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# PwC's Monthly Tax Update

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

August 2022



# Corporate Tax Update

## ATO guidance on UPEs finalised

The Australian Taxation Office (ATO) has issued Taxation Determination [TD 2022/1](#) on unpaid present entitlements (UPEs) and sub-trust arrangements in the context of the deemed dividend rules in Division 7A of the *Income Tax Assessment Act 1936*.

In the Determination, the Commissioner takes the view that when a private company beneficiary with a UPE, who by arrangement, understanding or acquiescence, consents to the trustee retaining that amount to continue using it for trust purposes (i.e. the company has knowledge of an amount that it can demand immediate payment of from the trustee and does not demand payment) this constitutes the provision of financial accommodation to the trustee under section 109D(3)(b). As a result, the private company beneficiary makes a loan to the trustee under the extended definition of a 'loan' in subsection 109D(3) at the time when the financial accommodation is provided.

In the case where the private company beneficiary's present entitlements are satisfied by sub-trust, if the private company beneficiary by arrangement, understanding or acquiescence, consents to the sub-trustee allowing those funds to be used by or for the benefit of the private company beneficiary's shareholder or their associate where all or part of the sub-trust fund is used by or for the benefit of that entity, and the private company beneficiary has knowledge of this use, this constitutes the provision by the private company beneficiary of financial accommodation to the entity using or benefiting from the use of the sub-trust fund under section 109D(3)(b). This will be the case whether or not the use of the sub-trust fund is on commercial terms whereby a return is paid to the sub-trust fund.

The Determination outlines the ATO's compliance approach with respect to the application of Division 7A and includes examples of how a private company beneficiary and trustee can implement complying loan agreements so that the provision of financial accommodation does not give rise to a deemed dividend.

The determination applies to trust entitlements arising on or after 1 July 2022. The ATO has also

published a [compendium](#) of feedback received based on its consultation on draft Taxation Determination [TD 2022/D1](#).

The ATO has withdrawn Taxation Ruling [TR 2010/3](#) and Practice Statement [PS LA 2010/4](#) relating to UPEs and sub-trust arrangements pursuant to Division 7A with effect from 1 July 2022.

## Guidance on deemed dividend rules for private companies

The ATO has advised that the [benchmark interest rate](#) for Division 7A purposes for the 2022-23 income year for Division 7A purposes is 4.77 (previously 4.52) per cent per annum. This benchmark interest rate is relevant to determine if a private company loan made in the 2022-23 income year is taken to be a dividend, and to calculate the amount of the minimum yearly repayment for the 2022 income year on an amalgamated loan taken to have been made prior to 1 July 2022.

## Guidance on CRS and FATCA compliance

The ATO has published a [self-review guide and toolkit](#) to assist financial institutions with their obligations under the automatic exchange of information (AEOI) regimes comprising the Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FATCA). The ATO has an AEOI compliance program that seeks greater assurance that reporters with CRS and FATCA obligations have appropriate frameworks in place and are correctly reporting to the ATO.

The guide outlines how financial institutions should conduct a self-review of their governance, due diligence, data and reporting systems and outlines what the ATO looks for when reviewing AEOI compliance. The purpose of the framework is to allow financial institutions to prepare for, and undertake, a review of their own reporting systems and data prior to review by the ATO.

Once the ATO has completed a AEOI review, and found no major deficiencies in the taxpayer's AEOI framework, it is intended that it may initiate the next review on a periodic basis at least once every four years.

## Let's talk

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## Employment Taxes Update

### Reminder – Superannuation guarantee obligations have increased

Employers should note that from 1 July 2022, the prescribed superannuation guarantee (SG) rate increased to 10.5 per cent (from the previous rate of 10 per cent). This increase means employers must contribute an additional half per cent to meet their SG obligations, subject of course to any separate requirements for specific organisations to contribute beyond the statutory rate (e.g. contractually agreed terms or enterprise agreements which may require a higher rate of contribution).

In addition, the \$450 per month eligibility threshold for when SG is required to be paid has been removed from 1 July 2022. However, payments relating to work performed by non-residents solely outside of Australia and work performed by individuals under 18 years of age and employed for less than 30 hours per week, are still not subject to SG.

### Consultation on choice of fund rules and SG

The Australian Prudential Regulation Authority (APRA) is [undertaking consultation](#) on the relatively recent amendments to the *Superannuation Guarantee (Administration) Act 1992* to introduce choice of fund rules for registrable superannuation entity (RSE) licensees of defined benefit funds. The amendments provide that employers who make contributions for employees under workplace determinations or enterprise agreements made on or after 1 January 2021 need to provide those

employees with a choice of fund. Failure to comply with the choice of fund requirements in respect of an employee (other than in limited circumstances) attracts a penalty increase to the individual SG shortfall.

The purpose of APRA's consultation is to determine whether any unintended consequences have arisen from the amendments. The deadline for submitting responses to the consultation is 8 September 2022.

### Reasonable travel and meal allowances for the year ending 30 June 2023

The Australian Taxation Office (ATO) has released [Taxation Determination TD 2022/10](#), in which the Commissioner has set out the amounts considered to be reasonable for the 2022-23 income year where an allowance is paid to the employee in respect of:

- overtime meal expenses – for food and drink when working overtime
- domestic travel expenses – for accommodation, food and drink, and incidentals when travelling away from home overnight for work (particular reasonable amounts are given for employee truck drivers, office holders covered by the Remuneration Tribunal and Federal Members of Parliament), and
- overseas travel expenses – for food and drink, and incidentals when travelling overseas for work.

This Tax Determination should also be considered by employers when assessing whether any PAYG withholding is required to be calculated and remitted to the ATO on travel allowances paid.



## PAYG withholding schedules released

The ATO has issued the [Taxation Administration Withholding Schedules 2022](#) Instrument that specifies the amounts required to be withheld as well as procedures for withholding under the Pay As You Go Withholding (PAYG) system. The instrument applies to payments made from 1 July 2022.

## Federal court finds employee relationship

The Federal Court has found in [JMC v Commissioner of Taxation \[2022\] FCA 750](#) that a lecturer was engaged as an employee and not a contractor, applying the guidance of the High Court in [CFMMEU v Personnel Contracting Pty Ltd \[2022\] HCA 1](#) and [ZG Operations Australia Pty Ltd v Jamsek \[2022\] HCA 2](#).

The dispute concerned whether the taxpayer was required to pay the SG in respect of payments made to a teacher it had engaged to provide teaching services under a written contract. The contract provided that the teacher was to be paid an hourly rate for delivering lectures and marking exams, with the teacher required to submit timesheets and weekly lesson plans. The taxpayer had oversight and control over how these services were to be provided. In its arguments before the Court, the taxpayer company emphasised that the teacher was required to submit invoices under a registered business name and that the services could be sub-contracted or assigned.

The Federal Court found that, having regard to the totality of the legal rights and obligations as set out in the contract, the teacher should be characterised as a common law employee. In particular, the Court considered the fact that the teacher contracted as an individual with the taxpayer, the taxpayer had significant rights to supervise and control the teaching services, remuneration was provided for hourly (and not for a particular outcome) and the taxpayer provided all of the necessary infrastructure and equipment for the services to be determinative. In addition, the rights for the teacher to sub-contract services were relatively narrow and limited in scope.

In relation to the extended definition of employee for the purposes of the SG, the Court found that there was little doubt that the contracts between the taxpayer and the teacher were principally for the teacher's labour and not for the production of a result.

## NSW payroll tax and employment agency contracts

In [Chief Commissioner of State Revenue \(NSW\) v E Group Security Pty Ltd \[2022\] NSWCA 115](#) the New South Wales Court of Appeal has reaffirmed the existing "employment agency contract" test set out in [UNSW Global Pty Ltd v Chief Commissioner of State Revenue \(NSW\) \[2016\] NSWSC 1852](#) (*UNSW Global*).

In a business group that offered security services to its clients, the taxpayer served as the primary operating entity. The Chief Commissioner of State Revenue assessed the taxpayer with payroll tax liabilities in relation to the remuneration of security guards whose services had been subcontracted from third parties. The question before the Court was whether the agreements between the taxpayer and its clients (or, alternatively, the agreements between the taxpayer and its wholly-owned subsidiaries) qualified as "employment agency contracts" according to NSW payroll tax law.

The Commissioner's main argument was that the decision in *UNSW Global* inappropriately narrowed the definition of employment agency contract within the relevant legislation and that the construction had negative practical effects on how the law operated (such as excluding from the scope of the legislation cases where entities caused services to be provided domestically).

The NSW Court of Appeal found that there was a strong inference that the legislature was to be taken to have approved the construction applied in *UNSW Global* given circumstances where the Commissioner had frequently introduced and defended legislation based on the employment agency contract deeming provisions, had consistently advanced the test he had proposed in the *UNSW Global* decision, and had reviewed the legislation on a regular basis.

With the continued relevance of the *UNSW Global* decision being upheld, the Commissioner's further grounds of appeal against the findings of the NSW Supreme Court in the earlier decision of [E Group Security Pty Ltd v Chief Commissioner of State Revenue \[2021\] NSWSC 1190](#), will be considered by the court in a subsequent hearing.

## NSW payroll tax and arrangements with medical practitioners

The Appeal Panel of the NSW Civil and Administrative Tribunal (NCAT) recently handed down its decision in the matter of [Thomas and Naaz Pty Ltd \(ACN 101 491 703\) v Chief Commissioner of State Revenue \[2022\] NSWCATAP 220](#) (the Appeal).

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. 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 appeal sought to overturn the earlier findings of the NCAT which were in favour of the Chief Commissioner of State Revenue on numerous grounds. These grounds included in particular that the NCAT was incorrect in establishing that services were provided by doctors to the medical centre, and that the NCAT should have observed its earlier decision of *Homefront Nursing Pty Ltd v Chief Commissioner of State Revenue* [2019] NSWCATAD 145 (*Homefront Nursing*) which found that payments under similar arrangements should not be taken to constitute a wage for payroll tax purposes on the basis they were not paid for or in relation to the performance of work.

The Appeal Panel found that the taxpayer's appeal had incorrectly been filed on the basis of questions of law, whereas the grounds of the appeal instead constituted questions of fact. It nonetheless considered the taxpayer's grounds of appeal and the Appeal Panel did not identify reason to question the NCAT's first instance finding that the doctors provided services to the taxpayer. It was further found that the Appeal Panel was not bound by *Homefront Nursing* and that the decisions in the *Optical Superstore* series of judgements, being decisions of superior courts, did not support the conclusion of *Homefront Nursing*. The taxpayer's appeal was thereby rejected with leave to raise new arguments refused.

## NSW payroll tax measures now law

The [State Revenue Legislation Amendment Bill 2022](#) which gives effect to a number of NSW 2022-23 Budget measures is now law. This Bill, among other things, provides an exemption from payroll tax for wages paid to employees funded by the Commonwealth Aged Care Workforce Bonus Grant Opportunity on or after 1 February 2022.

## QLD payroll tax measures now law

The [Revenue Legislation Amendment Bill 2022](#) has passed the Queensland (Qld) Parliament and is now law, giving effect to amendments to the *Payroll Tax Act 1971* (QLD) to implement the following State Budget measures, including:

- imposition of a new mental health levy from 1 January 2023, payable by employers, or groups of employers, with annual Australian taxable wages (for payroll tax purposes) over AUD 10 million
- increase the phase out rate for deductions from 1 January 2023, to provide relief for small to medium businesses
- extend the 50 per cent rebate for wages paid or payable to apprentices and trainees to include wages paid or payable during the financial year ending on 30 June 2022 (such extension previously having been affected by way of an administrative arrangement); and
- extend the rebate for wages paid or payable to apprentices and trainees to include wages paid or payable during the financial year ending on 30 June 2023.

Following the passage of the legislation, the Queensland Revenue Office has withdrawn [Public Ruling PTAQ000.5.1](#) relating to the 50 per cent payroll tax rebate available for wages paid to apprentices.

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# Global Tax and Trade Update

## Some insight into Government's multinational tax proposals

In the Parliamentary Budget Office (PBO) [report on the budget impacts of election commitments](#) made by political parties, further information was found in relation to the Australian Labor Party's (ALP's) tax policies including its [multinational tax proposals](#) which cover:

- thin capitalisation changes to replace the safe harbour debt test with a 30 per cent earnings before interest tax, depreciation and amortisation (EBITDA) limit, and
- an integrity proposal to limit the ability for multinationals to claim deductions for payments for the use of intellectual property in certain jurisdictions

Of note is that the report suggests in the context of assumptions made by the PBO in its costings relating to the integrity proposal to deny deductions for payments for the use of intellectual property, that this would apply where the payments are made to a jurisdiction where:

- the jurisdiction applies a tax preferential patent box regime to the royalty income (e.g. UK, Singapore, Netherlands, Belgium, France, Ireland, India, Switzerland, Spain, among others), or
- the payment is not subject to 'sufficient foreign tax' where that term is defined as incurring a tax liability of at least 80 per cent of Australia's corporate tax rate.

Refer to this [PwC Alert](#) for further observations.

## Increase in FIRB fees

The [Foreign Acquisitions and Takeovers Fees Imposition Amendment \(Fee Doubling\) Regulations 2022](#) were recently made to double the amount of fees paid by foreign persons for the review of foreign investment applications under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and provide clarity by updating references in indexation provisions. The Amending Regulations apply to fees that become payable on or after 29 July 2022.

## GILTI rules not equivalent to CFC rules for hybrid mismatch purposes

The Australian Taxation Office (ATO) has issued Taxation Determination [TD 2022/9](#) stating its view that the United States Global Intangible Low Taxed Income (GILTI) rules do not correspond to

Australia's controlled foreign company (CFC) regime for the purposes of the hybrid mismatch rules in Australia. This view has been taken by the ATO as it considers the GILTI rules to be a minimum tax regime with a different purpose from Australia's CFC regime. As a result, whether an amount is taxed under the GILTI rules does not mean that an amount will be "subject to foreign income tax" for the purposes of determining whether there is a deduction/non-inclusion outcome, or be considered "dual inclusion income".

Taxpayers that have taken positions that income subject to the GILTI regime should be considered "subject to foreign tax" will need to consider the impact of the Determination.

TD 2022/9 was previously issued in draft as [TD 2019/D12](#), with substantial revisions to the reasoning adopted in the draft determination. Read more in PwC's [Tax Alert](#).

## ATO concerns with treaty shopping

The ATO has issued Taxpayer Alert [TA 2022/2](#) on treaty shopping arrangements where a taxpayer seeks to obtain a reduced withholding tax rate under a double taxation agreement (DTA) in relation to dividend or royalty payments made from Australia to an offshore entity.

The ATO is concerned with arrangements where an entity is interposed between an Australian resident entity and the ultimate recipient of the dividend or royalty. The ATO will scrutinise arrangements where the interposed entity is resident in a country with which Australia has a DTA providing for a reduced rate of withholding where the ultimate parent is resident in a country with which Australia has no DTA or a DTA that does not provide a reduced withholding rate. The ATO's scrutiny will extend to these arrangements even where the interposed entity has significant operations and employees in the interposed jurisdiction.

The Alert notes that arrangements may be subject to the operation of the anti-avoidance rules provided under Australia's DTAs (including the Principal Purposes Test contained either in some of Australia's DTAs themselves or in Article 7(1) of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) or a Main Purposes Test contained under the applicable royalty and dividend articles in a number of Australia's DTAs) or Australia's general anti-avoidance rules and/or diverted profits tax.

The Alert is not directed at arrangements which facilitate bona fide investment into Australia that obtain treaty benefits in a manner consistent with the object and purpose for which the benefit is intended to be conferred.

The ATO is likely to make detailed enquiries and requests for information in relation to any possible treaty shopping arrangements that it identifies.

## Extended transitional compliance approach for corporate residency

The ATO has updated [Practical Compliance Guideline PCG 2018/9](#) which deals with identifying the central management and control of a foreign incorporated company for residency purposes. The update has extended the transitional compliance approach provided to companies that are taking active and timely steps to change their governance arrangements under which the ATO will not allocate compliance resources to those companies to disturb their foreign residency status. This compliance approach has been extended to 31 December 2022 for taxpayers.

## MLI synthesised texts updated

The ATO has updated the synthesised texts of Australia's tax treaties with [Belgium](#) and the [United Kingdom](#) as modified by the MLI. The update follows agreement between Australia and these jurisdictions in relation to unresolved disputes. The synthesised text of the tax treaty with [Malaysia](#) as modified by the MLI has been updated to reflect consultation between the competent authorities of Australia and Malaysia.

## Update on tax issues for G20 Finance Ministers and Central Bank Governors meeting

In the [Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors](#) for the July 2022 meeting an update was provided on the progress of the two-pillar solution to address tax challenges arising from the digitalisation of the economy, updates on Organisation for Economic Cooperation and Development (OECD) projects including tax transparency and the implementation of the Base Erosion and Profit Shifting (BEPS) project. In addition, the Inclusive Forum on Carbon Mitigation Approaches was launched.

It was reported that significant progress has been made on all aspects of the two-pillar solution work, with the Pillar Two global minimum tax rules now out and ready for countries' implementation, and key Pillar One rules have been released for public consultation as agreed by the OECD/G20 Inclusive Framework on BEPS to inform the work and optimise the possibility to have the Multilateral

Convention needed for its implementation enter into force (see also update below). Progress continues on the implementation of the BEPS package actions to ensure all members of the Inclusive Framework can participate meaningfully in this work. New steps have been taken on monitoring the implementation of the automatic exchange of information, and there are fewer jurisdictions failing to implement tax transparency standards.

## Update on Pillar One

The OECD has published a [Progress Report on Amount A](#) of Pillar One of the two-pillar solution to address tax challenges arising from the digitalisation of the economy. The report outlines the technical work completed to date with a consolidated version of the Amount A operative provisions through model domestic rules. The report does not include rules relating to administration of Amount A or the tax certainty framework which are expected to be released before October 2022.

Under a revised timeline, the new multilateral convention to implement Pillar One is due to be finalised by mid-2023 for entry into force in 2024.

Submissions in response to the Progress Report are due by 19 August 2022.

Refer to PwC's [Tax Policy Bulletin](#) for more information.

## Update on International Compliance Assurance Program

The International Compliance Assurance Program (ICAP) is a voluntary program that uses country by country reporting as well as other information to facilitate multilateral engagements between multinational groups and tax administrations to promote tax certainty and assurance. Australia is a participating country in this program.

The OECD has [advised](#) that multinational groups that wish to join the ICAP should contact the tax administration in their ultimate parent entity's jurisdiction before 30 September 2022. Relevant contact details for each jurisdiction as well as a series of frequently asked questions are available on the OECD website.

## Other OECD reports

The OECD has published the following reports which address global taxation issues:

- [Revenue Statistics in Asia and the Pacific 2022](#) that compiles tax revenue and non-tax revenue statistics for countries in the Asia Pacific region with a special feature on strengthening tax revenues in developing Asia.



- [Housing Taxation in OECD Countries](#) that provides a comparison of housing tax policies in OECD countries, assessing their efficiency, equity and revenue effects and identifies options to reform these taxes.

## Customs decision remitted back to AAT

The Full Federal Court has held in [Comptroller-General of Customs v Alstom Transport Australia Pty Ltd \[2022\] FCAFC 109](#) that the Administrative Appeals Tribunal (AAT) had not made the necessary findings of fact to determine there were no substitutable goods for driverless trains in Australia when considering the taxpayer's application for a customs tariff concession order (TCO). As a result, the decision was remitted back to the AAT.

## New import duty concessions

The Comptroller-General of Customs has enacted by-laws to prescribe the following goods permanently free from import duty from 1 July 2022:

- Primary receptacle for medication, vaccines and other goods used in the prevention or treatment of COVID-19 in [Customs By-law No 2200084](#).

- Active ingredients for the manufacture of medicines and vaccines used for the prevention or treatment of COVID-19 in [Customs By-law No 2200083](#).
- Protective equipment capable of limiting the transmission of pathogens or viruses in [Customs By-law No 2200082](#).

In addition, the following notices of intention have been made to remove tariffs on the following imports:

- goods manufactured or produced in the [Ukraine](#) to Australia with effect from 4 July 2022 for a period of 12 months. Excise-equivalent duties as applicable to fuels, alcohol and tobacco products will remain
- [new electric cars](#) (i.e. battery electric cars, hydrogen fuel cell electric cars, and hybrid electric cars that are capable of being charged by plugging into an external source of power) that have a customs value below the [fuel-efficient car limit](#) (currently AUD 84,916), with effect from 1 July 2022. This gives effect to the new Government's election commitment.

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# Personal Tax Update

## ATO warnings and tips this tax time

The Australian Taxation Office (ATO) has put taxpayers [on notice](#) that it will be focusing on income and tax deductions from rental properties as one of the four key areas that it is reviewing this tax

time. A random enquiry program instituted by the ATO has found that 9 out of 10 income tax returns reporting rental income and deductions contained at least one error. The key errors found by the ATO include the following issues:

- Not including all rental income, including from short term rentals, renting part of a home,



insurance payouts and bond money retained in line with the owner's ownership interest

- Not getting expenses right, including not claiming deductions for items that need to be depreciated over a number of years, not deducting interest on loans for private expenses and ensuring only expenses related to earning rental income are claimed
- Not calculating the cost base of a property correctly when determining any capital gain or loss made during the year and ensuring that vendor obtains a clearance certificate to avoid foreign resident capital gains tax withholding, and
- Not retaining records of all rental expenses and income for at least five years from the disposal of the property or lodgement of the tax return (whichever comes later).

## 2022-23 cents per kilometre rate

The ATO has finalised a [legislative determination](#) stating that the cents per kilometre rate for calculating work-related motor vehicle expenses will be set at 78 cents per kilometre for the 2022-23 income year.

## Checking superannuation contribution limits

The ATO [updated](#) its systems to enable individuals to view and manage their non-concessional superannuation contributions using ATO online services accessed via myGov. The non-concessional contribution information displays:

- the remaining cap amount for the financial year
- whether the member is close to exceeding the cap for the financial year
- if the member has exceeded the cap, it shows the amount by using clear labels and coloured indicators.

The concessional contributions and unused concessional contribution information display has also been enhanced.

Monitoring superannuation contributions during the year is important so as to ensure that the applicable contribution cap limits are not exceeded.

## Work expenses guidance

The ATO has updated its [guidance on work expenses](#) available on its website to take into account updates that occurred during the 2021-22 income year, including to the deductibility of COVID-19 tests, travel and accommodation expenses and protective equipment from COVID-19.

## AAT finds payments following relationship breakdown assessable

The Administrative Appeals Tribunal (AAT) has held in [GQRW v Commissioner of Taxation \[2022\] AATA 1779](#) that payments made to the taxpayer following a relationship breakdown were assessable as ordinary income having regard to the arrangements. In the absence of a spousal maintenance order made under the *Family Law Act 1975* (Cth) or other relevant law, whether the taxpayer's spouse had also paid tax on the payments is not relevant to whether or not the receipt of the payments also constituted income in the hands of the taxpayer. In such circumstances, the payments were found to have been made in relation to the taxpayer's share of the royalties paid by a unit trust in relation to the families' share of those royalties. The taxpayer had contended that the payments followed an oral agreement as a result of a matrimonial breakdown.

## SA return to work payments not-assessable

The ATO has published [guidance](#) on lump sum payments received under the *South Australian Return to Work Act 2014* to a taxpayer who has been incapacitated due to a workplace injury and are able to return to work. According to the guidance, retraining allowances, redemption payments for liabilities associated with medical services and lump sum payments for permanent impairments (for both economic and non-economic loss) are not taxable.

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# State Taxes Update

## NSW Budget measures now law

The [State Revenue Legislation Amendment Bill 2022](#) has passed the New South Wales (NSW) Parliament and is now law. The Bill enacts a number of measures announced in the 2022-23 NSW Budget. The amendments made by this Bill include:

- an increase in foreign surcharge land tax on residential land owned by foreign persons from two per cent to four per cent of the taxable value of the residential land applicable from 31 December 2022
- changes to betting tax and point of consumption tax, and
- changes to the calculation of the annual payment to the racing industry from two per cent or taxable net NSW wagering revenue to 33 per cent of point of consumption tax.

## QLD Budget measures now law

The [Revenue Legislation Amendment Bill 2022](#) has passed the Queensland (Qld) Parliament and is now law, giving effect to miscellaneous QLD tax measures and some announcements from the Qld 2022-23 State Budget. The duties and land tax measures included in this Bill are:

- three new additional royalty rate tiers for the purposes of calculating coal royalties, with the following tiers applicable from 1 July 2022:
  - 20 per cent on that part of the average price per tonne that exceeds AUD 175 and is less than AUD 225
  - 30 per cent on that part of the average price per tonne that exceeds AUD 225 but is less than AUD 300, and
  - 40 per cent on that part of the average price per tonne that exceeds AUD 300
- an exemption from additional foreign acquirer duty for retirement visa holders purchasing a principal place of residence from 1 January 2023
- a change in how land tax is calculated for individuals and entities that hold freehold land outside of Qld (as announced in the 2021-22 Budget Update Mid-Year Fiscal and Economic Review) from 1 July 2023 such that the taxable value of interstate land holdings will be aggregated with properties held in Qld to determine the applicable land tax rate for the Qld properties (refer also to this [information](#) about this new land tax change)

- retrospective exemption from transfer duty and vehicle registration duty for certain transactions relating to particular small business restructures from 7 September 2020 or 28 June 2021 to legislate an existing administrative arrangement, and
- a retrospective exemption from transfer duty to certain dutiable transactions involving the vesting of dutiable property under the *Succession Act 1981* from 3 April 2017 and the *Aboriginal and Torres Strait Islander Land Holding Act 2013* from 6 August 2019 to legislate an existing administrative arrangement.

Following the passage of the legislation, as the administrative arrangements they contained have now been legislated, the Queensland Revenue Office has withdrawn the following rulings:

- [Public Ruling DA124.2](#) relating to an exemption from dutiable transactions for deceased estates, and
- [Public Ruling DA000.16.2](#) relating to an exemption from transfer duty and vehicle registration duty for certain small business restructures.

## NT Budget measures now law

The [Revenue Legislation Amendment and Repeal Bill 2022](#), which contains measures from the 2022-23 Northern Territory (NT) Budget has passed Parliament and is now law. The Bill includes the following:

- the repeal of the property activation levy with effect from 1 July 2022
- index monetary units, penalty units and revenue units
- provide a new stamp duty exemption for the purchase of newly built homes by eligible individuals from 1 July 2022, and
- provide a new stamp duty concession of up to AUD 1,500 for certificates of registration for electric vehicles.

The Northern Territory Revenue Office has made updated [guidance](#) and [forms](#) available on its website to applicants for the stamp duty exemption for single-contract house and land packages. Other guidance on the meaning of '[principal place of residence](#)', '[new home](#)' and '[home](#)' have also been updated to take into account the new exemption.

## NSW: Updated guidance on penalties and interest

Revenue New South Wales has published [practice note CPN 024](#) that explains the approach Revenue NSW takes to the application of penalties and interest and where these may be remitted. The practice note follows the introduction of new penalty provisions for tax avoidance schemes that cover all NSW taxes.

Where a tax default occurs, a liability to pay interest on the default amount arises, composed of a market rate component (adjusted in line with 90-day Bank Accepted Bill Rate published by the Reserve Bank of Australia) and a premium component of eight per cent per annum. The Chief Commissioner of State Revenue remit either or both of these interest components having regard to whether the default arose from circumstances outside of the control of the taxpayer, whether the taxpayer took reasonable care or whether there was intentional disregard of a taxation law. Requests for remission of interest should be made to the Chief Commissioner in writing who will assess all facts and circumstances affecting the tax default before deciding to either remit any or all of the interest.

Penalty tax may also be imposed on tax defaults, at the amount of 25 per cent of the unpaid tax or 50 per cent where the taxpayer is a significant global entity. This penalty can be increased to up to 90 per cent of the tax default depending on various factors such as whether the taxpayer attempted to conceal the default or hindered the Chief Commissioner in his investigation.

## Tasmanian land tax ruling on surcharge for NZ citizens

The Tasmanian State Revenue Office has issued [Revenue Ruling PUB-LT-2022-2](#) that indicates that the new foreign investor land tax surcharge will not apply to certain New Zealand (NZ) citizens that ordinarily work and live in Australia. In particular, although a NZ citizen would ordinarily be considered to have become a foreign person for the purposes of the surcharge land tax imposed by the *Land Tax Act 2000* (Tas) in circumstances where they temporarily leave Australia, the Commissioner has determined that they will be taken not to be a foreign person in the following circumstances:

- the owner is a natural person
- the person is a citizen of New Zealand and held a Special Category visa (subclass 444) at all material times
- the person's principal residence was in Australia on 1 July of the relevant year; and

- on 1 July of the relevant financial year, the person was temporarily outside of Australia for a period of three months or less.

## Updates to WA duties rulings

The Western Australian Department of Finance has updated the following public guidance on certain aspects of WA duty, with effect from 1 July 2022:

- [Ruling DA 25 – When two or more transactions are taken to form, evidence, give effect to or arise from substantially one arrangement for duties purposes](#)
- [Commissioner's practice DA 29 – Duty on the distribution of a deceased estate](#)
- [Commissioner's practice DA 30 – How the first home owner rate of duty is calculated if an eligible person and an excluded person buy vacant land to subdivide, and](#)
- [Commissioner's practice DA 42 Value of a transaction that involves mining tenements or the unencumbered value of mining tenements held by a landholder.](#)

## ACT thresholds for 2022-23 year

The following legislative instruments have been made to give effect to a number of changes to duties, home buyer assistance and land rents thresholds and eligibility criteria in the Australian Capital Territory (ACT) with effect from 1 July 2022:

- [Taxation Administration \(Amounts payable – Duty\) Determination 2022 \(DI 2022-155\)](#) that determines the differential rates of duty, or the method by which an amount of duty is payable for different types of dutiable transactions
- [Duties \(Deferred payment of duty – Eligible property\) Determination 2022 \(DI 2022-156\)](#) that increases the price threshold to AUD 1 million (previously AUD 750,000) for eligibility for a first home owner grant or who would be eligible to defer duty if they would have otherwise been eligible for the first home owner grant apart from the person's home not being a new home
- [Taxation Administration \(Amounts payable – Home Buyer Concession Scheme\) Determination 2022 \(DI 2022-157\)](#) increases the base income threshold under the Home Buyers Concession Scheme to AUD 170,000 (previously AUD 160,000) and determines other eligibility requirements
- [Taxation Administration \(Amounts Payable – Pensioner Duty Concession Scheme\) Determination 2022 \(DI 2022-158\)](#) prescribes eligibility requirements and the calculation method for the Pension Duty Concession Scheme

- [Disability Duty Concession Scheme – Sets the amounts payable and eligibility criteria for the scheme \(DI 2022-159\)](#) increases the property price threshold for the ACT Disability Duty Concession Scheme to AUD 1 million (previously AUD 750,000) and determines other eligibility requirements, and
- [Taxation Administration \(Amounts Payable— Land Rent\) Determination 2022 \(DI 2022-154\)](#) determines the standard percentage of 4 per cent and discount percentage of 2 per cent for the purposes of annual Land Rent applicable to certain residential leases, as well as income threshold amounts.

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## Superannuation Update

### Review of Your Future, Your Super measures

The Government has [announced](#) that the Treasury will conduct a review of the *Your Future, Your Super* superannuation reforms following the second round of performance tests due to be completed in August 2022. The review will focus on whether the reforms have resulted in any significant unintended consequences by discouraging investment decisions or certain infrastructure investments as well as concerns relating to the regulatory complexity of best financial interest duty requirements. The Government will also pause the extension of the performance tests to products other than MySuper products for a period of 12 months while the review and any subsequent consultation occurs.

### Consultation on faith-based super products

An election commitment of the new Government was to allow the Australian Prudential Regulation Authority (APRA) to consider the religious affiliation of a super fund when applying the annual performance test. To progress this proposal, Treasury has released [exposure draft legislation](#) for consultation that proposes amendments to the *Your Future, Your Super* annual performance test focusing on how faith-based superannuation

products are treated. The draft amendments seeks to:

- require trustees to apply to APRA for faith-based product status;
- subject faith-based products to a supplementary test that considers their faith-based investment strategy, if they fail the original test; and
- exempt faith-based products from the consequences of failure if they pass the supplementary test.

Comments on the draft legislation may be made until 16 August 2022.

### Minimum super drawdown requirements

A reminder that the superannuation minimum drawdown requirements for pensions and annuities remain reduced by 50 per cent for the current 2022-23 financial year. Superannuation and annuity providers calculate the minimum annual payment required as at 1 July each year, based on the account balance of the member or annuitant. The 50 per cent reduction will apply to this calculated minimum annual payment that is made to members' account-based pensions and annuities, allocated pensions and annuities and market-linked pensions and annuities. [Click here](#) to see a summary of the required minimum drawdowns.

There is no maximum amount which must be paid unless it is a transition to retirement pension.



## FAQs on superannuation data transformation

The Australian Prudential Regulation Authority (APRA) has published additional [frequently asked questions](#) (FAQ) for registrable superannuation entity licensees for reporting standards under the Superannuation Data Transformation.

## Reminder that COVID-19 relief for SMSFs has expired

The Australian Taxation Office (ATO) has [published](#) a reminder that relief provided to self-managed superannuation funds (SMSFs) as a result of COVID-19 expired from 30 June 2022 and that SMSF trustees are now expected to comply with obligations previously covered by the relief. The relief that has now expired related to residency, rental waivers and deferrals, loan repayment relief and in-house asset relief.

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## Legislative Update

The new Federal Parliament resumed sittings on 26 July 2022 following the election of the Australian Labor Party Government.

The following tax-related Bills were introduced into Parliament:

- the [Treasury Laws Amendment \(2022 Measures No 1\) Bill 2022](#), which was introduced into the House of Representatives on 27 July 2022, proposes a number of amendments that were included in previously lapsed Bills:
  - provide further support for small businesses and primary producers impacted by Cyclone Seroja by making associated grants made under Category C of the Disaster Recovery Funding Arrangements 2018 non-assessable and non-exempt income
  - provide income tax and withholding tax exemptions for FIFA and its wholly owned subsidiary
  - FWWC2023 Pty Ltd for activities associated with delivering the 2023 FIFA Women's World Cup, with effect from 1 July 2020 to 31 December 2028 inclusive

- make minor and technical amendments to various legislation including the Fringe Benefits Tax Assessment (FBT) to address unintended consequences and restore access to FBT exemptions for certain tax exempt not-for-profit societies and associations inadvertently excluded and prevent overlap between employees covered by the \$30,000 exemption cap and those covered by \$17,000 exemption cap
- delay commencement of the Modernising Business Registers program to 1 July 2026, or an earlier date specified by proclamation.
- the [Treasury Laws Amendment \(Electric Car Discount\) Bill 2022](#), which was introduced into the House of Representatives on 27 July 2022, proposes to amend the FBT law to exempt from fringe benefits tax cars that are zero or low emissions vehicles that are first held and used on or after 1 July 2022.

Since our last update, the following tax and superannuation measures have been registered as legislative instruments:

- the [Income Tax \(Effective Life of Depreciating Assets\) Amendment Determination \(No 1\) 2022](#) that updates the effective lives of depreciating assets prescribed by the Commissioner of Taxation

- the [Australian Prudential Regulation Authority Supervisory Levies Determination 2022](#) to set the superannuation supervisory levy and the retirement savings account providers supervisory levy for the 2022-23 financial year
- the [Foreign Acquisitions and Takeovers Fees Imposition Amendment \(Fee Doubling\) Regulations 2022](#) to increase the amount of fees paid by foreign persons for the review of foreign investment applications under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) from 29 July 2022
- the [Taxation Administration Withholding Schedules 2022](#) Instrument that specifies the amounts required to be withheld as well as procedures for withholding under the Pay As You Go Withholding system from 1 July 2022, and
- the following Customs By-laws that exempt certain items from import duty:
  - [Customs By-law No 2200082](#) that makes a previous concession for imports of protective equipment capable of limiting the transmission of pathogens or viruses permanent
  - [Customs By-law No 2200083](#) on active ingredients for the manufacture of medicines and vaccines used for the prevention or treatment of COVID-19, and
  - [Customs By-law No 2200084](#) on primary receptacle for medication, vaccines and other goods used in the prevention or treatment of COVID-19

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## Other News

### Further information on ALP policies

In the Parliamentary Budget Office (PBO) [report on the budget impacts of election commitments](#) made by political parties, further information was found in relation to the Australian Labor Party's (ALP's) tax policies in the context of assumptions made by the PBO in its costings. In addition to the multinational tax policies (see Global tax and trade section in this update), further information is provided in relation to the following tax administration issues:

- a proposal (not previously announced) to [increase the value of a penalty unit](#) which is used for purposes of determining many tax penalties from the current AUD 222 per unit to AUD 275 per unit from 1 July 2022. If implemented, this would mean the maximum penalty for late

lodgment of returns with the ATO for a significant global entity (SGE) would increase from AUD 555,000 to AUD 687,500.

- additional information about the [expected ATO funding and additional revenue](#) collections over the 2022-23 forward estimates period comprising on a fiscal balance basis, an increase in tax revenue of around AUD 6.97 billion, partially offset by an increase in funded ATO departmental expenses of around AUD 1.37 billion and an increase in GST payments of around AUD 0.44 billion.

### New effective lives ruling

The Australian Taxation Office (ATO) has issued the following in relation to the determination of the effective lives of depreciating assets from 1 July 2022:

- [Taxation Ruling TR 2022/1](#) that explains the methodology used by the Commissioner of Taxation to make a determination of the effective life of depreciating assets as well as sets out the determined effective lives of a wide range of depreciating assets, and
- the [Income Tax \(Effective Life of Depreciating Assets\) Amendment Determination \(No 1\) 2022](#) that updates the effective lives of depreciating assets prescribed by the Commissioner. The determination provides effective lives for electric bicycles, electric scooters and plastic safety screens, and effective lives of new depreciating assets for casino operations, clothing manufacturing, salt manufacturing and refining and wooden furniture industries.

## LPP protocol finalised

The ATO has finalised its [legal professional privilege \(LPP\) protocol](#) to assist taxpayers with making LPP claims following formal requests for documents by the ATO.

The protocol steps through the ATO's recommended approach to making LPP claims and the level of information to provide to minimise the risk of taxpayer LPP claims being challenged. It states that in many cases the ATO will accept an LPP claim where the protocol has been followed. Where the protocol is not followed, the ATO states that taxpayers can expect further enquiries in relation to the claim.

## CGT improvement threshold

The Commissioner of Taxation has [determined](#) the capital gains tax (CGT) improvement threshold, used to determine when a capital improvement to a pre-CGT asset is a separate asset and when a CGT rollover may be available for a capital improvement. The threshold has been set at AUD 162,899 for the 2022-23 income year.

## Proceeds of sale paid out of company profits

The Administrative Appeals Tribunal (AAT) has held in [Douglas v Commissioner of Taxation \[2022\] AATA 2056](#) that a special dividend by BHP Group Ltd, paid out of the proceeds of the sale of oil and gas assets, was assessable to the taxpayer as ordinary income on the basis it was a dividend paid out of profits.

In the case, BHP had conducted a sale of its oil and gas assets located in the United States and used the proceeds to conduct an off-market share buyback and fund a special dividend. The taxpayer initially returned the special dividend and related franking credit in his income tax return as assessable income, but later lodged an amendment request stating that the dividend was properly characterised as a return of capital. The taxpayer contended that the special dividend was a bonus

dividend of capital paid by BHP and that his BHP shares were exempt from CGT as they were purchased before 1985. The Commissioner contended that the sale of the assets was a CGT event for BHP with the special dividend being assessable as a dividend paid out of the profits of BHP. The AAT agreed with the Commissioner's arguments, finding that no CGT event had occurred for the taxpayer and that the dividend was assessable by virtue of being paid out of the retained earnings of BHP.

## ACNC releases draft guidance

The Australian Charities and Not-for-profits Commissioner (ACNC) has [released](#) draft interpretation statements on the meaning of public benevolent institution and health promotion charity, relevant to whether a charity is eligible to be a deductible gift recipient (DGR) or exempt from fringe benefits tax (FBT). The proposed guidance on public benevolent institutions incorporates additional guidance on a charity's 'main purpose' following a recent Administrative Appeals Tribunal decision and incorporates separate guidance on a Federal Court decision which the ACNC proposes to withdraw. The proposed guidance relating to health promotion charities primarily includes updates to the meaning of 'diseases'.

Comments on the draft guidance must be submitted by 30 August 2022.

## ACNC regulations to be remade

Treasury has [released](#) for comment exposure draft regulations that propose to remake the [Australian Charities and Not-for-profits Commission Regulation 2013](#), scheduled to sunset on 1 April 2012. The exposure draft regulations contain minimal changes to the existing regulation with updates for clarity and to remove provisions that are no longer applicable. Comments can be made by 15 August 2022.

## ATO resuming debt recovery activities

The ATO has [indicated](#) that it has started sending new correspondence to taxpayers including information on outstanding lodgment and payment obligations. This correspondence follows a move to a 'new normal' where the ATO will commence stronger actions against taxpayers that do not comply with their obligations, following scaled back activities during COVID-19 and recent natural disasters.

## AAT decision on cash flow boost

The Administrative Appeals Tribunal (AAT) has held in [Thiele v Commissioner of Taxation \[2022\] AATA 2123](#) that a taxpayer who had conducted a business in a partnership and subsequently took over the

business as a sole trader was not eligible for the cash flow boost stimulus measure.

The taxpayer had conducted a business in partnership with another individual until 1 February 2020 at which time the taxpayer purchased the other partner's interest. The taxpayer then subsequently applied for the cash flow boost stimulus measure, which was rejected by the Commissioner on the basis that the taxpayer was not the same entity as the partnership and therefore did not have an amount included in his assessable income for the 2018-19 income year in relation to carrying on a business.

The Tribunal found that the "assessable income" referred to in the definition of "net income" in s90 of the Income Tax Assessment Act 1997 is expressly stated to be assessable income of the partnership and it is not assessable income of the individual partners. As such it is the partners' shares of the net income of the partnership that is treated as assessable income of the partners. Since the partnership had realised a net loss so that no assessable income was included in the taxpayer's return from the business for the 2018-19 year, the taxpayer did not meet the eligibility requirements to access the cash flow boost.

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