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PwC's Monthly Tax Update

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

May 2021



Corporate tax update

Reportable tax position schedule instructions 2021

The Australian Taxation Office (ATO) has published the reportable tax position (RTP) schedule instructions for 2021 income tax returns. There have been significant changes made to the RTP schedule, including:

- the requirement to lodge has been extended to Australian owned private companies that have been notified by the ATO that they must lodge the schedule with their 2021 income tax return. All other public companies or foreign-owned companies must continue to self-assess their obligation to lodge the RTP schedule against the ATO's thresholds
- the criteria for a position to be reported as a Category B reportable tax position has changed to cover an uncertain tax position or a contingent liability or asset in relation to tax that has been recognised in the entity's accounts, regardless of materiality. A company is no longer required to report an uncertain tax position or contingent liability/asset recognised in a related party's financial statements.
- a number of Category C questions have changed, with several questions now requiring additional information to be disclosed in the comments section of the Schedule. All questions that ask for a self-assessed risk rating under practical compliance guidelines (PCG) have also been revised such that high risk arrangements no longer fall within the same subcategory as arrangement for which a self-assessment has not been undertaken; and
- 12 new Category C questions covering various items of ATO guidance, including:
 - hybrid mismatch rules
 - private companies and deemed dividend rules (Division 7A) in context of a tax consolidated group
 - private companies with trustee shareholders
 - foreign income tax offsets
 - arrangements involving development, enhancement, maintenance, protection or exploitation of intangible assets
 - cross-border financing, including arm's length debt test
 - restructuring involving unit trusts
 - multiple entry consolidated (MEC) group restructuring

- disclosure where the taxpayer falls into the high risk zone of any **final** PCG published at a later time during the year (or if the PCG has not been applied).

Given the breadth of changes to the RTP Schedule for 2021 as compared to prior years and the likelihood that the positions reported will influence ATO case selection for risk reviews and audits, it is recommended that taxpayers required to complete the RTP Schedule seek early advice in relation to the completion of the Schedule.

ATO view on financial institutions making remediation payments

The ATO has published a [fact sheet](#) for financial institutions on PAYG withholding and reporting obligations in the context of remediation payments made to customers. Remediation payments may include one or more of the following: refund of fees for no service or deficient financial advice, underpaid credit interest or overcharged debit interest (and associated compensation), refund of insurance premiums, compensation for loss of earnings or portfolio value, or amount representing inconvenience caused to customer.

The fact sheet covers several different scenarios including:

- obligations where records show the customer's address is inside Australia
- obligations where records show the customer's address is outside Australia
- PAYG withholding thresholds; and
- information financial institutions need to report to the ATO.

Waste processing technology core or supporting R&D activities

In the case of [PKWK v Innovation and Science Australia \[2021\] AATA 706](#), the Administration Appeals Tribunal (AAT) held that activities concerning the development of pyrolysis technology to process municipal waste was core or supporting research and development (R&D) activities. The AAT held that the research generated new knowledge as a systematic progression of work had been developed, leading to logical conclusions and the generation of new knowledge. The AAT also concluded that the supporting activities were directly related to the core activities.

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Employment taxes update

Final FBT ruling on car parking benefits again deferred

The ATO has again postponed the effective date for its upcoming final fringe benefits tax (FBT) ruling on car parking benefits to 1 April 2022.

In December 2020, the ATO conducted a consultation on Draft Taxation Ruling [TR 2019/D5](#) and a draft update to [Chapter 16 of Fringe benefits tax – a guide for employers](#) published in November 2019. Concerns were raised in consultation that the draft ruling relied too heavily on subjective factors such as the profit-making intention of a car parking operator, which an employer would have difficulty in establishing, for a nearby car park.

To address the issue, the ATO has indicated that the final FBT ruling will revise the test to determine what is a 'commercial car parking facility' to focus on a car parking facility's objective characteristics.

Acknowledging the ongoing uncertainty for employers, the ATO has decided that any changes in view will apply from 1 April 2022, not 1 April 2020, as indicated in the draft ruling. The final draft ruling is intended to be published by mid-June 2021.

FBT exemption for retraining

Treasury has released [exposure draft](#) proposed legislation, which will give effect to the 2020-21 Federal Budget measure to exempt employer provided retraining and reskilling benefits to redundant or soon to be redundant employees from FBT.

The new measures, which will apply to eligible benefits provided on and after 2 October 2020, are designed to remove any disincentive in the FBT system for retraining redundant employees to help with transitioning to new employment. The exemption will not cover retraining provided through salary packaging or costs for which an income tax deduction is specifically denied such as Commonwealth supported places at universities.

Submissions in response to the exposure draft legislation were due by 29 April 2021. Refer to PwC's [Tax Insight](#) for further information.

JobKeeper eligibility: Backdated ABN

The Full Federal Court has found in [Federal Commissioner of Taxation v Apted \[2021\] FCAFC 45](#) that a sole trader who applied on 31 March 2020 for an Australian Business Number (ABN) that was effective from 1 July 2019 was eligible for payments under the JobKeeper program.

By way of background, under the JobKeeper program, one condition for entitlement to the JobKeeper was that the taxpayer was required to hold an ABN as at 12 March 2020 or a later time allowed by the Commissioner of Taxation.

In the decision, the Court held that prima facie the taxpayer did not hold an ABN at 12 March 2020 and accordingly was ineligible for the JobKeeper program in the absence of the Commissioner exercising discretion to allow a later time. The Administrative Appeals Tribunal (AAT) in its earlier proceedings had determined that the exercise of the

Commissioner's discretion to allow a later time was a reviewable decision and that this discretion should be exercised in favour of the taxpayer. The Full Federal Court agreed that the exercise of the discretion was a reviewable decision and that the Commissioner had not established that the AAT had erred in exercising this discretion in favour of the taxpayer.

JobMaker alternative reporting requirements

The Commissioner of Taxation has issued a legislative instrument ([JobMaker Hiring Credit Reporting Obligations Amendment Instrument 2021](#)) that amends the JobMaker Hiring Credit scheme to allow more employers to access it. Under the instrument, if an employer is unable to provide the required information through the Single Touch Payroll (STP) system as a result of software constraints to claim JobMaker, provision is made to enable employers to report this employee information directly through ATO Online. There are further minor amendments including clarifying that an employer can update its financial institution account details after the JobMaker claim period has closed.

Payroll tax (NSW): Tougher rules coming relating to unpaid wages

The New South Wales (NSW) government has [announced](#) it will introduce new laws aimed at employers who avoid payroll taxes through unpaid wages or wage theft. The new legislation will introduce:

- harsher penalties
- allow Revenue NSW to publicly name taxpayers avoiding payroll tax (with guidelines to be developed by the Minister)
- allow information to be disclosed to the Commonwealth Fair Work Ombudsman, and
- allow Revenue NSW to reassess payroll tax up to five years after the initial tax assessment in relation to unpaid wages.

The detail of this proposal, including the scope of arrangements it will apply to, should become evident once draft legislation is available.

Payroll tax (ACT): Ruling on exemption for contractors

The Australian Capital Territory (ACT) Revenue office has updated its [circular](#) in relation to exemptions for contractors following the decision of the Victorian Supreme Court in [Nationwide Towing & Transport Pty Ltd & Ors v Commissioner of State Revenue \[2018\] VSC 262](#) (Nationwide Towing). In this case, the Court found that the Commissioner of State Revenue does not need to be satisfied that a contractor conducts a genuine independent business in order for the contract to be excluded as a relevant contract on the basis that the services are provided by a person who ordinarily provides services to the general public.

The updated circular confirms that a similar position applies in the ACT and sets out factors relevant to the exclusion.

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Global tax update

ATO guidance on imported hybrid mismatch rules

The ATO has released draft [Practical Compliance Guideline PCG 2021/D3](#) setting out the ATO's proposed approach to assessing tax compliance risks associated with the imported hybrid mismatch rules.

PCG 2021/D3 sets out the steps that the ATO expects taxpayers to have taken in order to be considered to have undertaken reasonable enquiries to assess the risk associated with non-structured arrangements. PCG 2021/D3 states that the ATO expects that parties to a structured arrangement will have or should be in a position to access all relevant information to consider the imported hybrid mismatch rule.

PCG 2021/D3 will also allow taxpayers to assess the level of compliance risk associated with their arrangements based on various factors.

Submissions on PCG 2021/D3 are due on 21 May. Refer to this [PwC Tax Alert](#) for further details.

Update to information exchange countries for MITs

To reflect the updated list of countries with which Australia has an exchange of information (EOI) agreement, the *Taxation Administration Regulations 2017* have been updated ([Taxation Administration Amendment \(Updating the List of Exchange of Information Countries\) Regulations 2021](#)) to include those countries for purposes of applying the lower rate of managed investment trust (MIT) withholding tax applicable to certain fund payments made to a recipient in an 'information exchange country'.

The new regulations now mean that certain distributions made by a MIT to entities in the Dominican Republic, Ecuador, El Salvador, Hong Kong, Jamaica, Kuwait, Morocco, North Macedonia and Serbia from 1 July 2020 will be eligible for the 15 per cent withholding tax rate instead of the default withholding tax rate of 30 per cent. Kenya has also been removed from the list.

Update on Multilateral Convention

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

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

The ATO has also published the [synthesised text](#) of the Agreement between the Government of Australia and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as modified by the MLI.

OECD: Digitalisation of the economy

The Organisation for Economic Co-operation and Development (OECD) has published the [Secretary-General's Tax Report](#) to the Group of 20 (G20) Finance Ministers and Central Bank Governors. The report concludes that the G20/OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS) is ready to reach a consensus-based solution by mid-2021 in responding to the tax challenges of the digitalisation of the economy. Furthermore, work is progressing to develop a new tax reporting framework on cryptocurrency assets, and the OECD will soon release a report on how to design and implement an effective value added tax policy in response to the growth of the sharing and gig economy.

Other OECD developments

The OECD has published the [Arbitration Profiles](#) of 30 jurisdictions applying Part VI on Arbitration of the MLI, which allows jurisdictions choosing to apply it to adopt mandatory binding arbitration for the resolution of tax treaty disputes. The Arbitration Profiles allow jurisdictions to provide further information on their approach to MLI arbitration in a publicly available format. Each arbitration profile includes links to competent authority agreements concluded by each jurisdiction, a list of reservations on cases eligible for arbitration and further clarifications on each jurisdiction's position.

The OECD has released the [stage 2 peer review monitoring reports](#) for [Australia](#), [Ireland](#), [Israel](#), [Japan](#), [Malta](#), [Mexico](#), [New Zealand](#) and [Portugal](#) on BEPS Action 14 'Making Dispute Resolution Mechanisms More Effective'. The peer review monitoring reports evaluate progress made from each stage 1 peer review and take into account new developments and statistics. In the context of Australia, the report concludes that Australia has met the minimum standard for the prevention of tax disputes, availability and access to mutual agreement procedures (MAP) and all other requirements under the Action 14 minimum

standard in relation to the resolution of MAP cases. However, it is reported that although Australia almost meets the minimum standard when it comes to the implementation of MAP agreements, no problems have surfaced.

International transfer pricing updates

Her Majesty's Revenue and Customs (HMRC) in the United Kingdom (UK) has asked for comments on proposed changes to transfer pricing rules. The proposed rules would introduce mandatory master file and local file requirements for UK multinational enterprises, introduce additional disclosures about cross-border transactions in annual tax return filings and the potential use of an evidence log to identify key facts and evidence. HMRC has invited submissions on the proposed changes by 1 June 2021. Refer to this [PwC Insight](#) for further details.

China's State Tax Administration has issued a consultation draft of a simplified procedure in relation to unilateral advance pricing agreements (APAs). The simplified procedure provides a timeline of up to 12 months to complete a unilateral APA with fewer steps involved and is intended to encourage taxpayers to obtain APAs for their transfer pricing arrangements. Comments on the proposed changes were due on 18 April 2021. Refer to this [PwC Insight](#) for further details.

Update to communications relating to customs

The Comptroller-General of Customs has published [Customs \(Information Technology Requirements\) Determination 2021](#) which replaces an equivalent 2010 Determination that expired on 1 April 2021. The 2021 Determination contains some minor modifications to simplify key concepts, reflect

updates to technology platforms used by industry and specify the information technology requirements for electronic nomination applications made by Australian Trusted Traders. The information technology requirements now also require that electronic applications relating to the Australian Trusted Trader nominations are to be made through the ATT Portal website.

US tax plan

The United States (US) Treasury has released President Biden's [The Made in America Tax Plan](#) which proposes to implement a series of US corporate tax reforms to address profit shifting and offshoring incentives and to level the playing field between domestic and foreign corporations. These include:

- raising the US corporate income tax rate to 28 percent
- strengthening the global minimum tax for US multinational corporations
- reducing incentives for foreign jurisdictions to maintain ultra-low corporate tax rates by encouraging global adoption of robust minimum taxes
- enacting a 15 percent minimum tax on book income of large companies that report high profits, but have little taxable income
- replacing flawed incentives that reward excess profits from intangible assets with more generous incentives for new research and development
- replacing fossil fuel subsidies with incentives for clean energy production, and
- ramping up enforcement to address corporate tax avoidance.

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Indirect tax update

GST determination on development works in the ACT

The ATO has released a goods and services tax determination [GSTD 2021/1](#) which provides the ATO view on the application of GST to arrangements between government agencies and private developers when developing land in the ACT supplied under a long term Crown lease, referred to by the ATO as a 'building arrangement'. In particular, the Determination considers whether 'building works' and 'associated site works' constitute a supply of development services by the developer to the government agency and non-monetary consideration for the supply of the Crown lease by the government agency.

In GSTD 2021/1, the ATO considers that:

- a developer makes a supply of development services to a government agency to the extent that it is required to perform 'associated works' that become the property of the government agency(ies) or are subject to an easement to a government agency on completion
- these development services constitute non-monetary consideration for the land supplied to the developer
- the development services are to be valued in accordance with principles set out in GSTR 2001/6 on non-monetary consideration
- where the ownerships of associated works and building works is retained by the developer, the works do not constitute development services, and
- other obligations such as affordable housing requirements do not constitute development services.

Holding lease arrangements are distinguished from the Crown lease arrangements under GSTD 2021/1 and are confirmed to be dealt with under [GSTR 2015/2](#) (see also below).

This latest Determination means developers in ACT 'building arrangements' need to consider appropriate valuation of the development services, issue of invoices and payment of GST liabilities for both current developments and when negotiating future land contracts. The Determination also creates an opportunity for affected developers to amend their GST margin scheme calculations on settlements to take into account those development services the ATO now considers to be non-monetary consideration for the land acquired, subject to the statutory timelines and Division 142 GST refund provisions.

Although the Determination applies both before and after its date of issue on 31 March 2021, it does not apply where the developer has previously obtained a private binding ruling that is applicable to its arrangements. Furthermore, in cases where the predecessor draft [GSTD 2019/D1](#) has been applied, the ATO will not seek to disturb this position if both parties apply the view to all aspects of the development arrangement for the entire period of the arrangement (the Commissioner also expects that in these situations there would be an agreement in writing by both parties to apply this view).

Addendum clarifying development lease arrangements in the ACT

The ATO has released an [addendum](#) to [GSTR 2015/2](#) which deals with development lease arrangements with government agencies in the ACT.

The addendum amends GSTR 2015/2, with the following key changes:

- clarification to specifically exclude from the scope of GSTR 2015/2 those ACT 'building arrangements' dealt within GSTD 2021/1
- new commentary is provided on the calculation of market value of development works in holding lease arrangements. The ATO takes the view that, where the market value of development works is determined with reference to the professional valuation of land supplied by the government agency less the monetary consideration paid for the land, the professional valuation of land should be made on an 'in globo' basis. This reduces the land valuation by the amount of the margin expected to be made by the developer, and the value of the development services by an equivalent amount.

The Addendum applies with effect from 24 March 2021.

GST-free treatment of certain beds and mattresses

The ATO's Draft GST Determination [GSTD 2021/D1](#) discusses when the supply of an adjustable bed, pressure management mattress, pressure management overlay or spare part is GST-free. A medical aid or appliance is GST-free if it is specifically designed for people with an illness or disability and not widely used by people without an illness or disability. In this regard, the draft Determination indicates that in determining whether a bed, mattress or overlay is GST-free involves applying an essential character test to examine its

basic nature, taking its composition, function and other factors.

The Commissioner is aware of the practical difficulties a supplier may encounter in determining the extent to which the item supplied is used by people without an illness or disability and has outlined a practical compliance approach in the draft Determination.

Although when the final Determination is issued, it will apply both before and after its date of issue, transitional compliance relief will apply. Specifically

in cases where supplies of adjustable beds, pressure management mattresses or pressure management overlays are currently being treated as GST-free, the Commissioner will not seek to disturb this approach for tax periods commencing prior to the final Determination being issued, or commencing within three months after the final Determination being issued.

Comments can be made on the draft by 21 May 2021.

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Personal tax update

Data matching for globally mobile employees

The ATO has announced a new [data-matching program](#) targeting globally mobile employees under which it will gather passenger movement information from the Department of Home Affairs for tax years from 2016–17 to 2022–23, covering approximately 670,000 individuals each financial year.

The objectives of the passenger movements data-matching program are to:

- promote voluntary compliance and increase community confidence in the integrity of the tax and superannuation systems
- improve knowledge of the overall level of identity and residency compliance risks, including registration, lodgment, reporting and payment obligations
- gain insights from the data to help develop and implement administrative strategies to improve voluntary compliance, which may include educational or compliance activities
- identify ineligible tax and superannuation claims
- refine existing risk detection models and treatment systems to identify and educate

individuals and businesses who may be failing to meet their registration, lodgment and payment obligations and help them comply, and

- identify potentially new or emerging non-compliance, and entities controlling or exploiting those methodologies.

This program appears to have a particular focus on individual residency status and may be particularly relevant to Australians who, in recent times, have returned to Australia due to COVID-19. For further information refer to our [Tax Insight](#).

Draft legislation: CGT exemption for granny flats

Treasury has released [exposure draft legislation](#) for public consultation on the proposal to provide an exemption from capital gains tax (CGT) exemption for granny flat arrangements. The CGT exemption is intended to be available to granny flat arrangements for providing accommodation for older Australians or people with disabilities under a formal written arrangement.

This measure is intended to reduce the risk of abuse to vulnerable Australians arising from informal granny flat arrangements which can lead to financial

abuse or exploitation where family relationships break down.

Submissions in relation to the draft legislation was due on 29 April 2021.

Extension of HomeBuilder construction deadline

The government has [extended](#) the deadline to commence construction of eligible new home builds and renovations for all applicants from six months to 18 months from when the eligible contract was

signed. All applicants who signed eligible construction contracts between 4 June 2020 and 31 March 2021 will now have 18 months to commence construction from the date the contract was signed.

The extension was provided due to unanticipated delays and supply constraints in the residential construction industry. Applicants will have until 30 April 2023 to provide all necessary documentation to the relevant State or Territory revenue office.

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State taxes update

Victorian duty applied to default interest

The Victorian Supreme Court (VSC) has found that default interest for a delayed transaction may form part of the consideration for the transfer of land in [Commissioner of State Revenue v 1043 Melton Highway Pty Ltd \[2020\] VSC 820](#).

In this matter, settlement of the land purchase had been deferred a number of times and there had been multiple variations to the contract for sale. As part of the transaction, the taxpayer paid to the vendor in addition to the purchase price:

- default interest relating to the delayed settlement, and
- interest for the late provision of a loan which was required to be provided under the terms of the contract for sale.

The VSC held that both amounts of interest were part of the consideration for the transfer of land and formed part of the dutiable value of the land for Victorian duty purposes.

Victorian duty: Superannuation fund transfer exemption

The VSC has held in [Razzy Australia Pty Ltd \(as trustee\) & Anor v Commissioner of State Revenue \[2021\] VSC 124](#) that the redemption of units in superannuation funds which held interests in a landholding unit trust, and subsequent transfer of cash to facilitate a scheme to rearrange the ownership of superannuation funds connected with two brothers were not wholly subject to Victorian duty. The Commissioner had imposed duty in respect of both transactions based upon the increase in the percentage of units held in the landholding unit trust.

The Court found that the exemption from duty under sections 89D(a) and 40(1)(c) of the *Duties Act 2000 (Vic)* did not require a direct transfer and could apply to transactions involving a redemption or issue of units. However, the Court also found that 'aggregation' in accordance with the Act resulted in acquisitions amounting to a "significant interest" in the landholding unit trust. As a result, the 20 per cent threshold for triggering landholder duty was exceeded, even though one of the acquisitions were exempt from duty.

NSW land tax COVID-19 relief

Revenue New South Wales has [extended](#) the due date to apply for relief from NSW land tax due to

COVID-19 until 31 May 2021. This extension covers the following forms of relief:

- 2020 land tax COVID-19 relief that may provide a reduction of up to 50 per cent on the land tax payable for 2020 to eligible commercial and residential landowners that provided a rent reduction to a tenant experiencing financial distress, and
- 2021 land tax COVID-19 relief that may provide a reduction of up to 25 per cent on the land tax payable for 2021 to eligible landowners with commercial leases that provided a rent reduction to a retail tenant experiencing financial distress.

Guidance on aggregation of transactions for Tasmanian duty purposes

The Tasmanian State Revenue Office has issued updated Revenue Ruling [PUB-DT-2019-5](#) to provide guidance when two or more dutiable transactions

constitute one arrangement. The ruling provides a non-exhaustive list of circumstances where transactions may or may not be considered one arrangement. This Revenue Ruling applies from 7 November 2019.

QLD land tax regulations remade

The Queensland Government has remade new land tax regulations - [Land Tax Regulation 2021 \(Qld\)](#) - replacing the 2010 Regulations and which provides for several administrative matters necessary for the proper administration of certain aspects of the *Land Tax Act 2010 (Qld)*. Specifically, the Regulation prescribe:

- primary production activities for the purposes of the primary production land tax exemption
- the ways to apply to the Commissioner for a clearance certificate and the associated fees, and
- the period and documents required to elect to pay land tax by instalments.

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Superannuation update

Key superannuation thresholds and rates

The ATO has published [key superannuation rates and thresholds](#) for the 2021-22 income year. Of particular note is the increase in the annual amounts that can be contributed to superannuation. The following key thresholds apply for the forthcoming financial year commencing from 1 July 2021:

- the concessional contributions cap is AUD 27,500 (up from AUD 25,000)
- the non-concessional contributions cap is AUD 110,000 (up from AUD 100,000)
- the capital gains tax cap amount for non-concessional contributions is AUD 1.615 million
- the Division 293 tax threshold amount is AUD 250,000
- the maximum super contribution base is AUD 58,920 per quarter
- the low-rate superannuation benefit cap is AUD 225,000
- the general transfer balance cap is AUD 1.7 million (up from AUD 1.6 million)
- the defined benefit income cap is AUD 106,250
- the employment termination payment (ETP) cap for life benefit termination payments and death benefit termination payments is \$225,000, and
- the tax-free part of genuine redundancy payments and early retirement scheme payments is AUD 11,341, and for each complete year of service is AUD 5,672.

SMSF data and payment standards

The [Superannuation Data and Payment Standards \(Release Authorities, and SMSF Rollovers\) Amendment 2021](#) amends the Superannuation Data and Payment Standards 2012 which requires trustees of self-managed superannuation funds (SMSFs) to comply with the Standards in relation to rollovers and transfers that are requested on or after 31 March 2021. The amendment requires APRA-regulated superannuation entities and SMSFs to send and receive rollover information and payments using SuperStream from 31 March 2021.

Extended compliance approach on non-arm's length expenditure

The ATO has extended its compliance approach set out in practical compliance guideline [PCG 2020/5](#) which deals with the non-arm's length provisions that apply to complying superannuation entities so that it now applies until 30 June 2022. Specifically, PCG 2020/5 states that the ATO will not allocate compliance resources to determine where income is non-arm's length income where the fund incurred on or before 30 June 2022 non-arm's length expenditure of a general nature that has a sufficient nexus to all ordinary and/or statutory income derived by the fund.

This transitional compliance approach is intended to provide certainty for taxpayers until the finalisation

of the related Law Companion Ruling [LCR 2019/D3](#) which is expected to be [finalised](#) in July 2021.

Regulations to support reuniting more superannuation

The [Treasury Laws Amendment \(Reuniting More Superannuation\) Regulations 2021](#) (the Regulations) have been published to facilitate legislative changes made by the [Treasury Laws Amendment \(Reuniting More Superannuation\) Act 2021](#). The amendments made by the principal Act was to:

- facilitate the closure of eligible rollover funds by 31 January 2022
- create a new category of payments that superannuation providers may pay to the Commissioner of Taxation; and
- provide for the reunification of these amounts with a member's active account or to the person directly, where that person has reached the eligibility age, or the amount is less than AUD 200.

The Regulations support these new rules by providing that superannuation providers may no longer transfer certain amounts to eligible rollover funds and to allow the Commissioner of Taxation to pay interest on amounts received from superannuation providers.

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Legislative update

Since our last update, no new tax or superannuation related Bills were introduced into Parliament.

Commonwealth revenue measures that were registered as legislative instruments or regulations since our last monthly update include:

- [Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2021](#) which provides an exemption for certain administrators

of payment systems from having to include specified classes of transactions in third party reporting to the Commissioner of Taxation (under Division 396 of Schedule 1 to the *Taxation Administration Act 1953*).

- [Customs \(Information Technology Requirements\) Determination 2021](#) which outlines the electronic information technology requirements under the *Customs Act 1901*.

- [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 10\) 2021](#) which amends the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 to allow financial institutions participating in the SME Recovery Loan Scheme to confirm that notices have been provided by the Commissioner of Taxation to entities concerning their election to participate in the JobKeeper payment program in the first quarter of 2021.
- [Superannuation Data and Payment Standards \(Release Authorities, and SMSF Rollovers\) Amendment 2021](#) which amends the Superannuation Data and Payment Standards 2012 in relation to fund rollovers and transfers that are requested on or after 31 March 2021.
- [Treasury Laws Amendment \(Reuniting More Superannuation\) Regulations 2021](#) which supports the Reuniting More Superannuation reforms in relation to eligible rollover funds.
- [Taxation Administration Amendment \(Updating the List of Exchange of Information Countries\) Regulations 2021](#) which includes new countries that are "information exchange countries" for purposes of applying the lower rate of managed investment trust (MIT) withholding tax.

Federal Parliament will resume sitting from 11 May 2021, which is the day of the 2021-22 Federal Budget (watch for [PwC's comprehensive Budget analysis](#)).

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Other news

ATO's small business dispute resolution

The ATO has [announced](#) that its small business independent review service will be made permanent after a two year trial. The small business independent review service, which exists in addition to other forms of dispute resolution, is available to taxpayers with annual turnover of less than AUD 10 million in relation to disputes about income tax, goods and services tax, excise, luxury car tax, wine equalisation tax, and fuel tax credits. Disputes about employer obligations like superannuation and fringe benefits tax are not eligible for the independent review service.

Since the pilot program began in 2018, more than 180 small businesses have used the service and

1,200 small businesses have been offered access to the service.

Certain electronic payments exempt from reporting

The ATO has published the [Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2021](#). The Determination exempts administrators of qualifying payment systems (within the meaning of the *Payment Systems (Regulation) Act 1998*) from reporting certain electronic transactions in their third party reports to the Commissioner of Taxation (as prima facie required by item 9 in the table in section 396-55 of Schedule 1 of the *Taxation Administration Act 1953*). The instrument applies with retrospective effect from 1 July 2020.

Australian Business Registry Service

The Commissioner of Taxation has been [appointed](#) as the Commonwealth Registrar of the Australian Business Registry Service (ABRS) as the next stage of the Modernising Business Registers program. The ABRS will bring together the Australian Business Register managed by the ATO with the 31 business registers managed by the Australian Securities and Investments Commission.

Director identification numbers are intended to be available later in the year as the first function of the ABRS and will be a new requirement for company directors.

Further support to Australian screen production

The Government [announced](#) that its AUD 50 million Temporary Interruption Fund (TIF) will be extended for a further six months, to provide coverage for productions that commence principal photography prior to 31 December 2021.

Furthermore, the existing Producer Offset rate of 40 percent applicable to feature films with a theatrical release will continue, while (as previously announced) the Producer Offset rate for other eligible formats such as drama and documentary content for television and streaming platforms will increase from 20 to 30 percent.

Qualification as public benevolent institution

The Administrative Appeals Tribunal (AAT) in [Women's Life Centre Inc and Commissioner of the Australian Charities and Not-for-profits Commission \(Taxation\) \[2021\] AATA 500](#) has found that a taxpayer did not qualify as a public benevolent institution for purposes of it qualifying as a deductible gift recipient. The taxpayer provided counselling and other services to women facing a 'crisis pregnancy' which was found not to be for the principal objective of providing relief from various kinds of need due to the various permutations of the meaning of the term crisis pregnancy. In addition, the counsellors employed by the taxpayer were trained to provide emotional support and general assistance, but lacked the qualifications and experience to provide relief from poverty, distress, suffering or misfortune as required by previous case law.

ATO guidance on promoter penalty laws

The ATO has issued [Law Administration Practice Statement PS LA 2021/1](#) which provides guidance on the application of promoter penalty laws including the indicators of potential promoter behaviour, the process for making decisions and the sanctions and remedies available.

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PwC's Monthly Tax Update

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