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PwC's Monthly Tax Update

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

February 2021



Corporate Tax Update

ATO's guidelines on market value substitution rules involving hybrid securities

The Australian Taxation Office (ATO) has released [Practical Compliance Guideline PCG 2021/1](#) to assist taxpayers in applying market value substitution rules where there is a buy-back or redemption of hybrid securities and the investor holds the securities on capital account.

The PCG applies to a hybrid security with the following features:

- It is an equity interest under Division 974
- The issuer has an option to buy-back or redeem or a specified call date
- The security is listed (either on the ASX or an overseas stock exchange)
- The amount paid on buy-back or redemption is equal to the face value of the security
- The security will convert into ordinary shares (either in the issuer or a connected entity) if it is not bought back or redeemed before the specified call date
- The security carries a right to regular distributions calculated with reference to a market-based coupon rate
- There is a strong market expectation that the security will be bought back or redeemed (prior to the announcement of any buy back or redemption).

Where a hybrid security is covered by the PCG, accepted methodology for determining market value is:

- For the specified call date – the security's face value
- For the reinvestment date – the security's volume weighted average price (VWAP) over the five trading days prior to the first announcement date, adjusted for any accrued distributions, provided the result is within a tolerance of 2 per cent of the amount received.

Corporate Tax Transparency report released

The ATO has [released](#) its [corporate tax transparency report](#) for the 2018-19 income year which contains the name, Australian Business Number (ABN), total income, taxable income and tax payable for:

- Australian public and foreign-owned companies with an income of AUD100 million or more
- Australian-owned resident private companies with an income of AUD200 million or more.

It also contains the name, ABN and tax payable for entities that had a petroleum resource rent tax (PRRT) payable amount for the 2018-19 income year.

The report shows that since the first report in 2013-14, there has been growth in total income, taxable income, and income tax payable. In 2018-19, there was growth in income tax payable with foreign-owned entities contributing the most to the increase (AUD2.09 billion), followed by Australian public entities (AUD1.33 billion) and Australian private entities (AUD341 million).

Let's talk

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Employment Taxes Update

JobMaker Hiring Credit Rules now operative

The Rules to establish the JobMaker Hiring Credit scheme to support organisations to take on additional employees through a hiring credit have been made ([Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No 9\) 2020](#)). In brief, the JobMaker Hiring Credit is available to eligible employers from 7 October 2020 for each additional new job that is created for an eligible employee who is aged 16 to 29 years for an amount of up to AUD 200 per week, and up to AUD 100 per week for each eligible additional employee aged 30 to 35 years.

Furthermore, the [JobMaker Hiring Credit Reporting Obligations Instrument 2020](#) sets out the information that employers who participate in the JobMaker Hiring Credit scheme must provide to the Australian Taxation Office (ATO) each time a claim for a payment is made under the scheme. The instrument also explains how reporting must be undertaken, and when reports are due.

For any employer who is currently hiring or intending to hire young jobseekers and is likely to meet the eligibility criteria, it is important to consider the processes and procedures that are in place to monitor, track, record, report and claim credit entitlements, as well as meet the quarterly administration requirements.

The ATO has opened [registration](#) for the new JobMaker Hiring Credit scheme for eligible employers and also provided its guidance with respect to the administration process, such as registrations, claims and the reporting requirements.

The first JobMaker Hiring Credit can be claimed from 1 February 2021, for the first JobMaker period covering the period from 7 October 2020 to 6 January 2021.

For further information, refer to this [Tax Alert](#).

IGTO report on JobKeeper and Boosting CashFlow Programs

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) released the results of her latest complaint investigations: [A Report on aspects of the Australian Taxation Office's administration of JobKeeper and Boosting Cash Flow Payments for new businesses](#).

The IGTO conducted complaint investigations in response to concerns raised by, or on behalf of, new small businesses, including concerns that the ATO had decided they were ineligible to receive the

Boosting Cash Flow and/or JobKeeper payments because either:

- sales had not been reported in their Business Activity Statement (BAS) as lodged (or to be lodged) before 12 March 2020; or
- they were not required to lodge a BAS at all.

The key focus of the report is on helping new small businesses understand ATO eligibility decisions.

The IGTO concluded that the ATO did not provide a number of new businesses with an opportunity to provide evidence of having made taxable supplies (within the modified meaning) before it determined that they were ineligible for the Boosting Cash Flow and/or JobKeeper support measures.

Against this finding, it has recommended that any new small business that had been deemed ineligible by the ATO but can show that it was carrying on an enterprise that made taxable supplies (as modified) in a goods and services tax (GST) reporting period ending before 12 March 2020 (and otherwise meets the other eligibility requirements for Boosting Cash Flow and/or JobKeeper measures), should contact the ATO directly to confirm how it may obtain an ATO review of its earlier decision. It should also ask the ATO to accept late notification of their supplies, if they were not previously reported.

Business entitled to JobKeeper in spite of a retrospective ABN

The Administrative Appeals Tribunal (AAT) handed down its decision in [Apted v FC of T \[2020\] AATA 5139](#) finding that a sole trader was eligible for JobKeeper payments on the basis that he had an active Australian Business Number (ABN) on 12 March 2020 even though the ABN was only reactivated in June 2020 but with a retrospective effective date. Specifically, the Tribunal found that if the applicant can satisfy the Australian Business Registrar that he was carrying on an enterprise at the relevant time, the Registrar can issue an ABN, and provided the ABN has a date of effect that pre-dates 12 March 2020, the entitlement under the JobKeeper Rules will be satisfied.

The ATO has [indicated](#) that it has considered the decision and is appealing the decision to the Full Federal Court. The ATO has said that the Tribunal's decision remains inconsistent with the Commissioner's view and it concludes that whether an entity had an ABN is to be determined by reference to whether an entity had an active ABN on 12 March 2020, i.e. a point-in-time test that cannot be adjusted retrospectively, and that a favourable exercise of the discretion to allow further time for an

entity to register for an ABN is not appropriate based on the reasons given by the Tribunal.

In the interim, according to the current ATO position, pending the conclusion of the Commissioner's appeal, where an entity's eligibility can otherwise be resolved in a manner favourable to them, those decisions will continue to be made (and having regard to whether the entity's circumstances fall within the approach contemplated in Law Administration Practice Statement [PS LA 2020/1](#)). Furthermore, the ATO will postpone finalising decisions regarding eligibility for JobKeeper payments in circumstances where it determines the entity does not satisfy the eligibility criteria but consider it might become eligible depending on the views of the Full Federal Court in this case.

Any business which had its JobKeeper application declined because it did not meet the requirement to have an ABN on 12 March 2020, and had satisfied that all other eligibility requirements were met, should monitor the progress of this case.

Reminder – final phase of JobKeeper program from 4 January 2021

The final phase of the JobKeeper extension commenced on 4 January 2021, from which time the payment rates decreased to AUD1,000 per eligible employee or business participant that worked 80 hours or more during a 28 day reference period and AUD650 for all other eligible employees or business participants. Eligible employers are required to meet the decline in turnover test for the December 2020 quarter in order to access the JobKeeper extension from 4 January 2021 (ending on 28 March 2021). New entities enrolling in the JobKeeper program from 4 January 2021 had until [31 January 2021](#) to enrol and submit their "Check decline in turnover form" with the ATO, as well as meeting the wages condition for JobKeeper fortnights 21 and 22.

For JobKeeper entitlements for JobKeeper fortnights 18, 19 and 20 (23 November 2020 to 3 January 2021), eligible entities had until [28 January 2021](#) to complete their business monthly declaration to be reimbursed for payments made to their eligible employees in JobKeeper fortnights 18, 19 and 20 (23 November 2020 to 3 January 2021).

Updated guidance for foreign employers of individuals temporarily working in Australia as a result of COVID-19

[New guidance](#) from the Australian Taxation Office (ATO) sets out the obligations for foreign employers of employees who are working remotely from

Australia but who normally reside in another country. Affected individuals working in Australia should consider whether they have become an Australian tax resident or, while remaining a tax non-resident of Australia, whether their employment income is taxable in Australia. Employers should carefully review the tax situation of their employees working remotely in Australia to ensure they are compliant with all Australian employer obligations.

Under this new guidance, foreign employers may need to have commenced Pay-As-You-Go (PAYG) withholding and Single Touch Payroll (STP) reporting for amounts paid to affected employees from as early as their initial date of arrival or from 1 July 2020, depending on the situation. They will also need to consider the Fringe Benefits Tax (FBT) obligations for benefits provided to these individuals. Superannuation Guarantee obligations may also apply, even where the individual is not taxable in Australia.

For further information, refer to this [Tax Alert](#).

Payroll tax measures from Victorian 2020-21 Budget

The [2020-21 Victorian State Budget](#) was delivered on 24 November 2020 by Treasurer Tim Pallas. The following payroll tax measures were announced as part of the government's Jobs Plan (see State Taxes section for details of other measures announced in the Budget):

- businesses with annual Australian group wages less than AUD10 million will automatically receive a non-refundable credit of 10 cents for every dollar of Victorian wages paid in 2020-21 and 2021-22 above the previous year's wages. This "New jobs tax credit" is aimed to apply so that eligible small and medium businesses pay no payroll tax on increased wages and receive a refund or waiver of payroll tax liabilities.
- small and medium businesses with annual Victorian payroll up to AUD10 million can defer their payroll tax for the full 2020-21 financial year. The deferred liabilities will be repayable in quarterly instalments over the 2021-22 financial year.
- eligible universities can defer their payroll tax liabilities for the first half of 2020-21 and must pay at least half of the deferred amount by June 2022 and the balance by June 2023.
- from 1 July 2021, employers will be able to pay payroll tax annually (rather than monthly) if their annual Victorian payroll tax liabilities are less than AUD100,000 (increased from AUD40,000).

NSW Jobs Plus Program now open

In response to the hardships faced by businesses due to COVID-19 and the recent drought and bushfire crisis, the New South Wales (NSW) Government recently announced the Jobs Plus Program to support organisations seeking to start or expand their business in NSW.

The Jobs Plus Program will provide various levels of assistance to eligible businesses if they achieve the threshold of creating at least 30 net new full time equivalent jobs.

Eligible employers can now [apply for the Jobs Plus Program](#), with applications accepted on an ongoing basis until the Jobs Plus Program funding has been fully allocated or at 5pm on 30 June 2022, whichever occurs first.

For further information, refer to this [Tax Alert](#).

COVID-19 and payroll tax support

Since our last update, the following payroll tax developments to support the current COVID-19 economy have occurred:

- The [Payroll Tax Amendment Act 2020 \(NSW\)](#) to give effect to the NSW 2020-21 Budget announcement to provide for a temporary reduction of the payroll tax rate on taxable wages from the current rate of 5.45 to 4.85 per cent from 1 July 2020 to 30 June 2022, and to increase the threshold amount from AUD1.2 million from financial year commencing on or after 1 July 2020 is now enacted
- The ACT [announced](#) further extensions of its payroll tax assistance for businesses including continued payroll tax exemptions to businesses that are still unable to operate due to ACT Government health-related restrictions, and case-by-case waivers for those that can only operate on a very limited basis, until 30 June 2021 (see [Taxation Administration \(Payroll Tax — Businesses Not Permitted to Operate\) COVID-19 Exemption Scheme Determination 2021](#)). It also extended the payroll tax exemption for wages paid to new apprentices or trainees employed after 1 August 2020 until 30 June 2021 (see [Taxation Administration \(Payroll Tax\) COVID-19 Exemption Scheme Determination 2021](#)).
- Tasmania's extended apprentice payroll tax rebate for apprentices and trainees in all industries applies from 1 January 2021 up to 30 June 2022 – [registration now open](#).
- Tasmania will [waive](#) the payroll tax liability on wages paid by certain employers providing hotel quarantine services during the COVID-19 pandemic effective from 23 December 2020.

- Western Australia has [announced](#) a payroll tax exemption for eligible employers of apprentices or trainees who commence and undertake training between 5 October 2020 and 30 September 2021 on wages subsidised through the Federal Government's [Boosting Apprenticeships Commencements scheme](#).
- The [Treasury and Finance Legislation Amendment Act 2020 \(NT\)](#) was enacted and gives effect to the payroll tax measure announced in the [Northern Territory 2020-21 Budget](#) to extend the existing payroll tax exemption for hiring resident employees for one year to 30 June 2021

Payroll tax rulings on exclusion for contractors

The following State payroll tax rulings that considers whether a contractor who performs services under a contract ordinarily performs services of that kind to the public generally, have been updated:

- Queensland [Public Ruling PTA021](#) – the updated ruling takes effect from 17 December 2020.
- Victorian [Public Ruling PTA-021](#) – the updated ruling takes effect from 15 December 2020.

Tasmanian payroll tax ruling on maternity and adoption leave pay

The Tasmanian State Revenue Office has issued [Revenue Ruling PTA012v2](#) to explain and clarify the application of the Tasmanian payroll tax exemption for maternity and adoption leave pay.

Update to ATO's FBT guide for employers

To reflect the legislative changes arising from the 2020-21 Federal Budget to expand eligibility for the following FBT exemptions that apply to small businesses with less than AUD10 million in aggregated turnover to those with up to AUD50 million aggregated turnover for FBT years commencing from 1 April 2021:

- car parking, and
 - work-related portable electronic devices,
- the ATO has updated Chapter 20 of the [Fringe benefits tax — a guide for employers](#).

SG and salary sacrifice for deemed employees

The ATO has issued an [addendum](#) to Superannuation Guarantee Determination [SGD 2006/2](#) on effective salary sacrifice arrangements for individuals under a contract principally for labour and others deemed to be employees for superannuation guarantee (SG) purposes.

The addendum reflects updated references to income tax legislation and also amendments made to the SG legislation by the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act 2019* which improved the integrity of the superannuation system by ensuring that an individual's salary sacrifice contributions cannot be used to reduce an employer's minimum SG contributions.

The addendum applies on and from 1 January 2020.

Proposed changes to STP reportable amounts

A [draft legislative instrument](#) proposes amendments to the type of information which the approved form for STP reporting requires. The proposed changes to the reported information reflects recent legislative amendments in relation to amounts salary sacrificed to superannuation and reporting of amounts relating to a payee's child support obligations. The instrument, once finalised, will have prospective effect commencing on the day it is registered.

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Global Tax Update

Latest news from international tax and transfer pricing

Final ATO guidance on cross-border interest-free loans

The Australian Taxation Office (ATO) has finalised its guidance on outbound interest-free loans between related parties. The final guidance takes the form of a new Schedule 3 to its Practical Compliance Guideline [PCG 2017/4](#) on cross-border related party financing arrangements. The guidance in Schedule 3 has retrospective effect from 1 January 2020, applying to existing and newly created related party interest-free loans.

The finalised Schedule 3 incorporates minor changes from the previously issued draft guidance (released in August 2020) and includes amendments to reflect the requirement for taxpayers to disclose their self-assessed risk zone rating in the 2021 Reportable Tax Position (RTP) Schedule that is required to be lodged with the annual income tax return for many companies. The most significant change from the draft guidance is the removal of the 'sovereign risk of borrower entity' indicator from the pricing risk scoring table. For further details, refer to our [Tax Alert](#).

Natural resource income paid to non-residents

The ATO has issued Taxation Ruling [TR 2020/5](#) which considers the tax treatment of natural resources income which is derived by a non-resident and calculated by reference to the value or quantity of natural resources produced and/or sold (commonly referred to as override royalties). This ruling finalises the ATO's preliminary views that were originally issued in draft form in 2016. Notwithstanding the nearly four years that it has taken to finalise the ruling, there have been limited substantive changes to its contents.

In short, the ruling takes a relatively expansive interpretation of already broadly drafted tax provisions and suggests that in most circumstances payments made in respect of override royalties will be natural resource income (and therefore deemed to have an Australian source), subject to natural resource withholding (if paid to a non-resident), and that most (but not all) of Australia's double tax treaties provide Australia with taxing rights over this

income under the “income from real property” article. For further details, refer to our [Tax Alert](#).

Sovereign immunity and super fund for foreign residents withholding tax exemptions

The ATO has finalised Law Companion Ruling [LCR 2020/3](#) which provides guidance on the withholding tax exemption for superannuation funds for foreign residents and the sovereign immunity exemption. The scope of both of these exemptions was reduced via amendments in *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019*, which introduced additional requirements to access these exemptions. Subject to transitional rules, these amendments apply to income derived on or after 1 July 2019.

One of the requirements to access these exemptions is that a superannuation fund for foreign residents or a sovereign entity group (as relevant) must not have “influence” of a kind described in the tax law over the payer entity (this is known as the influence test). The LCR contains guidance on the influence test and on key terms and definitions relevant to the sovereign immunity rules.

Update to ATO practice statement dealing with Advance Pricing Arrangements

The ATO has updated Law Administration Practice Statement [PS LA 2015/4](#) which sets out the Commissioner's practice and procedures and provides guidance to ATO staff in dealing with requests from taxpayers to enter into an advance pricing arrangement (APA). The amendments are intended to improve clarity of the process, enhance governance at decision making points, revise out-of-date references and make general improvements to readability of the practice statement.

Simplified transfer pricing record keeping guidance updated

The ATO has updated Practical Compliance Guideline [PCG 2017/2](#) which outlines simplified transfer pricing record keeping options for certain eligible taxpayers. This update provides that the maximum interest rate for small related party inbound loans and the minimum interest rate for small related party inbound loans for the 2021 income year is 1.79 per cent.

ATO issues updated guidance on SGEs and CBCREs

The ATO has updated its guidance on the concept of a [significant global entity](#) (SGE) and released new

guidance on the concept of a [country-by-country reporting entity](#) (CBCRE) following amendments enacted last year. The amendments, which apply broadly to income years commencing on or after 1 July 2019, expanded the concept of SGE and introduced the concept of CBCRE, which is a subset of the SGE population that may have CBC reporting obligations and/or general purpose financial statement (GPFS) lodgment obligations.

The updated guidance outlines the consequences of a taxpayer being classified as an SGE or CBCRE (or both), and provides guidance on key terms such as global parent entity, annual global income, global financial statements and notional listed company group. The guidance also includes numerous examples to illustrate the application of the concepts to different scenarios.

United States economic recovery plan

With the inauguration of President Biden in the United States (US) and the Democrats securing control of the Senate as well as the House, the prospect of tax reform in the US has increased significantly. On 14 January 2021, Biden proposed a USD 1.9 trillion emergency legislative package (the American Rescue Plan) to fund COVID-19 vaccinations, provide increased direct relief to individuals, and support communities. The proposal is the first step in a two-part plan that is needed immediately and will be followed by an economic recovery plan – the Build Back Better Recovery Plan – that will be outlined in February 2021.

Biden's Build Back Better Recovery Plan is expected to include increases in tax rates for corporations and high-income individuals, international tax law changes, and other revenue-raising measures proposed during his presidential campaign. For more information, read our [Tax Insight](#).

Italy's digital service tax

Under Italy's digital services tax, which became effective 1 January 2020, businesses that earn Italian digital revenues above certain thresholds are subject to the tax, and a traditional 'nexus' is not required. For the 2020 financial year, the 3 per cent tax must be paid by 16 February 2021 and a specific tax return must be filed by 31 March 2021.

The Italian Revenue Agency has the power to issue an executive regulation that helps determine the scope of the tax's application. A draft executive regulation was published for public consultation on 16 December 2020, providing guidance on key terms and their definition for the purposes of the digital services tax. For further details, refer to our [Tax Insight](#).

Luxembourg issues guidance on interest limitation rules

Luxembourg has recently introduced Interest Limitation Rules (ILR) into its income tax law. The Luxembourg tax authorities issued an administrative circular providing guidance on their interpretation of the ILR on 8 January 2021. This circular sets out the Luxembourg tax authorities' interpretation and intended practical application of the ILR.

Taxpayers with interest deductions in Luxembourg should continue assessing how the ILR might impact their business, noting that the ILR is effective with tax years beginning on or after 1 January 2019. The circular contains numerous examples which may also be helpful for tax practitioners and return preparers. Refer to our [Tax Insight](#) for further details.

G20 Leaders Summit

The G20 Leaders Summit was held on 21-22 November 2020, during which the Organisation for Economic Cooperation and Development (OECD) Secretary-General presented his [tax report](#) to the G20 Leaders. This report contains two parts – Part I reports on the activities and achievements in the OECD's international tax agenda, and Part II reports on the activities and achievements of the Global Forum on Transparency and Exchange of Information for Tax Purposes. The report notes that the COVID-19 pandemic has accelerated the digitalisation of the economy, exacerbating the tax challenges associated with this, and provided an update on the work of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) to develop a Blueprint to address these challenges.

A [report](#) was also presented to the G20 outlining structural policies for a strong recovery from the COVID-19 pandemic and a sustainable, inclusive and resilient future. The report – *New Horizons* – which was requested by the G20 to support its Action Plan in response to the crisis, says governments need to plan now for the recovery while continuing to live with the virus. Emergency economic measures to tackle the crisis will need to be adapted, support to people and businesses become more targeted, and new policies put in place to make the objective of a stronger, sustainable and inclusive global economy, a reality. The report highlights the need for stronger cooperation between governments in a number of fields, including in relation to the taxation of multinationals as the economy becomes increasingly digitised.

Global actions to meet the current economic and administrative challenges

The Forum on Tax Administration (FTA) held its [virtual plenary meeting](#) on 7-8 December 2020 bringing together tax commissioners from across the globe and representatives from international organisations and regional tax administration bodies. They met to discuss a variety of tax administration issues including responses to the global pandemic, emerging risks, digital transformation and tax certainty.

FTA members agreed to:

- improve the resilience and agility of tax administrations globally to respond to crises, including through collaboration, development and use of new technology tools, and different working arrangements.
- develop a roadmap in early 2021 for the digital service transformation of tax administrations, aiming to identify priority work on core elements such as digital identity, e-invoicing and secure mechanisms for the real-time sharing of information across borders.
- progress work on tax certainty, including through moving the International Compliance Assurance Programme (ICAP) from pilot phase to an established program for the co-ordinated assessment of multinational enterprise groups' transfer pricing risks.
- bring together senior FTA leaders to consider collective FTA support for capacity building in developing countries.

For more details, including as regards the reports published at the Plenary and the FTA's future work programme, see the [communiqué](#) released at the close of the meeting.

2020 edition of OECDs annual Revenue Statistics and Consumption Tax Trends

On 3 December 2020 the OECD [published](#) the 2020 edition of its annual *Revenue Statistics* and *Consumption Tax Trends* publications.

Revenue Statistics 2020 shows tax revenues fell across the OECD for the first time in a decade during 2019. The COVID-19 crisis is likely to further significantly hit tax revenues in 2020. New analysis in *Revenue Statistics* shows that increases in government consumption and in households' consumption of essential goods will exacerbate this fall in the short to medium-term.

Consumption Tax Trends 2020 highlights that standard value added tax (VAT) rates remained stable between 2017 and 2020, at a record high of 19.3 per cent on average. Only one country (Japan) increased its standard VAT rate in 2019, and no reductions were recorded until the COVID-19 outbreak in early 2020, when Germany and Ireland temporarily reduced their standard VAT rate as part of their economic stimulus packages. In a special section of *Consumption Tax Trends*, it is reported that many countries have also introduced a range of VAT measures to support businesses and the healthcare sector during the crisis.

Automatic Exchange of Information

The OECD has provided the following updates on implementation of its standard on automatic exchange of financial account information :

- [First Peer Review](#) of the Automatic Exchange of Financial Account Information: A report published by the Global Forum on Transparency and Exchange of Information for Tax Purposes has found that international standards on the automatic exchange of information for tax purposes have so far been satisfactorily implemented by countries worldwide. 88 per cent of jurisdictions engaged in automatic exchange since 2017-18 were deemed to have satisfactory legal frameworks in place.
- [Guide on Promoting and Assessing Compliance by Financial Institutions](#): Automatic Exchange of Information (AEOI) under the Common Reporting Standard (CRS) and the United States Foreign Account Tax Compliance Act (FATCA) involves the exchange of information on financial accounts between tax administrations. The purpose of this compliance guide is to assist government officials and financial institutions regarding the obligations to monitor and ensure compliance with reporting obligations under CRS and FATCA. It also provides a practical overview of what a robust compliance regime may involve.

Public comments received on the Reports on Pillar One and Pillar Two Blueprints

On 12 October 2020, as part of the ongoing work to develop a solution to the tax challenges of the digitalisation of the economy, the Inclusive Framework invited public comments on the Reports on the Pillar One and Pillar Two Blueprints to address the tax challenges arising from digitalisation. The OECD published the [public comments](#) it received on 16 December 2020.

Stakeholders were eager to 'have their say' in relation to the Blueprints with over 200 submissions

made. Recent public consultation meetings sought to focus on the key questions identified in the consultation document, particularly regarding simplification options and ideas. Next steps are aiming for political consensus by the end of June. Read more in our [Tax Policy Alert](#).

Update on Multilateral Convention

[Chile, Germany and Pakistan](#) have deposited their instruments of ratification for the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (Multilateral Convention or MLI).

The MLI now covers almost 1700 bilateral tax treaties. For Chile, the MLI will enter into force on 1 March 2021, and for Germany and Pakistan, it will enter into force on 1 April 2021. Note, Australia does not currently have a tax treaty with Pakistan, and the Australia-Germany tax treaty is not covered by the MLI.

Other OECD updates

The OECD has also published the following updates relating to its ongoing work to tackle Base Erosion and Profit Shifting (BEPS):

- [Information](#) on the state of implementation of the hard-to-value intangibles (HTVI) approach by members of the Inclusive Framework: The OECD has published jurisdiction-specific information on the implementation of the HTVI approach. To date, 40 jurisdictions have provided information on whether their domestic legal system provides for transfer pricing rules aimed at transactions involving HTVI.
- [Update](#) on transparency on tax rulings: As part of continuing efforts to improve tax transparency, the Inclusive Framework has reviewed the progress made by 124 jurisdictions in spontaneously exchanging information on tax rulings, in accordance with the BEPS Action 5 minimum standard. It was concluded that transparency on tax rulings is now a fully-entrenched part of the international tax framework, with 20,000 tax rulings having been identified and 36,000 exchanges between jurisdictions having taken place.
- [Review](#) of harmful tax practices: the OECD Forum on Harmful Tax Practices (FHTP) has reviewed progress by jurisdictions in countering harmful tax practices, and found significant legislative changes to 44 of the 49 reviewed regimes, with 37 having been redesigned or abolished and a further seven being currently in the process of being amended. For the remaining five regimes, the FHTP has concluded that they do not currently pose BEPS risks.

Customs guideline on natural gas exports

[Customs \(Prohibited Exports\) \(Operation of the Australian Domestic Gas Security Mechanism\) Guidelines 2020](#), registered on 5 January 2021, sets out the requirements, indicative timing, processes, and considerations associated with the operation of the Australian Domestic Gas Security Mechanism (ADGSM). The objective of the ADGSM is to ensure that there is a sufficient supply of natural gas to meet the forecast needs of Australian gas consumers by requiring, if necessary, LNG Projects which are drawing gas from the domestic market to limit exports or find offsetting sources of new gas.

Review of excise and customs duty regime to reduce business costs

On 22 December 2020, the Government [announced](#) that reducing business costs arising from the administration of our excise and excise-equivalent customs duty regime is a new priority area for its Deregulation Taskforce. The comprehensive review aims to cut regulatory overheads for business, supporting new investments in fuel security and the beverage manufacturing sector, while enabling ATO and border force officers to focus on higher-risk enforcement efforts. This work will not examine the base or rates of taxation, and instead focus on enhancing the administrative efficiency of the excise and excise-equivalent customs duty regimes.

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Indirect Tax Update

GST Governance, Data Testing and Transaction Testing

The Australian Taxation Office (ATO) has released its Goods and services tax (GST) [Governance, Data Testing and Transaction Testing Guide](#) online. The purpose of the guide is to assist taxpayers to prepare for a GST streamlined assurance review (SAR) under the ATO's top 100 and top 1,000 programs, review the design and operation of a taxpayer's GST controls as part of updating its framework, or undertake data and transacting testing to ensure business systems are correctly reporting GST.

For further insights in the issues raised by this Guide, refer to this [Tax Alert](#).

GST determination on corporate card statements

[Goods and Services Tax: Waiver of Tax Invoice Requirement \(Corporate Card Statements\) No 2 Determination 2020](#) was registered to include an additional corporate card provider for purposes of when corporate cardholders can claim input tax credits without holding a tax invoice in certain circumstances. The determination applies retrospectively to tax periods that commence on or after 10 February 2020, being the application date of the revoked instrument ([Goods and Services Tax: Waiver of Tax Invoice Requirement \(Corporate Card Statements\) Legislative Instrument 2020](#)).

No input tax credits allowed on gold purchase

The Administrative Appeals Tribunal has found in [Very Important Business v FC of T \[2020\] AATA 4698](#) that the taxpayer was not entitled to input tax credits as claimed in relation to the purchase of gold or items containing gold. The taxpayer received "a bag of jewellery and other items" which it weighed, melted and assayed, in so doing producing a gold bar and paid the supplier an agreed amount per gram of gold contained in the bar. The gold produced was then brought into investment form and sold, with the taxpayer treating the sales as not subject to goods and services tax (GST). The case concerns the extent to which the relevant transactions:

- in the case of the acquisitions of jewellery and other items – were not acquisitions of taxable supplies, because they were acquisitions of input taxed supplies or from persons who were not registered for GST; or
- in the case of its supplies of bullion produced from those acquisitions – were input taxed supplies.

The Tribunal found that the taxpayer did not discharge the burden of proving the assessments were excessive in the way it chose to argue its case that it acquired only gold bars (which were not "precious metals" as defined for GST purposes) from the suppliers.

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Personal Tax Update

Updated tax guidance for individuals temporarily working in Australia as a result of COVID-19

[New guidance](#) from the Australian Taxation Office (ATO) sets out the obligations for foreign employers of employees who are working remotely from Australia but who normally reside in another country. Affected individuals working in Australia should consider whether they have become an Australian tax resident or, while remaining a tax non-resident of Australia, whether their employment income is taxable in Australia. Under this guidance, the ATO considers that individuals may be taxable in Australia from their initial date of arrival in Australia or from 1 July 2020 if they have been working in Australia due to COVID-19 and:

- they were ordinarily tax resident of a country with which Australia has a Double Taxation Agreement (DTA), but are not eligible for the short-term stay exemption in that DTA; or
- they have become an Australian tax resident.

As a consequence, from the initial date of arrival or from 1 July 2020, foreign employers may need to have commenced Pay-As-You-Go (PAYG) withholding and Single Touch Payroll (STP) reporting for amounts paid to affected employees. They will also need to consider the Fringe Benefits Tax (FBT) obligations for benefits provided to these individuals. Superannuation guarantee obligations may also apply, even where the individual is not taxable in Australia. These obligations also apply to foreign employers that do not have any business presence in Australia.

For further information, refer to this [Tax Alert](#).

'Shortcut' method for working from home expenses due to COVID-19 extended

Australian taxpayers have several options to calculate their tax deductions in respect of working from home and incurring additional running expenses in relation to their income-producing activities. The Australian Taxation Office (ATO) has

extended its 'shortcut' method of a fixed rate of 80 cents per hour for individuals claiming deductions for additional running expenses incurred whilst working from home due to COVID-19 up to 30 June 2021 (see the updated Practical Compliance Guideline [PCG 2020/3](#)).

ATO guidance on payments to government employees posted overseas

The ATO has released *Draft Taxation Determination TD 2020/D2*, which sets out the fringe benefits tax and income tax treatment of payments or benefits provided by an Australian Government Agency to an employee in respect of their overseas posting.

In the draft Determination, the Commissioner provides his preliminary view on the appropriate tax treatment of eight types of payments or allowances to Agency employees posted overseas and whether they must be reported on a payment summary or income statement. These eight types are then divided into four categories of varying breadth: living-away-from-home allowances; expense payment fringe benefits; assessable income; and related to cost of posting allowance. Further information on relevant rules and adjustments are provided on each of the four categories.

The Explanation in Appendix 1 of the draft Determination provides additional information on a range of issues relevant to these types of benefits and payments including withholding payments, fringe benefits tax and reportable fringe benefits amounts. Appendix 2 describes the Commissioner's proposed view on the interrelation between these benefits and superannuation guarantees.

Comments were due by 11 December 2020.

Consultation on education and training expense deductions for individuals

The government has released a [discussion paper](#) on education and training expense deduction for individuals. This follows the announcement in the 2020-21 Federal Budget that the Government would consult on allowing individuals to deduct education and training expenses they incur, where the expense is not related to their current employment.

Individuals can currently deduct education or training expenses they incur that are sufficiently related to their current employment, reflecting the general principle in the income tax law that allows deductions for expenses incurred in the course of earning assessable income. The discussion paper sought stakeholder views (comments were due by 22 January 2021) on whether tax arrangements should play a greater role in encouraging

Australians to retrain and reskill to support their future employment and career and, if so, how this would best be achieved. It highlights a range of issues including what training courses and expenses would be in scope for a deduction, whether the current AUD250 reduction in self-education expenses should be removed, and what integrity measures could be introduced to safeguard the system.

Deferred tax point for ESS interest – real risk of loss or forfeiture

The Administrative Appeals Tribunal (AAT) has held in [Gennai and Commissioner of Taxation \[2020\] AATA 4667](#) that the discount relating to options acquired by a taxpayer under an employee share scheme (ESS) was assessable in the year in which the ESS deferred taxing point occurs, as under the conditions of the ESS plan, the employees risk of termination (which would result in the options being forfeited) was a real risk of loss or forfeiture.

The AAT found that the Commissioner was correct to assess the discount on the options in the year in which the taxpayer's employment was terminated, as that was the year in which the ESS deferred taxing point occurred under Subdivision 83-A of the *Income Tax Assessment Act 1997 (Cth)*. The taxpayer argued that Subdivision 83A-C did not apply as there was no real risk that he would forfeit or lose the ESS interest. The AAT held that the test of whether there is a real risk of forfeiture neither directs itself to the mind of a reasonable person nor to the subjective assessment of the taxpayer, and that the starting point for assessing if there was a real risk of forfeiture or loss was the conditions of the ESS plan. The plan provided that any options not vested and exercisable on the date of the employees termination would expire, and the AAT held that the risks that the taxpayer could lose his job in the course of one year (before the options vested) amounted to a real risk imposed by the conditions of the scheme.

Classification of invalidity benefits of ex-defence force members

In [Commissioner of Taxation v Douglas \[2020\] FCAFC 220](#), the Full Federal Court considered the tax classification of invalidity benefits received by three taxpayers who were discharged from the Australian Defence Force on medical grounds. The key issue to be determined by the Full Court was whether the payments were classified as "superannuation lump sums" or "superannuation income streams", which have different tax consequences.

Whilst there were specific facts relevant for each taxpayer, the Full Court heard the Commissioner's appeals against individual test case decision of the AAT jointly due to commonality of the underlying issues.

The Full Court ultimately concluded that the benefits were "superannuation lump sums" in two of the three cases, and a "superannuation income stream" in the third case.

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State Taxes Update

Victorian 2020-21 Budget

The [2020-21 Victorian State Budget](#) was delivered on 24 November 2020 by Treasurer Tim Pallas. Similar to many of the other 2020-21 State and Territory Budgets, Victoria's Budget focuses on recovery over three key pillars: a Jobs Plan, a Big Housing Build package and Infrastructure spend. Total revenue in 2020-21 is expected to be 4.2 per cent lower than 2018-19 levels, while state tax revenue is forecast to decrease by 9.7 per cent compared with 2019-20. Net debt will reach AUD86.7 billion this financial year and grow to AUD154.8 billion by the end of the forward estimates. Total expenditure is expected to be AUD90.0 billion in 2020-21, before declining by 6.2 per cent in 2021-22.

The 50 per cent stamp duty concession on the purchase of commercial and industrial properties in regional Victoria was brought forward to apply to contracts entered into on or after 1 January 2021, rather than 1 July 2023.

As part of the Big Housing Build package, the Government announced a waiver of 50 per cent of stamp duty for new residential properties and 25 per cent for existing residential properties will be available on real property purchases in Victoria with a dutiable value of up to AUD1 million, applicable to contracts entered into between 25 November 2020 and 30 June 2021.

In addition, from 1 January 2022, as part of the Big Housing Build package, the Government announced it will provide eligible new build-to-rent developments with a 50 per cent land tax discount and full exemption from the Victorian absentee owner land tax surcharge until 1 January 2040.

From 1 January 2021, the land tax concession provided to land owned and occupied by clubs carried on exclusively for the social, cultural, recreational, literary or educational interests of their members will be replaced with a land tax exemption. The current land tax concession will continue to apply to clubs promoting or controlling horse racing or harness racing.

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

The [State Taxation Acts Amendment Act 2020 \(Vic\)](#), introduced and subsequently enacted, gives effect to some of the above Budget measures and also makes several other amendments to State taxation and valuation laws to improve their operation. This includes from a duties perspective:

- bringing forward the 50 per cent land transfer duty concession for transfers of commercial and industrial land in regional Victoria for contracts, arrangements or agreements entered into from 1 January 2021
- amend the partnership provisions in the *Duties Act 2000* to address an anomaly in situations involving multiple layered partnerships, where one partnership holds an interest in another partnership
- exclude security interests in dutiable property consisting of an interest in fixtures from the definition of dutiable property
- expand the duty exemption available for certain equity release products that enable existing homeowners (usually older Australians) to obtain a financial benefit by trading equity in their home for a lump sum payment or income stream

- extend the corporate reconstruction concession for matters involving multiple steps to arrangements involving both a consolidation and a reconstruction, and
- confirm the corporate consolidation concession is only available to consolidated groups under the Income Tax Assessment Act 1997.

In relation to land taxes, the Act also:

- provides a land tax exemption for certain clubs
- abolishes special land tax
- addresses various administrative issues in the principal place of residence provisions
- enables penalty tax and interest on unpaid land tax to be included in a first charge on land
- enables penalty tax and interest on an amount of unpaid land tax to be recovered from a mortgagee, lessee or occupier if a tax default occurs, and
- repeals the provision for the issue of land tax clearance certificates (and provide for the issue of property clearance certificates).

QLD 2020-21 Budget

The [2020-21 Queensland Government Budget](#) was delivered on 1 December 2020 by Treasurer Cameron Dick. Across the four years to 2022-23, total Government revenue is expected to be AUD12.3 billion lower than forecast at the 2019-20 Mid-Year and Fiscal Economic Review, driven by a downward revision across key revenue streams. This includes a AUD4.5 billion reduction in forecast tax revenue, a AUD3.8 billion reduction in goods and services tax revenue and AUD4 billion reduction in royalties. The QLD Government has forecast that the QLD economy will still return to marginal growth (up 0.25 per cent) in 2020-21, before strengthening to 3.5 per cent growth in 2021-22. Importantly, no new tax measures or charges were introduced as part of the Budget and unlike New South Wales and Victoria, there was also no mention of State taxes reform or concessionary stamp duty or land tax relief for build to rent developments.

Northern Territory Budget measures enacted

The [Treasury and Finance Legislation Amendment Act 2020 \(NT\)](#) was enacted and gives effect to several measures announced in the [Northern Territory 2020-21 Budget](#) delivered on 10 November 2020 including:

- the freeze on the indexation of government fees and charges in 2020-21, and
- an extension of the stamp duty homeowner assistance schemes to 30 June 2021.

South Australian duty imposed on share acquisition

The Supreme Court of South Australia has held in [Consolidated Mining & Civil Pty Ltd v Commissioner of State Taxation \(SA\) \[2020\] SASC 233](#) that the taxpayer was not exempt from stamp duty on a share purchase having regard to the transitional provision in section 105A(4) of the *Stamp Duties Act 1923 (SA)*. The exception created by section 05A(4) was that a conveyance or transfer that occurs after 1 July 2018 was not exempt from duty if it relates to an interest that arose from a contract of sale or other transaction entered into before 1 July 2018. In this case, on 1 June 2018, the appellant entered into a Share Sale Agreement to acquire all of the issued shares in a company. As at the date of the share acquisition, the company was the owner of a mining lease granted pursuant to the *Mining Act 1971 (SA)*. Completion of the Share Sale Agreement was effected on 11 July 2018.

The Court found that the purpose of section 105A(4) is to serve as a transitional provision to determine questions of timing that will arise from the implementation of the legislative policy that duty will no longer be payable in specified instances. In this context, the words "conveyance or transfer" must be broadly construed on a purposive basis so as to include a transaction, including a notional acquisition under section 100(1) which makes dutiable the acquisition of a prescribed interest in a land holding entity where duty is equivalent to the duty payable on a conveyance of land, with an unencumbered value equivalent to the value of the acquirer's notional interest in the entity's underlying local land assets.

Guidance on land holding for Victorian landholder duty purposes

The Victoria State Revenue Office has updated Revenue Ruling [DA-060](#) to take into account the amendment to the definition of 'land holding' in the landholder provisions in Part 2 of Chapter 3 of the *Duties Act 2000 (Vic)* that took effect from 19 June 2019 to include interests in fixtures held separately from land, and land taken to be beneficially owned due to an economic entitlement held in relation to the relevant land. The ruling also includes some guidance and examples of circumstances where the Commissioner of State Revenue is willing to consider the written down book value of fixtures in the absence of formal valuation evidence.

No NSW duty on transfer to an exempt charitable or benevolent body

The NSW Supreme Court has held in [YWCA Australia v Chief Commissioner of State Revenue \(NSW\) \[2020\] NSWSC 1798](#) that the taxpayer was an "exempt charitable or benevolent body" entitled to the exemption from duty on the transfer of property by a scheme of arrangement. The particular issue under consideration, and which the Court affirmed, was whether the resources of YWCA Australia were and are used predominantly for the relief of poverty and/or the promotion of education, rather than for other charitable purposes.

NSW duties guidance on meaning of 'fixed to land'

The NSW Commissioner of State Revenue NSW has released Practice Note [CPN 014](#) which provides guidance on the meaning of "fixed to land" for the purposes of landholder duty. From 24 June 2020, land holdings also include an interest in anything fixed to the land subject to exceptions. Section 147A(1) of the *Duties Act 1997 (NSW)*, defines land to include anything fixed to the land whether the thing:

- constitutes a fixture at law, or
- is owned separately from the land, or
- is notionally severed or considered to be legally separate from the land as a result of the operation of any other Act or law.

The Chief Commissioner interprets a thing "fixed to the land" in section 147A as a thing that is more than temporarily affixed to the land. The Practice Note also includes various examples.

Victorian duty imposed on interest on late settlement

The Supreme Court of Victoria has held in [Commissioner of State Revenue \(Vic\) v 1043 Melton Highway Pty Ltd \[2020\] VSC 820](#), that transfer duty applied on the total consideration for the purchase of a property, inclusive of both the default interest (i.e. amounts received in return for the vendors' promise to defer settlement and refrain from issue of a notice of default) and loan advance interest (payable by reason of the purchaser's failure to make cash advances within the time stipulated).

Court orders to exclude foreign beneficiaries for NSW surcharge land tax purposes

The NSW Supreme Court in the matter of [Re Dion Investments Pty Ltd \[2020\] NSWSC 1661](#) has conferred power to a trustee to release and/or surrender any trusts and powers that may benefit a "foreign person" for the purposes of the *Land Tax Act 1956 (NSW)*. Section 5D of the Land Tax Act provides that surcharge land tax would be imposed to the extent that a "foreign person" may be a beneficiary of a trust holding residential property.

The Court found that the definition of "beneficiary" in the relevant trust deed was broad enough to meet the definition of a "foreign person" and that the trustee would not be justified in disclaiming or surrendering its powers to appoint income and/or capital to any beneficiary of the Trust Estate while the beneficiary is a "foreign person", and even if current beneficiaries were to disclaim their interest that would not satisfy the requirements of section 5D of the Land Tax Act as a "foreign person" may still become a beneficiary. As a result, the order for a "direct" conferral of a power to release and/or surrender any trusts and powers (referable to the Trust Estate) which may benefit a "foreign person", ensured that the trust would not be subject to surcharge land tax.

NSW guidance on land tax relief due to COVID-19

Revenue NSW has released the following guidelines on land tax relief for eligible NSW landowners providing rent reductions to tenants impacted by COVID-19:

- [2020 land tax COVID-19 relief](#) to reduce by up to 50 per cent the 2020 land tax payable for eligible commercial and residential landowners that provided a rent reduction to a tenant experiencing financial distress as a result of COVID-19
- [2021 land tax COVID-19 relief](#) to reduce by up to 25 per cent the 2021 land tax payable for eligible landowners with commercial leases in 2021 that provide a reduction in rent to a retail tenant experiencing financial distress as a result of COVID-19.

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Superannuation Update

Draft law to give effect to Your Future, Your Super proposal

The Government released [exposure draft legislation and explanatory material](#) for public consultation (due by 24 December 2020) on the *Your Future, Your Super* package announced in the 2020-21 Budget designed to make sure the superannuation system delivers better outcomes for members. Specifically, the draft materials propose amendments to:

- Require employers to make contributions into an employee's existing fund, if new employees have one and do choose a fund to receive contributions.
- Require APRA to conduct an annual performance test for MySuper products, and other products specified in regulations. Trustees will be required to give notice to members when a product fails the test.
- Provide certainty and transparency about the basis by which superannuation products will be ranked and published on a website maintained by the ATO.
- Require superannuation trustees to act in the best financial interests of their members.

SMSFs and rental deferrals – exclusion from in-asset rules

The Australian Taxation Office (ATO) has registered a [legislative instrument](#) that applies to the trustee(s) of a self-managed superannuation fund (SMSF) where the fund acquires or holds an asset that would be an in-house asset as a result of direct or indirect investments in a property where the rent payable under a lease has been deferred during one or both of the 2019-20 or 2020-21 income years as a result of the financial impact of COVID-19. By way of background, where a trustee of an SMSF agrees to allow a deferral of the payment of rent owed under a lease (on arm's length terms) from a related party, the deferral can result in the trustee acquiring or holding an in-house asset that is not covered by

any of the exemptions in the *Superannuation Industry (Supervision) Act 1993*.

Specifically, under the instrument, an asset of a SMSF is not taken to be an in-house asset for the 2019-20, 2020-21 and future income years where the SMSF, during one or both of the 2019-20 and 2020-21 income years:

- allows a related party to defer the payment of rent owing under a lease agreement (on arm's length terms) to ease the financial impact of COVID-19, or
- holds the asset that is an interest in a company or unit trust which would not otherwise be an in-house asset and that company or unit trust allows a tenant to defer the payment of rent under a lease (on arm's length terms) to ease the financial impact of COVID-19.

Draft rules for transfer of data and payment for SMSF rollovers

To give effect to a previous Government announcement that the Data and Payment Standard would be extended to include rollovers and transfers of superannuation monies to and from SMSFs, the ATO has issued a [draft legislative instrument](#) requiring SMSFs to send and receive rollover information and payments using SuperStream from 31 March 2021. The Data and Payment Standard specifies the minimum requirements for dealing with payments and information relating to certain transactions within the superannuation system. Currently, rollovers and transfers of superannuation to and from SMSFs, and release authority requests issued by the Commissioner of Taxation are excluded from the Data and Payment Standard. Once finalised, this amendment will apply to rollovers and transfers, to and from SMSFs, requested on and after 31 March 2021.

Proposed amendments to commutation rules for certain income stream products

The Government announced as part of its [2020-21 Mid-Year Economic & Fiscal Outlook](#) that it will amend the law to ensure that retirees who have commuted and restarted certain market-linked

pensions, life expectancy pensions and similar products are treated appropriately under the transfer balance cap. Specifically, this is designed to enable retirees with these products who have been unable to commute amounts in excess of their transfer balance cap to undertake the necessary partial commutation. The proposed amendments will take effect from the date the relevant bill receives Royal Assent.

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Legislative Update

Since our last update, the following new Commonwealth tax and superannuation legislation has been introduced into Federal Parliament:

- [Treasury Laws Amendment \(2020 Measures No. 6\) Bill 2020](#), (introduced into the House of Representatives on 2 December 2020 and subsequently enacted) which provides an alternative mechanism to the existing test for working out if the AUD5 billion threshold applies to qualify for the temporary full expensing concession; enable entities to opt out of temporary full expensing and the backing business investment incentives on an asset-by-asset basis; makes a minor clarification to the operation of the temporary loss carry back provisions; and a number of other minor technical amendments.
- [Customs Tariff Amendment \(Incorporation of Proposals and Other Measures\) Bill 2020](#) which was introduced into the House of Representatives on 3 December 2020, proposes various amendments to the *Customs Tariff Act 1995* (Cth) including to provide for a free rate of duty for medical and hygiene products used to combat COVID-19, removing the AUD12,000 special customs duty on used and second-hand motor vehicles that are Peruvian originating goods or that are Trans-Pacific Partnership originating goods, inserting new notes and repealing redundant provisions.

The following key tax and superannuation related Bills have completed their passage through Parliament and are now law:

- [Export Market Development Grants Legislation Amendment Bill 2020](#) which aims to ensure that export market development grants funding is provided to those small to medium enterprises where it will have the greatest impact and also to modernise and simplify the scheme.
- [Foreign Investment Reform \(Protecting Australia's National Security\) Bill 2020](#) implements reforms to Australia's foreign investment framework that were announced in the Federal Government's July 2020 Economic Statement and the 2020-21 Federal Budget.
- [Treasury Laws Amendment \(2020 Measures No. 5\) Bill 2020](#) includes measures to make certain State and Territory Government business grants relating to COVID-19 recovery non-assessable non-exempt (NANE) income for smaller business entities (i.e. with an aggregated turnover of less than AUD50 million) and to make Neighbourhood Watch Australasia a deductible gift recipient under the income tax law.

Commonwealth revenue measures registered as legislative instruments or regulations since the last monthly update include:

- [Payment Times Reporting Rules 2020](#) set out technical and administrative details on how the Payment Times Reporting Scheme (which commenced on 1 January 2021 and requires

- certain large businesses to report on payment terms and practices) will operate.
- [Self Managed Superannuation Funds \(COVID-19 Rental income deferrals – In-house Asset Exclusion\) Determination 2020](#) excludes certain assets of self managed superannuation funds (SMSFs) from being in-house assets due to rental deferral arrangements that might be made in response to COVID-19.
 - [A New Tax System \(Australian Business Number\) Regulations 2020](#) remake and improve the existing Australian Business Number regulations by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation. The changes do not affect the substantive meaning or operation of the provisions.
 - [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No 9\) 2020](#) amends the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* to specify details about the JobMaker Hiring Credit scheme, including the start and end date of the scheme, when an employer or business is entitled to a payment, the amount and timing of a payment, and other matters relevant to the administration of the payment (see Employment Taxes section for more details about the JobMaker scheme).
 - [JobMaker Hiring Credit Reporting Obligations Instrument 2020](#) sets out the information that employers who seek to participate in the JobMaker Hiring Credit scheme must provide the ATO.
 - [Foreign Investment Reform \(Protecting Australia's National Security\) Regulations 2020](#) complements the *Foreign Investment Reform (Protecting Australia's National Security) Act 2020* (Cth), which aims to improve and update the operation of Australia's foreign investment screening framework.
 - [Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020](#) repeals the *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* and set out the fees payable for actions or notices given or issued under the *Foreign Acquisitions and Takeovers Act 1975* (Cth). These simplified fee arrangements support the broader package of reforms to Australia's foreign investment screening framework.
 - [Treasury Laws Amendment \(Miscellaneous and Technical Amendments\) Regulations 2020](#) makes minor and technical amendments to regulations in the Treasury portfolio, including to tax laws, corporations laws, superannuation laws, laws relating to consumer protections, and credit laws. It corrects typographical errors and unintended outcomes in the legislation, increases certain thresholds and repeals inoperative provisions.
 - [Income Tax Assessment \(Eligible State and Territory COVID-19 Economic Recovery Grants Programs\) Declaration 2020](#) declares certain Victorian grant programs as eligible programs such that grants paid under these programs will be NANE income.
- The last sitting day for Federal Parliament for 2020 was Thursday 10 December 2020. The [Parliamentary sitting calendar for 2021](#) has been released, with Parliament set to resume on Tuesday 2 February 2021. The 2021-22 Federal Budget is currently scheduled to be handed down on Tuesday 11 May 2020.

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Other News

Amendments to the capital allowance stimulus measures

As noted in the December 2020 edition of the Monthly Tax Update, the Treasurer announced an expansion to temporary full expensing for capital investments. These measures are now [law](#) and introduce an alternative test for companies to access the measure and to allow businesses to opt out of the temporary full expensing and/or backing business investment measures.

The alternative test which only applies to the temporary full expensing measure will apply in addition to the aggregated turnover test, which remains unchanged. The alternative test is available to corporate entities (or other entities that are treated as a company for tax purposes) and will allow a company with annual aggregated turnover of AUD5 billion or more to access the measure if it has:

- less than AUD5 billion in total statutory and ordinary income (excluding non-assessable non-exempt income) in either the 2018-19 or 2019-20 income year, and
- invested more than AUD100 million in certain tangible depreciating assets in the period covering the 2016-17 to 2018-19 income years.

Businesses may now choose to opt out of this measure on an asset-by-asset basis. Businesses that are not eligible, or are eligible but choose to opt out, may still be eligible for other concessions, such as the original 'instant-asset write-off' concession, the backing business investment depreciation measure (which is now also able to be opted-out of) or the normal depreciation rules.

For further information about the temporary full expensing measure, refer to this [PwC Tax Alert](#).

Board of Taxation's Review of CGT rollovers

The Board of Taxation has released a second [consultation paper](#) in relation to its review of capital gains tax (CGT) roll-overs. This paper sets out the Board's first-stage proposal for rationalising (and replacing) seven of the key roll-overs that deal with the most common business restructuring transactions, including mergers (i.e. takeovers), demergers, and internal reorganisations with a general business restructure roll-over. In the subsequent phase of this review, the Board will use its principled roll-over framework to assess the merits of extending the general business restructure

roll-over in application to transactions not covered by existing reliefs.

Submissions to the Board on this latest paper close on 5 February 2021.

Treasury consultation on e-invoicing

Treasury released a [consultation paper](#) on further actions that the Government can take to accelerate the adoption of Pan European Public Procurement OnLine (Peppol) framework for e-Invoicing in the private sector, including options for mandatory adoption by businesses. While e-Invoicing can deliver enhanced invoice processing efficiency and accuracy, the paper also seeks to consult on how a Peppol e-Invoicing mandate for businesses can reduce payment times from large to small businesses. As part of the 2020-21 Budget, the Government announced it would mandate that all Commonwealth Government agencies must be able to receive Peppol e-Invoices by 1 July 2022, with large agencies having to do so by 1 July 2021. Submissions were due on this paper by January 2021.

Taxpayer Alert on structured arrangements that provide imputation benefits

[Taxpayer Alert TA 2020/5](#) has been released by the Australian Taxation Office (ATO), which summarises concerns held by the Commissioner of Taxation in relation to particular arrangements that provide imputation benefits to Australian taxpayers where, as a result of derivative instruments entered into as part of the arrangement, the taxpayer retains no or nominal economic exposure to the dividend and capital performance associated with that parcel of shares.

The basis for the Commissioner's concern is that the income tax law requires that, broadly, the benefits of franking credits should only be available to the true economic owner of shares. Particular arrangements where the Commissioner considers a taxpayer may be inappropriately accessing franking credits include arrangements where:

- The taxpayer holds a long position in an existing portfolio of Australian shares
- Additional shares are acquired outside of the normal investing activities of the taxpayer and, at or about the same time, a derivative instrument is entered into to substantially reduce the

taxpayer's economic exposure to the additional shares; and

- The taxpayer claims the franking credits associated with the additional shares by relying on the holding period rules as they apply to the entire portfolio of shares.

Acceptable estimates of trading stock used for private use

The Commissioner of Taxation has set out the amounts in [Taxation Determination TD 2021/1](#) that will be accepted as estimates of the value of goods taken from trading stock for private use by taxpayers in specified industries during the 2020-21 income year. The industries covered by the Determination include bakery, butcher, restaurant/café, caterer, delicatessen, fruiterer/greengrocer, takeaway food shop and mixed business (incorporating milk bar, general store and convenience store).

Where taxpayers consider the values contained in the Determination are not reflective of their particular circumstances, they may elect to maintain suitable records to determine an alternative amount.

ATO data matching – motor vehicles

Under a new [data matching program](#), the ATO will acquire motor vehicle registry data from state and territory motor vehicle registry authorities for 2019-20 to 2021-22 to identify and address taxpayers not complying with taxation obligations. The data obtained will include identification details of buyers, sellers, licensed dealers, fleet managers and leasing companies, and also the transaction details.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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