



PwC's Monthly Tax Update

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

April 2023



Corporate Tax Update

Transparency measures for Australian public companies

On 16 March 2023 Treasury released [draft law](#) which proposes to implement part of the Government's broader tax transparency measures that were previously announced as part of its broader multinational tax initiatives in the October 2022 Budget.

Specifically, this draft law proposes that Australian public companies (listed and unlisted) will be required to provide additional information about their subsidiaries including tax residency, ownership breakdown and entity type (partnership, body corporate etc) in financial reports applicable to financial years commencing on or after 1 July 2023. Refer to our [Tax Alert](#) for further details about this draft legislation.

Comments can be made on the draft by 13 April 2023.

The Government will consult separately on the [other elements](#) of its multinational tax integrity package announced in the October 2022 Federal Budget, including the public country-by-country reporting measure for Significant Global Entities (SGEs), and requirements for tenderers for Australian government contracts worth more than \$200,000 to disclose their country of tax domicile by reporting their ultimate head entity's country of tax residence.

ATO guidance on tax compliance for Corporate Collective Investment Vehicles (CCIVs)

The ATO has released [information](#) on the treatment of Corporate Collective Investment Vehicles (CCIVs).

The CCIV regime was introduced by the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022 (Cth)* and applies from 1 July 2022. A CCIV is a type of company, limited by shares that is used for funds management and which is an umbrella vehicle that is made up of one or more CCIV sub-funds operated by a single corporate director.

The ATO indicates that the CCIV tax framework is focused on providing CCIVs with access to the same attribution-based flow-through tax regime that applies to attribution managed investment trusts (AMITs). To access the AMIT regime in an income year, CCIV sub-funds must meet the modified AMIT eligibility criteria outlined in the tax framework for that income year.

The ATO guidance also includes information about the process to register a CCIV, and also addresses income tax and goods and services tax issues. In particular, it confirms that an attribution CCIV sub-fund will lodge a bespoke income tax return – an Attribution CCIV sub-fund tax return (ACSITR) – that reflects the unique structure and circumstances of a CCIV sub-fund that meets the AMIT eligibility requirements. Information is also provided about other reporting obligations including the Business Activity Statement, Attribution managed investment trust member annual (AMMA) statement, and Annual Investment Income Report (AIIR).

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Employment Taxes Update

Superannuation Guarantee – Update on extended definition of an employee

Following the decision of the High Court of Australia in *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2 in February 2022, the matter was remitted down to the Full Federal Court in [Jamsek v ZG Operations Australia Pty Ltd \(No 3\)](#) [2023] FCAFC 48 to consider the potential application of section 12(3) of the Superannuation Guarantee (Administration) Act 1992 (SGAA), given the High Court's conclusion that the truck drivers were not common law employees. Importantly, the Commissioner of Taxation was also added as a party to the latest proceedings.

Section 12(3) of the SGAA provides that "(i)f a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract" (referred to as the extended test). The function of this section is to expand the meaning of employee for Superannuation Guarantee (SG) purposes, which has application to payments made to certain independent contractors that meet this requirement.

Overall, the Full Federal Court accepted the submissions of both the principal (ZG) and the Commissioner of Taxation, being that the truck drivers, who had contracted in their capacity as partners in their respective partnership rather than as individuals, were not entitled to SG under the extended test.

In reaching its decision, the Full Federal Court firstly held that a person entitled to SG under the extended test must be a *natural person*, and that the natural person must be a party to the contract in their personal capacity. As such, a contract exclusively between a principal and an entity/business structure, cannot result in an SG obligation for the principal.

In addition, the Full Federal Court observed and applied the principles in *Moffet*, whilst also observing that a contract which is for a 'result' will not be 'wholly or principally for [the] labour' of a specific person. Further, a right of delegation was recognised as being wholly inconsistent with a contract wholly or principally for the labour of a person. However, Wigney J's judgment (separate to the majority judgment) voiced a point of difference on this aspect – while the overall decision was unanimous, Wigney J's view was that a right of delegation which is fettered by restriction, may not in and of itself prevent such a contract from existing.

The Full Federal Court also observed that where a contract is not only for labour, but something else, such as equipment, in determining whether the contract is wholly or principally for labour, a method by which the value of each component can be ascertained, is necessary. In the current case, the absence of such analysis having been performed, the materiality of the trucks obtained under these contracts, combined with the risk and costs to the partnerships of ongoing operation, maintenance and insurance, permitted a conclusion that 'labour' was not the principal object of the contracts.

As a general observation, taxpayers may take some comfort in that the Court's reasoning is largely consistent with the public views of the Australian Taxation Office (ATO) upon which many have relied. Nonetheless, the decision brings with it complexities and further areas requiring clarification, which will hopefully be addressed once the ATO releases comment (through a decision impact statement, for example), and through future decisions of the courts. Taxpayers should be mindful that, under this latest decision, contracts under which a natural person (being the 'worker') is one of a number of parties, payments made under the contract may fall within the ambit of this test for SG purposes.

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ATO fact sheet on electric vehicles and FBT

The ATO has released a [fact sheet for employers](#) that outlines the operation of the electric vehicle (EV) FBT exemption. In particular, the fact sheet provides additional guidance for employers on the key requirements for a car benefit to qualify for the exemption and the treatment of associated benefits that an employer may also provide to an employee in conjunction with the use of an EV (for example, replacement batteries, home charging stations, road user charges).

2023 Fringe Benefits Tax time

For employers who have provided fringe benefits to employees between 1 April 2022 and 31 March 2023 it is now time to determine your 2023 fringe benefits tax (FBT). Here are some key dates to keep in mind:

- The FBT year concluded on 31 March 2023.
- To avoid interest and penalties FBT returns must be lodged and any outstanding liability paid by 22 May 2023.
- If you are submitting your FBT return electronically through a tax practitioner the deadline for submission is 26 June 2023.
- If you are submitting your FBT electronically for the first time, your chosen tax practitioner must add you to their FBT client list by 21 May 2023 for you to qualify for the extended June lodgment and payment deadline.
- Even if you have not provided any taxable fringe benefits during the 2023 FBT year, if you are currently registered for FBT are still required to lodge either a Notice of Non-Lodgment or a nil FBT return by your respective FBT return due date.

NSW Court of Appeal dismisses medical centre payroll tax appeal

In [Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue \[2023\] NSWCA 40](#) a medical centre operator was denied leave to appeal against an decision of the Appeal Panel of NSW Civil and Administrative Tribunal (NCAT) which previously found that agreements between the operator and doctors were "relevant contracts" for the purposes of the *Payroll Tax Act 2007* (NSW), thereby affirming the first instance decision of NCAT ([Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue \[2021\] NSWCATAD 259](#)).

The taxpayer operated a business comprising three medical centres from which a number of doctors operated. The taxpayer represented that the terms of the arrangement reflected the provision by the taxpayer to doctors of premises from which they can operate their medical practices, combined with administrative and operational services, and that no services were provided by the doctors to the taxpayer. Under the

agreements, the taxpayer would be paid 30% of the Medicare benefits payable to each doctor for patients seen at the medical centres. Aside from 3 of the doctors, each doctor directed Medicare benefits to a bank account held by the taxpayer. Administrative staff employed by the taxpayer would then reconcile the benefits received and pay 70% of those amounts to the doctors.

The Chief Commissioner of State Revenue had found that the taxpayer was in receipt of services from the doctors, notwithstanding that the doctors at the same time may have provided services to patients. Consequently, the Chief Commissioner had assessed the taxpayer as liable to payroll tax pursuant to the relevant contract provisions within the NSW payroll tax legislation.

The original appeal brought by the taxpayer before the Appeal Panel of NCAT found that the grounds raised by the taxpayer incorrectly sought to dispute findings of fact rather than questions of law. In the latest decision, the NSW Court of Appeal also dismissed the taxpayer's application to appeal against the orders made by the Appeal Panel. The court held that the Tribunal was correct to find that the doctors provided services to the taxpayer by attending to patients at the centres and thereby enabling the taxpayer to operate its business. The court also held that the Appeal Panel did not err in dismissing the appeal on the basis that the taxpayer's notice of appeal did not give rise to questions of law.

NSW Payroll Tax wage theft bill lapses

A Bill introduced in 2021 to deter the underpayment of wages by employers and strengthen the Chief Commissioner's powers to recover payroll tax on unpaid wages has lapsed on the prorogation of the NSW Parliament.

The [Tax Administration Amendment \(Combating Wage Theft\) Bill 2021](#) proposed amendments to the [Taxation Administration Act 1996](#) (NSW) to allow:

- the Chief Commissioner to reassess and recover payroll tax liabilities more than 5 years after an initial assessment in certain circumstances of underpayment of wages, eg following a Fair Work Ombudsman investigation
- tax officers to disclose information to the Fair Work Ombudsman to assist in investigations of underpayment of wages and to the Secretary of the Department of Premier and Cabinet to assist in investigations of breaches of the *Long Service Leave Act 1995* (NSW), and
- tax officers to disclose certain information about an employer in certain circumstances of underpayment of wages.

The Bill introduced higher penalties for offences, including failing to keep records or knowingly giving false or misleading information. It also created an offence of knowingly evading or attempting to evade tax.

Prior to the lapsing of this Bill, the amendments within were proposed to commence on the date of assent.

Global Tax and Trade Update

Consultation on draft legislation for changes to thin capitalisation and more

On 16 March 2023, Treasury released [exposure draft materials](#) setting out the proposed legislative changes for new interest limitation rules (ie thin capitalisation amendments) as part of the Government's proposed multinational tax package as announced in its October 2022 Federal Budget.

The key measures included in the draft materials are:

- replacement of the current asset based safe harbour test with a "fixed ratio test" that will limit a general class entity's available net debt deduction to 30 per cent of its tax determined EBITDA, and allow in certain cases a carry forward of disallowed deductions
- replacement of the current worldwide gearing test with a "group ratio test" that will allow debt related deductions (beyond the fixed ratio test amount) up to the level of the worldwide group's net interest expense as a share of group earnings
- replacement of the current arm's length debt test with an "external third party debt test" which will disallow all debt deductions that are not attributable to third party debt and that do not meet the conditions including that the debt is from an unrelated entity and the funding supports the Australian entity's operations
- as an integrity measure, to limit the availability of existing thin capitalisation safe harbours through narrowing the scope of entities that will be classified as a "financial entity", and
- the removal of interest deductions relating to the derivation of non-assessable non-exempt distributions derived from certain foreign subsidiaries.

These proposed rules are far reaching and will apply for income years commencing on or after 1 July 2023. With less than three months before the earliest

start date, there is not much time for taxpayers to assess the impact that the new measures will have on their capital structure and any consequential impacts of refinancing, if required.

The proposed measures are subject to consultation and submissions from interested parties can be made by 13 April 2023. PwC will be preparing a response to the consultation.

For more information on the proposed measures refer to the following Tax Alerts:

- [Australia's proposed new interest limitation regime](#)
- [Real assets and the new interest limitation rules](#)
- [Interest limitation rules – insights for private equity](#)
- [Interest limitation rules – insights for financial services](#)

OECD Pillar Two update on compliance and certainty aspects of global minimum tax

On 16 March 2023, the Organisation for Economic Cooperation and Development (OECD) hosted a [virtual consultation](#) to discuss the implementation of the Pillar Two Global Anti-Base Erosion (GloBE) rules, designed to ensure a minimum effective tax rate of 15 per cent has been paid by large multinational enterprises. The session included discussion and presentation of comments received from contributors on:

- tax certainty and why certainty is important for the implementation of the GloBE rules
- How the rules can be implemented to prevent disputes and differences in the application of the rules
- How any disputes that arise could be resolved
- The GloBE Information Return
- Simplification of data points and returns; and
- Standardisation of the administration of the GloBE rules.

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Germany releases draft law for Pillar Two

The German Federal Ministry of Finance published draft law on 20 March 2023 to implement the Pillar Two Directive ensuring a global minimum taxation for multinational groups and large domestic groups in the European Union. This follows the formal adoption late last year by the EU Council to adopt Pillar Two. Read more in our global [Alert](#).

President Biden's FY 2024 budget renews call for tax increases

US President Joe Biden sent Congress an FY 2024 budget that proposes to increase taxes for corporations and for individuals as part of a plan intended to reduce the US federal budget deficits. Specific proposals include an increase in the US corporate income tax rate and reforms to US international tax rules including raising the tax rate on the foreign earnings of US multinational corporations and adopting an undertaxed profits rule. For individuals, it proposes that the top individual ordinary income tax rate increase, capital gains income for high earners be taxed at ordinary rates, and a 25 per cent "minimum income tax on the wealthiest taxpayers" be imposed. Read more in our [Alert](#).



Indirect Tax Update

Supply of gold bullion case remitted to AAT

The Full Federal Court has allowed the Commissioner's appeal and the taxpayer's cross-appeal in the goods and services tax (GST) matter of [Commissioner of Taxation v Complete Success Solutions Pty Ltd ATF Complete Success Solutions Trust \[2023\] FCAFC 19](#).

The case in question concerned a taxpayer that claimed it made GST-free supplies of gold bullion and creditable acquisitions of scrap gold between August and November 2016 (the First Period for which the taxpayer cross-appealed from the initial Administrative Appeals Tribunal (AAT) decision) and GST-free supplies by way of export sales of scrap gold bars between December 2016 and January 2017 (the Second Period for which the Commissioner appealed from the decision of the AAT). On that basis, the taxpayer claimed it was not liable for GST on its sales and was entitled to input tax credits on its acquisitions.

The Commissioner claimed that the taxpayer's supplies did not satisfy the requirements for being GST-free supplies or, alternatively, that the general anti-avoidance provisions the GST anti-avoidance provisions applied on the basis that the taxpayer had entered into a scheme for the purposes of obtaining a GST benefit. The appeal was remitted back to the AAT on the following grounds:

- findings that the AAT did not properly consider whether there was a scheme for the purposes of applying the anti-avoidance provisions in the *A New Tax System (Goods and Services Tax) Act 1999*; and
- the Tribunal miscarried in its statutory function because it was not provided with materials which were critical to the Tribunal's ability to properly conduct the review of the matter concerning the First Period.

ATO decision impact statement – Landcom margin scheme case

The Australian Taxation Office (ATO) has released a [decision impact statement](#) in response to the Full Federal Court's decision in [FC of T v Landcom \[2022\] FCAFC 204](#) which concerned the application of the margin scheme to the sale of four freehold land interests under a single contract. The ATO outlines it agrees with and intends to follow the Court's findings.

The Court found that the better construction of the relevant law was that the provisions should apply separately to each individual interest that is supplied, even if the supply of the interest formed part of a larger supply of land.

The ATO notes that this will not change the overall outcome for non-government taxpayers as the final GST outcome will be largely the same whether determined collectively or individually for each interest. However, this will not necessarily be the case for government entities where each interest supplied will need to be considered separately when determining whether the supply is a supply of unimproved land to which section 38–445 or table item 4 of subsection 75–10(3) may apply.

The ATO will also review impacted products to ensure they are consistent with the conclusions of the Federal Court and it also intends to engage with the States and Territories in relation to the agreed notional GST dispute resolution process to consider whether any updates may be appropriate in light of the decision.

ATO update on GST for supply of digital products

The ATO has withdrawn its [guidance](#) from 2010 regarding the application of GST to supplies of digital products made to Australian residents from non-resident suppliers.

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This guidance is no longer current due to various legislative changes that ensure that GST is applied consistently to all supplies of digital process and other imported services to Australian consumers and relieves non-resident suppliers of the obligation to account for GST on certain supplies.

The following Rulings provide the current ATO view on the GST treatment of a supply of digital products to Australian residents from foreign-resident suppliers:

- [GSTR 2019/1](#) Goods and services tax: supply of anything other than goods or real property connected with the indirect tax zone (Australia) which provides guidance on when a supply of anything other than goods or real property (an intangible) is connected with Australia, including when certain supplies are disconnected from Australia (pursuant to the legislative changes which applied from 1 October 2016), and
- [GSTR 2017/1](#) Goods and services tax: making cross-border supplies to Australian consumers which provides guidance to overseas-based suppliers making supplies of services, digital products or rights to Australian consumers that use or enjoy those supplies in Australia (pursuant to the legislative changes which applied from 1 July 2017).

Updated Ruling dealing with financial supplies

The ATO has issued an [addendum](#) to [GSTR 2002/2](#) which deals with the GST treatment of financial supplies and related supplies and acquisitions.

The addendum amends GSTR 2002/2 to reflect changes in the GST law applicable to cross-border supplies and in relation to digital currency, includes new references to public guidance released relating to financial supplies, and contains some changes to modernise parts of the ruling.

Draft Ruling update on treatment of ATM service fees, credit card surcharges and debit card surcharges

The ATO has provisionally updated [GSTR 2014/2](#) which deals with the GST treatment of ATM service fees, credit card surcharges and debit card surcharges. The [draft update](#) reflects changes to the industry self-regulatory documents containing the definition of "ATM" or "ATM Terminal" (the replacement of the Consumer Electronic Clearing System Regulations and Manual with the Issuers and Acquirers Community Regulations and Code Set), changes in Reserve Bank of Australia rules for merchant surcharging, and the Reserve Bank of Australia designation of prepaid cards.

Comments on the draft updated ruling can be made by 21 April 2023.

Personal Tax Update

Concessional treatment of Australian Carbon Credit Units for primary producers

Treasury has released [exposure draft law](#) for consultation on the Government's proposal to provide concessional tax treatment to certain primary producers that generate revenue from the sales of Australian Carbon Credit Units (ACCUs). The proposal is to allow primary producers to treat any income from the sales of ACCUs as primary producer income, which attracts concessional treatment including for the purposes of the Farm Management Deposit (FMD) scheme and accessing income tax averaging.

Comments were due to be made on the draft law by 17 March 2023.

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State Taxes Update

Victorian position on tax surcharges for foreign owners unchanged

Further to our report in our [March Monthly Tax Update](#) regarding New South Wales (NSW) approach to international tax treaties and the imposition of foreign surcharge land tax and foreign surcharge purchaser duty, on 15 March 2023, the Victorian State Revenue Office (SRO) released its [position](#) that the SRO would continue to apply the Victorian duty and land tax provisions to all foreign purchasers and absentee owners.

By way of reminder, Revenue NSW [announced](#) that the imposition of foreign surcharge purchaser duty and foreign surcharge land taxes would not apply in some specified instances as they were found to be inconsistent with international tax treaties. The inconsistencies were specifically relating to Australia's international tax treaties with New Zealand, Finland, Germany and South Africa.

NSW guidance on shared equity scheme

Revenue NSW has issued a [Commissioner's Practice Note CPN 028](#) on the Shared Equity Home Buyer Helper (also known as the NSW Shared Equity Scheme). This scheme was established in December 2022 to assist people in acquiring their own home in New South Wales provided they meet certain eligibility requirements.

The practice note provides guidance on:

- the types of financial assets that may be included in the assessment of whether the applicant satisfies the asset limit and whether the applicant has excess savings; and
- when the Chief Commissioner may require the applicant to contribute some of their excess savings towards the purchase of the property.

ACT amendments to landholder duty provisions

The [Revenue Legislation Amendment Bill 2022 \(ACT\)](#) introduced late last year has now completed its passage through the Australian Capital Territory (ACT) Parliament. The Bill makes amendments to update landholder duty provisions under the *Duties Act 1999* (ACT), along with other minor and technical amendments to the Duties Act, *Land Tax Act 2004* (ACT) and the *Civil Law (Sale of Residential Property) Act 2003* (ACT) are also included in the Bill.

Specifically, the amendments include the initial stage of updates to the landholder duty provisions to:

- clarify the prescription of how duty is imposed on a 'relevant acquisition' in a 'landholder';
- allow for regulations to prescribe circumstances where the requirement for an 'acquisition statement' is unnecessary
- affirm that an agreement for the sale of land under the meaning of 'landholding' includes the grant of Crown lease
- amend the application of the joint and several liability provision for landholder duty to include the landholder and trustee for a private unit trust scheme to align with other jurisdictions
- amend the constructive ownership provisions of 'linked bodies' to align with other jurisdictions
- amend the definition of an 'associated person' to reduce the potential to use interposed entities to reduce the landholdings against the intent of the provisions
- consolidate the definition of a 'complying superannuation fund' and remove superseded references
- replace superseded references to marketable securities

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ACT transfer duty and declaration of trust

The ACT Civil and Administrative Tribunal has found for the taxpayer in [Leemhuis Investments Mitchell Pty Ltd L v Commissioner for ACT Revenue \[2023\] ACAT 12](#) in determining whether ACT transfer duty was correctly imposed in relation to the circumstances on which properties held on trust absolutely constituted a “declaration of trust”.

The Tribunal found that a declaration of trust for “the purposes of the Act” does not require writing and it can be created by circumstance and does not require an express declaration. The Tribunal found on the facts that there was a trust created absolutely of a 100 per cent equitable interest in two properties and this transaction was dutiable and payable by the transferee, who is the person who made the declaration. The nature of this trust was a continuation of the trust existing in the original position, not a new trust. Since the partner in the original position held a 50 per cent equitable interest in partnership property and had increased its equitable interest in the remaining partnership property to 100%, the taxpayer was therefore liable for ad valorem duty on 50 per cent of the unimproved value of the properties.

NSW land tax applied to rural land

The majority of the NSW Court of Appeal has allowed the Commissioner’s appeal in the matter of [Chief Commissioner of State Revenue v Godolphin Australia Pty Ltd \[2023\] NSWCA 44](#) finding that the taxpayer was not entitled to the land tax exemption. The taxpayer ran a business involving the breeding, sale and racing of thoroughbred racehorses and submitted that in its business model for the relevant land, the racing and the sale of breeding services, broodmares and progeny “are complementary or mutually reinforcing”, and that in its distinctive business model “the purpose of sale and the purpose of racing are two aspects of a single composite purpose”.

The principal question was whether or not the dominant use of the lands in the years 2014 to 2019 could be characterised as for the maintenance of animals for the purpose of selling them, their natural increase or their bodily produce under section 10AA(3)(b) of the *Land Tax Management Act 1956 (NSW)*.

The majority found that the question is whether that use of the properties can be characterised as having the character of a dominant use for the purpose of selling animals, progeny and produce. It was observed that in previous decisions under section 10AA(3)(b), the Court has steered away from separating the concepts of “use” and “purpose” and also appears to have accepted that (to the extent that it is appropriate to separate the two) the requirement of dominance applies to both use and purpose. In the manner contended for by Godolphin, any purpose, no matter how insignificant in the overall use of the land, would be sufficient to attract

the exemption which is not intended. The Court found that on the facts, the activities in pursuit of the racing purpose, not the sale purpose, constituted the dominant use of the land which accordingly meant that the exemption permitted by section 10AA(3)(b) did not apply.

Upcoming State and Territory Budgets

In the following months, the following States and Territories have scheduled their 2023–24 Budgets:

- Northern Territory – 9 May 2023
- Victoria – 23 May 2023
- Tasmania – 25 May 2023
- QLD – 13 June 2023
- ACT – 27 June 2023

Others will be scheduled as applicable.

Superannuation Update

Proposed changes to taxation of high superannuation balances

The government has [announced](#) a proposed change to the concessional tax rate for individuals with high superannuation balances. Specifically, effective from 1 July 2025 for the 2025–26 financial year onwards, individuals with total superannuation balances over \$3 million at the end of a financial year will be subject to a tax of 15 per cent on “earnings”. This tax is in addition to any tax their superannuation funds pay on earnings in accumulation. Any earnings corresponding to fund balances below \$3 million will continue to be taxed at 15 per cent or less.

In summary, it is proposed that:

- Fund “earnings” that will be subject to the 15 per cent tax imposed on the individual will be calculated based on the movement in the value of the individual’s cumulative fund balances during the income year, adjusted for contributions and withdrawals - this means that there will be tax on unrealised gains in the fund - and adjusted as a proportion of earnings corresponding to balances above \$3 million. Negative earnings can be carried forward and offset against this tax in future years’ tax liabilities.
- Fund balances in excess of \$3 million will be tested for the first time on 30 June 2026, with the first notices of a tax liability expected to be issued to individuals in the 2026–27 financial year. The individual will have the tax liability, not the fund, however the individual will have the choice of either paying the tax themselves or from their superannuation fund(s).
- There should be no additional compliance burden imposed on funds as the Australian Taxation Office will notify individuals of their liability using existing superannuation fund reporting data
- It is the Government’s intent to ensure broadly commensurate treatment for defined benefit interests.

Further information is available in this [Treasury Fact Sheet](#).

Consultation on the proposal is expected before any enabling legislation is introduced into Parliament.

Affected individuals should assess the potential impact that this proposal will have on their retirement savings.

Quarterly statistical report published

The ATO has published the Self-Managed Super Fund (SMSF) [quarterly statistical report](#) for December 2022. The report provides information on the population of SMSFs, their assets and membership.

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Legislative Update

Federal Parliament sat for the last time for this Autumn sittings on 30 March 2023, with the next sitting dates coinciding with the release of the 2023–24 Federal Budget on 9 May 2023.

Since our last update the following tax or superannuation related Bills were introduced into Federal Parliament:

- [Treasury Laws Amendment \(Refining and Improving Our Tax System\) Bill 2023](#), introduced into the House of Representatives on 22 March 2023, makes a number of amendments to income tax and excise and customs law which seek to:
 - give effect domestically to the recently signed double tax agreement between Australia and Iceland
 - extend the income tax treatment that applies to the Future Fund Board to its 100 per cent subsidiaries incorporated in Australia so as to exempt these subsidiaries from income tax and include them as entities eligible for a refund of a tax offset relating to a franked distribution
 - improve governance, reduce complexity and boost integrity of the deductible gift recipient (DGR) framework
 - allow an eligible business entity liable for excise duty for excisable goods or customs duty for excise-equivalent goods (being fuel and alcohol) to align their excise returns and customs returns with the return period for other indirect taxes which are separately lodged through a business activity statement
 - ensure that repackaging of beer of the first 10,000 litres of beer at particular premises in a financial year that would otherwise be excise manufacture is not taken to be the manufacture of beer if it is repackaged into a container with a capacity of no more than two litres which is not pressurised, and the repackaging occurs immediately before the retail sale of the repackaged beer.
- [Customs Tariff Amendment \(Incorporation of Proposals\) Bill 2023](#), introduced into the House of Representatives on 22 March 2023, makes various customs amendments including to:
 - extend the temporary increase in customs duties for goods that are the produce or manufacture of Russia or Belarus imported into Australia between 25 April 2022 and 24 October 2023
 - provide a 'Free' rate or reduced rate of customs duty for goods that are the produce or manufacture of Ukraine
 - extend the 'Free' rate of customs duty for prescribed medical products and hygiene products capable of use in combatting COVID-19
 - provide for the classification of certain electric and low emission vehicles with a customs value less than the 'fuel-efficient car limit'; and
 - correct tariff references for blood-grouping reagents and 'herbicides, anti-sprouting products and plant-growth regulators'.

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Other News

Draft notices for lodgment of 2023 tax returns

The Australian Taxation Office (ATO) has released for consultation the following draft legislative instruments setting out the Commissioner of Taxation's proposed requirements for taxpayers to lodge income tax returns for the 2023 income year:

- [Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2023](#) (which includes reference to the Attribution CCIV sub-fund tax return required for the first time under the new corporate collective investment vehicle (CCIV) framework), and
- [Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2023](#).

Comments on both are due to be made by 14 April 2023.

Draft miscellaneous and technical amendments

[Exposure draft materials](#) containing miscellaneous amendments to address unintended outcomes and correct drafting defects in Treasury portfolio laws have been released for consultation. From a tax and superannuation perspective, the draft proposes the following minor technical amendments:

- amend the definition of "year of income" in the *Superannuation Industry (Supervision) Act 1993* so that it has the same meaning as in the *Income Tax Assessment Act 1936*
- confirm that the supply of a goods and services tax (GST)-free car and car parts to an eligible individual who has a current disability certificate will continue to apply for certificates issued by the nominated company prior to amendments made by the *Treasury Laws Amendment (2021 Measures No 5) Act 2021*

- clarify that where purchasers of new residential premises and potential residential land are required to withhold and remit to the ATO a portion of the purchase price during settlement, the entity liable to pay GST on the taxable supply will be entitled to the credit for the GST paid by the purchaser.

Comment on the exposure draft materials can be made by 4 April 2023.

ATO guidance on issue of education directive for failing to keep or retain records

The ATO has updated its Law Administration Practice Statement [PS LA 2005/2](#), which deals with the penalty for failure to keep or retain records, to include guidance on when ATO officers will consider issuing an education direction to an entity that it reasonably believes has failed to comply with tax-related record-keeping obligations. This update was due to the new power given to the Commissioner of Taxation (enacted by *Treasury Laws Amendment (2022 Measures No. 2) Act 2022*) to issue the education directive as an alternative to existing financial penalties. The power came into effect from 13 March 2023 for failures to comply with record-keeping obligations under a taxation law both before and after assent.

According to the guidance, an entity that has been given a direction needs to complete our approved online record-keeping course, the successful completion of which by the due date means the entity is no longer liable to the penalty.

The update also set out the Commissioner's processes for issuing, varying and non-compliance with education directions.

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