trustees of a unit trust and trustees of other trusts holding shares or units, in relation to transactions not reported in an income tax return. Specifically, this instrument is intended to extend the exemptions available to certain entities from reporting information about erroneous transactions to the Commissioner of Taxation, i.e. where an investment is disposed of or purchased without the consent of the investor if the transaction is reversed, and also in relation to off-market transactions relating to shares listed on foreign exchanges.

The draft legislative instrument is intended to commence retrospectively on 1 July 2017 and replace the [2018 instrument](#).

Data matching programs on rental properties

The ATO will undertake the following data matching programs in relation to rental properties:

- [property management](#) data from property management software providers will be obtained for the 2018-19 to 2022-23 financial years. The data will be matched against ATO records to ensure compliance with tax obligations, such as correct reporting of rental income and deductions, and protect the tax system's integrity. It will acquire property owner

identification details, rental property details and property manager details.

- [rental bond](#) data from state and territory rental bond regulators will be obtained bi-annually for another three years to 30 June 2023. The data will be matched against ATO records to identify and address taxation risks, including income tax reporting obligations for income-producing properties and capital gains tax events arising upon disposal of a property. The data items will include landlord and managing agent identification details and rental bond transaction details.

Commissioner's discretion and Cash Flow Boost and JobKeeper eligibility

The ATO has updated Practice Statement Law Administration [PSLA 2020/1](#) which provides guidance in relation to the exercising of the Commissioner's discretion to allow an entity further time to hold an Australian business number (ABN), or provide notice to the Commissioner that an amount of business income should be included in the entity's assessable income for the relevant period or that the entity made a taxable supply during the relevant tax period, for the purposes of satisfying the eligibility criteria for the cash flow boost or the JobKeeper payment in respect of an eligible business participant.

This update follows the recent decision of the Full Federal Court in [Commissioner of Taxation v Apted \[2021\] FCAFC 45](#) and clarifies the circumstances in which the Commissioner will exercise his discretion. The update to PSLA 2020/1 also applies to the discretion to allow further time to provide notice of assessable income/taxable supplies to the Commissioner.

As a result of the decision in this case, the ATO is [revisiting](#) decisions on eligibility for the Cash Flow Boost and JobKeeper stimulus measures where the outcome may have been different applying the court's reasoning. For any entities that received an adverse decision in relation to the Commissioner's exercise of discretion in the context of the above, the Commissioner will automatically review their circumstances and whether his discretion should now be applied – there is no need to contact the ATO which aims to have the process completed by the end of June 2021.

When the Commissioner is required to give reasons

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has [published](#) an article discussing the circumstances where a taxpayer has a statutory right to access reasons from the Commissioner of Taxation (the Commissioner). The

article notes that despite the lack of a legal requirement to give reasons in some circumstances, the Taxpayer Charter published by the ATO sets an expectation that the Commissioner will be open, transparent and accountable. On this basis, the taxpayer should consider their right to complain, including via the ATO Complaints Unit and/or IGTO complaints service when the Commissioner refuses to provide reasons.

Not-for-profits and deductible gift recipients

In the 2021-22 Federal Budget the government has [announced](#) that not-for profit entities that are exempt from income tax with an active Australian Business Number will be required to submit information used to assess their income tax exemption in an online annual self-review form. This change will apply from 1 July 2023.

The government also [announced](#) that Australia Associated Press Ltd, Virtual War Memorial Limited and Scripture Union Queensland have been added to the list of specific Deductible Gift Recipients (DGR) from 1 July 2021 and Cambridge Australia Scholarships Limited and Foundation 1901 Limited have had their DGR status extended by five years.

Insurance payment found to be assessable recoupment

In [Dessent v Federal Commissioner of Taxation \[2021\] AATA 1206](#), the AAT has held that an amount received in consideration for releasing an insurer from all liability under an insurance payment was an assessable recoupment. The amount in dispute was described in the recitals to a Deed between the taxpayer and his insurer as being for loss of rent and any other benefits under the policy of insurance. The taxpayer also subsequently claimed deductions for repairs to the property. The taxpayer argued that the money paid to him under the policy was not income or rent and was not used to 'enable him to repair his property.' The AAT held that the amount received was an assessable recoupment regardless of whether the money was actually used for repairs to the property. The relevant law (section 20-20 of the *Income Tax Assessment Act 1997 (Cth)* (ITAA 1997)) referred only to the existence of "an" allowable deduction for the loss or outgoing in any year of income and not to the fact that the amount paid by the insurer was used for that purpose.

Franchisee prepaid rent not deductible

The Full Federal Court has dismissed the taxpayers' appeal in [Mussalli & Ors v FC of T \[2021\] FCAFC 71](#) and found that upfront payments made as part of lease and licence agreements of franchise restaurants, described as prepayments of rent, were

capital in nature and therefore not deductible under s8-1 of the ITAA 1997. The agreements included an option for the franchisee to reduce their rent by making a lump sum payment described as a 'prepayment of rent'.

The Court found that the payments were not made to secure the use and enjoyment of each store over the term of its lease, but secured the enduring advantage

of acquiring a preferable business structure, being one which involved the payment of a lower percentage rent over the term and most likely any renewed term, than would otherwise be the case. It was relevant that the means by which the enduring advantage was secured was a one off, lump sum, non-refundable payment. Furthermore, irrespective of the accounting evidence, it was concluded that the payments were of capital or of a capital nature.

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PwC's Monthly Tax Update

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