



# PwC's Monthly Tax Update

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

December 2022



[www.pwc.com.au](http://www.pwc.com.au)

# Corporate Tax Update

## Draft law to improve the integrity of off-market share buy-backs

To give effect to one of the Government's 2022–23 Federal Budget proposals, [exposure draft legislation](#) has been released which seeks to align the tax treatment of off-market share buy-backs undertaken by listed public companies with the on-market share buy-back tax treatment. Specifically, under the proposal, where a listed company undertakes an off-market buy-back of either a share or non-share equity interest, no portion of the purchase price allocated will be taken to be a dividend.

An integrity measure is included to treat distributions by a listed public company that are "consideration for" the cancellation of a membership interest as part of a selective reduction of capital as an unfrankable distribution. Read more in our [Tax Alert](#).

Comments on the draft legislation should be submitted by 9 December 2022.

## Corporate tax transparency report

The ATO has released its [corporate tax transparency report](#) for the 2020–21 income year which contains the name, Australian Business Number (ABN), total income, taxable income and tax payable for:

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

It also contains the name, ABN and tax payable for entities that had a petroleum resource rent tax (PRRT) payable amount for the 2020–21 income year.

It was reported that despite the pandemic, Australia's large corporate taxpayers generally performed well and paid a combined \$68.6 billion in income tax – representing a 19.8 per cent increase on the income tax in the prior year. Higher commodity prices were the key driver of the increase in corporate tax payments.

It should be noted that for Australian-owned resident private companies the reporting threshold decreases to \$100 million with effect from the 202223 income year (which will be reported in 2024 and onwards).

## R&D tax incentive for activities conducted overseas denied

The Administrative Appeals Tribunal (AAT) has held in [T.D.S Biz Pty Ltd and Commissioner of Taxation \(Taxation\) \[2022\] AATA 3543](#) that the taxpayer was not entitled to the research and development (R&D) tax incentive for supporting R&D activities conducted overseas.

The AAT affirmed the decision that the supporting R&D activities were not the mere supply of components. Since the activities were predominantly conducted overseas and there was no overseas finding, the applicant's supporting R&D activities are not covered by paragraphs 355–210(1)(d) or 355–210(1)(e) of the *Income Tax Assessment Act 1997* (ITAA 1997). Accordingly, there were no notional deductions under section 355–205 of the ITAA 1997 arising from the expenditure on the supporting R&D activities and no entitlement to a tax offset.

## Let's talk

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

### Chris Morris

Sydney  
Australian Tax Leader  
+61 (2) 8266 3040  
[chris.morris@pwc.com](mailto:chris.morris@pwc.com)

### Michael Bona

Brisbane  
Global Tax Leader  
+61 (7) 3257 5015  
[michael.bona@pwc.com](mailto:michael.bona@pwc.com)

### Warren Dick

Sydney  
Tax Reporting & Strategy Leader  
+61 (2) 8266 2935  
[warren.dick@pwc.com](mailto:warren.dick@pwc.com)

### Trinh Hua

Sydney  
Tax Market Leader  
+61 (2) 8266 3045  
[trinh.hua@pwc.com](mailto:trinh.hua@pwc.com)

### James O'Reilly

Brisbane  
Tax Leader  
+61 (7) 3257 8057  
[james.oreilly@pwc.com](mailto:james.oreilly@pwc.com)

### Jason Karametos

Melbourne  
Industries Tax Leader  
+61 (3) 8603 6233  
[jason.karametos@pwc.com](mailto:jason.karametos@pwc.com)

### Kirsten Arblaster

Melbourne  
Tax Leader  
+61 (3) 8603 6120  
[kirsten.arblaster@pwc.com](mailto:kirsten.arblaster@pwc.com)

### Rob Bentley

Perth  
Tax Leader  
+61 (8) 9238 5202  
[robert.k.bentley@pwc.com](mailto:robert.k.bentley@pwc.com)

### Alistair Hutson

Adelaide  
Partner  
+61 (8) 8218 7467  
[alistair.hutson@pwc.com](mailto:alistair.hutson@pwc.com)

### Sarah Hickey

Sydney  
Financial Services Tax Leader  
+61 (2) 8266  
[sarah.a.hickey@pwc.com](mailto:sarah.a.hickey@pwc.com)

### Amy Etherton

Newcastle  
Partner  
+61 (2) 4925 1175  
[amy.etherton@pwc.com](mailto:amy.etherton@pwc.com)

### Sophia Varelas

Melbourne  
National Leader, R&D and Government Incentives  
+61 417 208 230  
[sophia.varelas@pwc.com](mailto:sophia.varelas@pwc.com)

# Employment Taxes Update

## Electric vehicles to be exempt from FBT

The legislation ([Treasury Laws Amendment \(Electric Car Discount\) Bill 2022](#)) to give effect to the Fringe Benefits Tax (FBT) exemption for the use, or availability for use, of certain cars has now completed its passage through Parliament. Amendments were made to the Bill during its passage which provide that the exemption for petrol-based plug-in hybrids will end on 1 April 2025, and that a review of the amendments relating to the exemption for FBT and customs purposes must be undertaken within three years.

## NSW payroll tax – Entities entitled to de-group: Chief Commissioner's appeal dismissed

The New South Wales (NSW) Court of Appeal in the case [Chief Commissioner of State Revenue v Elanor Operations Pty Ltd \[2022\] NSWCA 222](#) has dismissed the Chief Commissioner's [appeal](#) against Elanor Operations regarding payroll tax de-grouping. The Court held that the respondent, which was composed of 16 companies, was entitled to de-group from payroll tax in NSW because their businesses were carried on independently of each other.

The respondent originally applied to the Chief Commissioner for an exemption from payroll tax grouping provisions pursuant to section 79 of the *Payroll Tax Act* (NSW), wherein the Commissioner has the discretion to exclude group members from being captured as such. The respondent contended that the companies should not be regarded as a single payroll tax group but rather fall within five sub-groups, for the purposes of the payroll tax assessment.

The application was denied by the Commissioner who declined to exercise their discretion to de-group the entities as per section 79 of the *Payroll Tax Act*. Following which, the respondent applied to the Supreme Court for a review of the

Commissioner's decision, which was granted by the primary Judge wherein her Honour revoked the decision made by the Chief Commissioner and remitted two of the respondents payroll tax assessments back to the Chief Commissioner for redetermination. Subsequently, the Chief Commissioner appealed the decision to the Court of Appeal, contending that the primary Judge had erred on four grounds.

For further analysis in relation to the original decision of the Supreme Court please refer to our [April 2022 Monthly Tax Update](#).

## Proposed amendment to Taxation Ruling in respect of FBT and car parking benefits

In light of the decision handed down in [FC of T v Virgin Australia Regional Airlines Pty Ltd & Anor \[2021\] FCAFC 209](#), the Australian Taxation Office (ATO) is proposing to amend Taxation Ruling [TR 2021/2](#). This ruling sets out when the provision of car parking is a car parking benefit for the purposes of the *Fringe Benefits Tax Assessment Act* 1986. The proposed change to the Ruling is aimed at addressing the concept of 'primary place of employment'. Submissions regarding the proposed update are currently being accepted until 2 December 2022.

## ATO focus on Superannuation Guarantee Compliance

The ATO has released the [Australian Tax Office Annual Report 2021–22](#), which sets out the details regarding their overall performance for the period and upcoming focus areas.

The Report notes that one of the ATO's key focus areas for the 2022-23 financial year is expanding the use of Single Touch Payroll 2 (STP2) data to simplify employer obligations and address superannuation guarantee non-compliance.

## Let's talk

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

**Norah Seddon**  
Sydney  
Partner  
+61 (2) 8266 5864  
[norah.seddon@pwc.com](mailto:norah.seddon@pwc.com)

**Adam Nicholas**  
Sydney  
Partner  
+61 (2) 8266 8172  
[adam.nicholas@pwc.com](mailto:adam.nicholas@pwc.com)

**Greg Kent**  
Melbourne  
Partner  
+61 (3) 8603 3149  
[greg.kent@pwc.com](mailto:greg.kent@pwc.com)

**Anne Bailey**  
Melbourne  
Partner  
+61 (3) 8603 6818  
[anne.m.bailey@pwc.com](mailto:anne.m.bailey@pwc.com)

**Paula Shannon**  
Brisbane  
Partner  
+61 (7) 3257 5751  
[paula.shannon@pwc.com](mailto:paula.shannon@pwc.com)



# Global Tax and Trade Update

## Consultation to expand the Australian tax treaty network

Treasury is seeking [comments](#) on the Government's [proposed expansion of the Australian tax treaty network](#) which includes a plan for negotiations with Bulgaria, Colombia, Croatia, Cyprus, Estonia, Latvia and Lithuania. Submissions are sought by 23 December 2022 on the key outcomes Australia should seek in negotiating these tax treaties and any other issues related to Australia's tax treaty network

These countries are in addition to the current treaty negotiation program which includes Portugal, Slovenia, Greece, Luxembourg.

## ATO simplified transfer pricing guidance

The Australian Taxation Office (ATO) has updated its [Practical Compliance Guideline PCG 2017/2](#) on the simplified transfer pricing record-keeping options available for the 2022–23 income year. Specifically, the update provides a maximum interest rate for low-level inbound loans and minimum for outbound loans of 5.65 per cent. Where a qualifying taxpayer applies one or more of the options in the Guideline, the ATO will generally not allocate compliance resources to review the covered transactions or arrangements specified in that option for transfer pricing purposes, beyond reviewing eligibility to use the option applied.

## Update on tax accounting and Pillar Two

The IFRS has issued a [paper](#) for the meeting of the International Accounting Standards Board (IASB) on 22–24 November 2022, which discusses the potential implications of the Organisation for Economic Cooperation and Development's (OECD) Pillar Two model rules on the accounting for income taxes. The paper recommends that the IASB amends *IAS 12 Income Taxes* to, among other things, introduce a temporary exception from accounting for deferred taxes arising from the rules (including any qualified domestic minimum top-up tax),

and require an entity to disclose whether it is in the scope of the Pillar Two model rules and whether it operates in low-tax jurisdictions.

## OECD updates on exchange of information

The OECD has [announced](#) that 22 jurisdictions have signed the multilateral competent authority agreement (MCAA) for the automatic exchange of information under the OECD [Model Rules for Reporting by Digital Platforms](#). The agreement will allow jurisdictions to automatically exchange information collected by operators of digital platforms with respect to transactions and income realised by platform sellers in the sharing and gig economy and from the sale of goods through such platforms.

In addition, 15 jurisdictions signed a separate MCAA supporting the [Model Mandatory Disclosure Rules on Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures](#). This agreement will enable the annual automatic exchange of information collected from intermediaries that have identified arrangements to circumvent the Common Reporting Standard (CRS) and structures that disguise the beneficial owners of assets held offshore with the jurisdiction of tax residence of the concerned taxpayers.

## Update to ASEAN-Australia-New Zealand Free Trade Agreement

The Prime Minister joined ASEAN and New Zealand counterparts to [announce](#) the substantial conclusion of negotiations to upgrade the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA). Once implemented, the upgrade will strengthen and improve the trade agreement to ensure it is fit for the future for businesses and trade in the region. The upgraded trade agreement, once in force, will include enhanced provisions on electronic commerce, competition, customs procedures and trade facilitation, trade in goods, rules of origin, trade in services and investment, as well as more opportunities for regional cooperation on issues such as the environment and climate change.

## Let's talk

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

**Chris Morris**  
Sydney

Australian Tax Leader  
+61 (2) 8266 3040  
[chris.morris@pwc.com](mailto:chris.morris@pwc.com)

**Michael Bona**

Brisbane  
Global Tax Leader  
+61 (7) 3257 5015  
[michael.bona@pwc.com](mailto:michael.bona@pwc.com)

**Peter Collins**

Melbourne  
International Tax Leader  
+61 (3) 8603 6247  
[peter.collins@pwc.com](mailto:peter.collins@pwc.com)

**Michael Taylor**

Melbourne  
Partner  
+61 (3) 8603 4091  
[michael.taylor@pwc.com](mailto:michael.taylor@pwc.com)

**Greg Weickhardt**

Melbourne  
Partner  
+61 (3) 8603 2547  
[greg.weickhardt@pwc.com](mailto:greg.weickhardt@pwc.com)

**Nick Houseman**

Sydney  
Australian Transfer Pricing Leader  
+61 (2) 8266 4647  
[nick.p.houseman@pwc.com](mailto:nick.p.houseman@pwc.com)

**Angela Danieletto**

Sydney  
Partner  
+61 (2) 8266 0973  
[angela.danieletto@pwc.com](mailto:angela.danieletto@pwc.com)

**Jayde Thompson**

Sydney  
Partner  
+61 403 678 059  
[jayde.thompson@pwc.com](mailto:jayde.thompson@pwc.com)

**Jonathan Malone**

Sydney  
Partner  
+61 (2) 8266 4770  
[jonathan.r.malone@pwc.com](mailto:jonathan.r.malone@pwc.com)

**Gary Dutton**

Partner  
Australian Trade Leader  
+61 434 182 652  
[gary.dutton@pwc.com](mailto:gary.dutton@pwc.com)

## New Free Trade Agreements

The legislation to give effect domestically to the following free trade agreements has now been enacted:

- [Australia-India Economic Cooperation and Trade Agreement](#) (ECTA)
- [Australia-United Kingdom Free Trade Agreement](#) (A-UKFTA), the first full trade agreement the UK negotiated following Brexit.

These agreements will enter into force 30 days (or another mutually agreed time) after the respective parties have confirmed in writing that they have completed their domestic requirements.

## Draft excise ruling: Remission and refund scheme for alcohol manufacturers

The ATO has issued draft excise ruling [EDR 2022/D2](#) which sets out the Commissioner's view of the meaning of 'legally and economically independent' for the purposes of the 'excise remission scheme for manufacturers of alcoholic beverages' and the 'excise refund scheme for alcohol manufacturers'.

An eligible alcohol manufacturer that is legally and economically independent from 1 July 2021 will be entitled to receive an automatic remission of their excise duty liability up to a maximum of \$350,000 each financial year. An eligible alcohol manufacturer that is legally and economically independent and pays their excise duty prior to 1 July 2021 for goods entered up to 31 May 2021 will be entitled on application to a refund of 60 per cent of the excise duty liability up to a maximum of \$100,000 each financial year.

Comments can be made on the draft ruling, which, when finalised, is proposed to apply to years before and after its issue, by 16 December 2022.



# Indirect Tax Update

## Draft instrument for recipient created tax invoices

A [draft legislative instrument](#) has been made to allow a recipient created tax invoice (RCTI) to be issued in certain specified circumstances for taxable supplies received by a government related entity, large business entity, or business entity recipient that is goods and services tax (GST) registered, rather than the supplier. This instrument, once finalised, replaces 51 existing instruments, and will enable taxpayers to self-assess their eligibility to issue RCTIs more easily and simply.

Comments can be made by  
16 December 2022.

## Indirect Tax Concession Scheme extends to Bhutan

Access to refunds of indirect tax (such as GST, fuel and alcohol taxes) under the Indirect Tax Concession Scheme has been extended to the consular representation of Bhutan under a new [legislative instrument](#). Relevant Australian consular posts overseas will also have access to similar benefits in Bhutan. Similar concessions apply for the benefit of diplomatic missions and accredited staff under a separate [instrument](#). The amendments are taken to have commenced on 8 September 2021.

## No entitlement to input tax credits

In [H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation \(Taxation\) \[2022\] AATA 3561](#), the Administrative Appeals Tribunal (AAT) upheld a decision by the Commissioner of Taxation to disallow input tax credits.

The primary question to be considered by the AAT was whether or not the taxpayer's entitlement to input tax credits claimed in the Business Activity Statement (BAS) lodged on 16 October 2020 for the quarterly tax periods between 1 January 2016 and 30 June 2016 has ceased due to the operation of the four-year time limit prescribed by section 93–5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act).

Since there was no evidence before the Tribunal that any further period to lodge the 31 March 2016 and 30 June 2016 BAS was granted, nor had the taxpayer suggested that this had occurred, the Tribunal found that the operation of section 93–5 of the GST means that if an extension of time to lodge a BAS has not been granted prior to the expiry of four years after the day on which it was required to be given, the entitlement to input tax credits immediately ceases. Consequently, the provision of further time within which to give a BAS cannot be provided retrospectively outside of the relevant four-year period. Accordingly, there is no entitlement to claim the associated input tax credits for those periods.

In addition, the taxpayer's entitlement to input tax credits in relation to the quarterly tax periods between 1 July 2016 and 31 December 2017 was under consideration. The Tribunal finds that a substantial amount of the claims were unsubstantiated by a valid tax invoice as required under section 29–70 of the GST Act and the evidence provided did not provide adequate details to allow the discretion in section 29–70(1B) of the GST Act to be exercised to treat a particular document as a tax invoice.

## Let's talk

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

**Matt Strauch**  
Melbourne  
Indirect Tax Leader  
+61 (3) 8603 6952  
[matthew.strauch@pwc.com](mailto:matthew.strauch@pwc.com)

**Michelle Tremain**  
Perth  
Partner  
+61 (8) 9238 3403  
[michelle.tremain@pwc.com](mailto:michelle.tremain@pwc.com)

**Adrian Abbott**  
Sydney  
Partner  
+61 (2) 8266 5140  
[adrian.abbott@pwc.com](mailto:adrian.abbott@pwc.com)

**Jeff Pfaff**  
Brisbane  
Partner  
+61 (7) 3257 8729  
[jeff.pfaff@pwc.com](mailto:jeff.pfaff@pwc.com)

**Brady Dever**  
Sydney  
Partner  
+61 (2) 8266 3467  
[brady.dever@pwc.com](mailto:brady.dever@pwc.com)

**Mark Simpson**  
Sydney  
Partner  
+61 (2) 8266 2654  
[mark.simpson@pwc.com](mailto:mark.simpson@pwc.com)

**Suzanne Kneen**  
Melbourne  
Partner  
+61 (3) 8603 0165  
[suzanne.kneen@pwc.com](mailto:suzanne.kneen@pwc.com)

**Shagun Thakur**  
Perth  
Partner  
+61 (8) 9238 3059  
[shagun.thakur@pwc.com](mailto:shagun.thakur@pwc.com)

**Andrew Howe**  
Sydney  
Partner  
+61 (4) 1464 1438  
[andrew.s.howe@pwc.com](mailto:andrew.s.howe@pwc.com)

**Mark De Luca**  
Sydney  
Partner  
+61 (2) 8266 2461  
[mark.de.luca@pwc.com](mailto:mark.de.luca@pwc.com)

# Personal Tax Update

## Deduction for additional running costs while working from home

The Australian Taxation Office (ATO) has released draft Practical Compliance Guideline [PCG 2022/D4](#) which sets out the approach that taxpayers who work from home can use from 1 July 2022. Specifically, taxpayers can continue to claim their actual expenses or, alternatively, they can use the revised fixed rate method for calculating the deduction for work-related additional running expenses incurred as a result of working from home.

The revised fixed-rate method apportions the following additional running expenses incurred on a fair and reasonable basis by using a fixed rate of 67c per hour for each hour worked from home during the income year:

- energy expenses (electricity and/or gas) for lighting, heating/cooling and electronic items used while working from home
- internet expenses
- mobile and/or home telephone expenses, and
- stationery and computer consumables.

The Guideline can be relied on to calculate the deduction for additional running expenses using this method if the taxpayer:

- works from home while carrying out employment duties or carrying on your business on or after 1 July 2022
- incurs additional running expenses of the kind outlined above which are ordinarily deductible as a result of working from home, and
- keeps and retains relevant records in respect of the time spent working from home and for the additional running expenses (covered by the rate per hour) incurred.

A separate home office or dedicated work area need not be set aside in the home in order to rely on this Guideline.

The Guideline should be read in conjunction with Taxation Ruling [TR 93/30](#) Income tax: deductions for home office expenses, which explains when working from home expenses are deductible. The previous shortcut method which was outlined in [PCG 2020/3](#) is no longer available for use.

## Ruling on personal services income

The ATO has finalised its guidance on personal services income (PSI) and personal services businesses (PSB). Taxation Ruling [TR 2022/3](#) combines and updates [TR 2001/7](#) and [TR 2001/8](#) (which are both withdrawn with effect from 24 November 2022) without changing the principles which were established in the two earlier rulings.

The ruling explains the meaning of PSI and the effect of the PSI rules, a PSB and the PSB tests along with examples to assist taxpayers in understanding the PSI rules and the PSB tests.

## Residency while working on cruise liners

In the case of [Duff v FC of T \[2022\] AATA 3675](#) the Administrative Appeals Tribunal (AAT) has found that an Australian citizen was an Australian tax resident while working on overseas cruise liners as he did not change his domicile to a place outside of Australia, nor had a permanent place of abode outside of Australia.

The AAT found that there was no evidence from which it could be established that the taxpayer intended to give up his Australian domicile and, instead, become a domicile of Norway. The Tribunal indicated that such an intent cannot be established from the mere fact that he left Australia to work, and for that purpose live, on cruise liners that sailed under the flag of Norway. A finding on that basis alone would not be in conformity with established principles dealing with the determination of a change in domicile and it would not be in conformity with section 10 of *the Domicile Act 1982 (Cth)*. To establish an intent to change domicile, residence in the new country cannot be fixed for a limited period or for a particular

## Let's talk

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

**Martina Crowley**  
Melbourne  
Partner  
+61 (3) 8603 1450  
[martina.crowley@pwc.com](mailto:martina.crowley@pwc.com)

**Glen Frost**  
Sydney  
Partner  
+61 (2) 8266 2266  
[glen.frost@pwc.com](mailto:glen.frost@pwc.com)

**Amy Etherton**  
Newcastle  
Partner  
+61 (2) 4925 1175  
[amy.etherton@pwc.com](mailto:amy.etherton@pwc.com)

**Samantha Vidler**  
Brisbane  
Partner  
+61 (7) 3257 8813  
[samantha.vidler@pwc.com](mailto:samantha.vidler@pwc.com)

**Matt Gurner**  
Perth  
Partner  
+61 (8) 9238 3458  
[matthew.gurner@pwc.com](mailto:matthew.gurner@pwc.com)

**Alistair Hutson**  
Adelaide  
Partner  
+61 (8) 8218 7467  
[alistair.hutson@pwc.com](mailto:alistair.hutson@pwc.com)

purpose and must be general and indefinite in its future contemplation. In this case, there was nothing general and indefinite about his deployment on the cruise liners – his temporary residence on the ships was only ever, by itself, an incidence of employment. It was not indefinite and it could not and did not, by itself, constitute a change of domicile.

In relation to the question of whether the taxpayer had a permanent place of abode outside of Australia, the Tribunal was not satisfied that he had a permanent place of abode outside Australia as it cannot be found that he was permanently living in any country after he left Australia.

### **Overseas earnings was not exempt**

The AAT has held in [Willard v FC of T \[2022\] AATA 3723](#) that the foreign earnings of a member of the Australian Border Force who was seconded to Papua New Guinea (PNG) was not considered exempt income on the basis that it does not satisfy the requirements of section 23AG(1AA)(d) of the *Income Tax Assessment Act 1936* for reason that the taxpayer was not deployed outside Australia as a member of a disciplined force in PNG.

The taxpayer was an employee for the Australia Public Service (APS) and working for the Department of Immigration and Border Protection and was sent to PNG pursuant to the Strongim Gavman Program as a Customs Adviser – Trade Facilitation. The program consisted of Australian official development assistance to PNG in the form of staff in Commonwealth Government Departments being seconded to counterpart PNG organisations to assist in capacity development.

The AAT determined that the AFB was not considered a “disciplined force” which was defined as the Australian Defence Force (ADF), Australian Federal Police (AFP) and the State and Territory police forces. The obligations of AFB officers were of a different character, had a different process of sanction and did not necessarily conform to hierarchical structure. In addition, it was noted that the work performed by the taxpayer in his role as a Customs Adviser was not akin to military and policing in the context of the legislation.

As a result, the AAT determined that the taxpayer did not qualify for the section 23AG exemption.



# State Taxes Update

## NSW First Home Buyer Choice is now law

The legislation to give effect to the New South Wales (NSW) Government's first home buyer choice is now law having received assent on 11 November 2022. Under this measure, first home buyers purchasing properties for up to \$1.5 million have the ability to choose to pay an annual property tax instead of stamp duty.

Eligible first home buyers who sign a contract of purchase on or after 16 January 2023 will be able to opt into the property tax and will not be required to pay stamp duty, provided they choose to pay property tax before their purchase settles.

Eligible first home buyers who sign a contract of purchase between 11 November 2022 and 15 January 2023 will also be able to opt into the property tax under the following transitional arrangements:

- applications to choose the property tax can be made at any time between 16 January 2023 and 30 June 2023
- if settlement occurs on or before 15 January 2023, the purchaser will need to pay stamp duty, and then apply for a refund of the stamp duty after 16 January 2023, and
- if settlement occurs on or after 16 January 2023, and the purchase has chosen property tax, they will not need to pay stamp duty.

Further information about the scheme can be found on [the NSW Government website](#).

## QLD interstate land tax aggregation measure now repealed

Legislation has now been passed (via amendment to the [Betting Tax and Other Amendments Act 2022](#)) to repeal the Queensland (QLD) interstate land tax aggregation measures which were to apply from 1 July 2023. The effect of the measures would have been to aggregate the taxable value of interstate land holdings with the value of QLD land holdings to determine the applicable land tax rate for QLD properties.

## NSW duty and beneficial ownership and leases

Revenue NSW issued the following Practice Notes in relation to the application of duty under the Duties Act 1997 (NSW) following the amendments made under the [State Revenue and Fines Legislation Amendment \(Miscellaneous\) Act 2022](#) which resulted in duty being imposed on transactions that result in a change in beneficial ownership of dutiable property other than excluded transactions.

- [Practice Note CPN 025](#) explains where a transaction that results in a change in beneficial ownership is a dutiable transaction
- [Practice Note CPN 027](#) outlines the circumstances when the grant of a lease will be dutiable. Duty is charged on a surrender of an interest in land and a lease in respect of which a premium is paid or agreed to be paid.

Both practice notes are effective from 19 May 2022. Refer to our [Insight](#) for detailed information.

## WA duty and farm-in arrangements

Following the enactment of [the Duties Amendment \(Farm-in Agreements\) Act 2022](#) (WA) which amended the [Duties Act 2008](#) (WA) from 2 November 2022 to address issues with the transfer duty concession for farm-in agreements involving mining tenements, Revenue WA has issued the following documents:

- [Circular 19](#) which explains the amendments
- [Fact Sheet](#) which explains how duty will apply to farm-in agreements and farm-in transactions
- [Revenue Ruling DA 16.0](#) outlining the Commissioner's interpretation of exploration for the purposes of farm-in transactions and farm-in agreements.
- [Commissioner's Practice DA 54.0](#) which outlines the Commissioner's treatment of certain issues when assessing farm-in agreements and farm-in transactions.

## Let's talk

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

**Rachael Cullen**  
Sydney  
Partner  
+61 409 470 495  
[rachael.cullen@pwc.com](mailto:rachael.cullen@pwc.com)

**Barry Diamond**  
Melbourne  
Partner  
+61 (3) 8603 1118  
[barry.diamond@pwc.com](mailto:barry.diamond@pwc.com)

**Stefan DeBellis**  
Brisbane  
Partner  
+61 (7) 3257 8781  
[stefan.debellis@pwc.com](mailto:stefan.debellis@pwc.com)

**Cherie Mulyono**  
Sydney  
Partner  
+61 (2) 8266 1055  
[cherie.mulyono@pwc.com](mailto:cherie.mulyono@pwc.com)

**Matthew Sealey**  
Partner  
+ 61 400 684 803  
[matthew.sealey@pwc.com](mailto:matthew.sealey@pwc.com)

**Jess Fantin**  
Brisbane  
Partner  
+61 (7) 3257 5501  
[jess.fantin@pwc.com](mailto:jess.fantin@pwc.com)

**Rachael Munro**  
Perth  
Partner  
+61 (8) 9238 3001  
[rachael.munro@pwc.com](mailto:rachael.munro@pwc.com)

## South Australian duty and student accommodation

The Supreme Court of South Australia Court of Appeal dismissed the [Commissioner's appeal in Commissioner of State Taxation v Perpetual Corporate Trust Ltd \[2022\] SASCA 117](#) finding that the primary judge has not erred in concluding that land with purpose-built student accommodation facilities was qualifying land for the purposes of section 105A of the *Stamp Duties Act 1923* (SA) and that it was not being used for 'residential purposes'.

By way of background, residential land used for the commercial purpose of providing long-term accommodation does not constitute qualifying land and is ineligible for a stamp duty reduction (and can therefore be subject to the foreign ownership surcharge, if applicable).

The Court indicated that whether land fits within the exception in section 105A(2)(a) will require a characterisation, on all the facts, of the purposes for which the land is taken to be used. The primary judge was correct to conclude that the word 'residential' in these exceptions implies a permanent or long-term commitment to living in a particular place. The property was occupied by (mainly) students as intended, that is, as a short-term place to live, and was designed and deployed as a form of accommodation that does not lend itself easily to the characterisation of long-term or permanent residence.

## NSW land tax exemption and child care

The Civil and Administrative Tribunal in NSW in [Mourched v Chief Commissioner of State Revenue \[2022\] NSWCATAP 362](#) was not satisfied on the balance of probabilities that relevant land assessed to land tax was used as a place where children were educated or cared for so as to attract the land tax child care exemption under section 10(1)(u) of the *Land Tax Management Act 1956* (NSW). For the exemption to apply, the parcel of land must be the place where the actual conduct of educating or caring for children in an approved facility takes place. Merely providing services which are used simply to assist in the provision of an approved education and care service located on another parcel of land, being the place where the children 'are' educated or cared for, is insufficient.

## NSW surcharge duty applied

The Civil and Administrative Tribunal in NSW affirmed the Commissioner's assessment of surcharge duty in respect of the taxpayer's purchase of property in 2019 in [Nguyen v Chief Commissioner of State Revenue \[2022\] NSWCATAD 354](#). The Tribunal found that although there was no dispute that Mr Nguyen was a permanent resident and his presence in Australia was not subject to any limitation as to time, he had only been in Australia for 114 days in the 12 months period prior to 13 June 2019 which was the date the

agreement was entered into. This means he had not been in Australia for the required 200 days to be considered to be "ordinarily resident" within the meaning of the *Foreign Acquisitions and Takeovers Act 1975* and accordingly was a foreign person at the time the contract was entered into. Further, as the residence requirement is not satisfied, no principal place of residence exemption applies and the contract was liable to surcharge duty.

## Victorian land tax primary production exemption not applicable

The Victorian Civil and Administrative Tribunal has found in [Lavender Rain Pty Ltd v Commissioner of State Revenue \(Review and Regulation\) \[2022\] VCAT 1264](#) that the taxpayer was not entitled to the land tax exemption applicable for primary production. Specifically, although the Commissioner was satisfied the relevant land was used for a business of primary production, he contended that the exemption did not apply because the principal business and main undertaking of the taxpayer was not the business of primary production. This is due to the company also receiving income relating to consultancy services and the operation of a ski competition, as well as the entry into a development agreement with a developer for the development of the property and surrounding properties.

The Tribunal was not satisfied that Lavender Rain's main undertaking was primary production in any of the relevant calendar years given the comparative income generated from, and capital employed, in its other undertakings. As such, the exemption was unavailable and the land tax assessments confirmed.

## NSW land tax and principal place of residence exemption

The Civil and Administrative Tribunal New South Wales found in [Cecere v Chief Commissioner of State Revenue \[2022\] NSWCATAD 350](#) that the taxpayer was not entitled to the principal place of residence land tax exemption in respect of a property for the 2017 land tax year and that the Commissioner's assessment should be confirmed. While it may have been the taxpayer's intention that the property would be his principal place of residence, and he may even have considered it to be so, subjective intention is relevant but not determinative. The legislation requires an actual occupation with the requisite degree of permanence, not merely an intention.

Having considered the evidence, the Tribunal was not satisfied that his occupation of the property had the requisite degree of permanence to establish that it was his principal place of residence. It is the quality and nature of the occupation which determines that element of permanence and there was insufficient evidence before the Tribunal to be satisfied as to the quality or nature of the taxpayer's occupation of the property during the relevant period.

## WA land tax and principal place of residence exemption

The Western Australia (WA) State Administrative Tribunal in [Sarros v Commissioner of State Revenue \[2022\] 102](#) WASAT rejected the taxpayers' appeal against the assessment of land tax on property they had asserted was their primary residence for land tax assessment years 2016–17, 2017–18 and 201819. In order to be exempt from land tax, the taxpayers, as the owners of the property, need to use it as their principal place of residence in a real and tangible manner.

The Tribunal considered a wide range of evidence but was not satisfied based on the evidence presented that the property was used as a principal place of residence. For example, the Tribunal noted the amount of utilities being consumed at the premises, throughout the relevant dates (leaving aside the two periods where water consumption did increase) is inconsistent with ongoing human habitation by two elderly adults. Although there was some evidence which demonstrates an ongoing association with the property in the form of bills or other notices addressed to the taxpayer, that, of itself, does not demonstrate that the property was his primary residence as at the relevant dates. It demonstrates only longstanding nominal and perfunctory use.



# Superannuation Update

## ATO's guide for valuations for SMSFs

The Australian Taxation Office (ATO) has released an updated [guide](#) designed to help self-managed superannuation fund (SMSF) trustees when valuing assets for superannuation purposes. The ATO indicates that although it may review a valuation as part of its compliance processes, if the guide is followed, it will generally accept the valuation provided. As part of this review, the ATO may ask to see evidence of the valuation method used.

The ATO will generally accept the determination of an asset's value, as long as:

- it does not conflict with this guide or the ATO's more general guide for [Market valuation for tax purposes](#)
- There is no evidence that a different value was used for the corresponding capital gains tax event
- it was based on objective and supportable data.

If the ATO concludes that the most appropriate valuation method has not been used for any of the assets, it will not be accepted and the most appropriate valuation method will be applied to determine an amended value.

## Let's talk

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

**Naree Brooks**  
Melbourne  
Partner  
+ 61 (3) 8603 1200  
[naree.brooks@pwc.com](mailto:naree.brooks@pwc.com)

**Marco Feltrin**  
Melbourne  
Partner  
+ 61 (3) 8603 6796  
[marco.feltrin@pwc.com](mailto:marco.feltrin@pwc.com)

**Abhi Aggarwal**  
Brisbane  
Partner  
+ 61 (7) 3257 5193  
[abhi.aggarwal@pwc.com](mailto:abhi.aggarwal@pwc.com)

**Alice Kase**  
Sydney  
Partner  
+ 61 (2) 8266 5506  
[alice.kase@pwc.com](mailto:alice.kase@pwc.com)

**Ken Woo**  
Sydney  
Partner  
+ 61 (2) 8266 2948  
[ken.woo@pwc.com](mailto:ken.woo@pwc.com)

**Allister Sime**  
Melbourne  
Director  
+61 3 8603 1195  
[allister.sime@pwc.com](mailto:allister.sime@pwc.com)

**Sharyn Frawley**  
Melbourne  
Director  
+61 3 8603 1217  
[sharyn.frawley@pwc.com](mailto:sharyn.frawley@pwc.com)



# Legislative Update

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

- [Treasury Laws Amendment \(2022 Measures No. 4\) Bill 2022](#), which was introduced into the House of Representatives on 23 November 2022, proposes a range of measures, including some measures that were first announced by the former Government, including:
  - the digital games tax offset to apply to qualifying Australian development expenditure incurred in relation to eligible game development from 1 July 2022
  - amendments to clarify that digital currencies (such as bitcoin) continue to be excluded from the income tax treatment of foreign currency for income years that include 1 July 2021 and later income years and in the context of the goods and services tax, in relation to supplies or payments made on or after 1 July 2021
  - measures to reduce the compliance burden for employers finalising their fringe benefits tax returns by empowering the Commissioner of Taxation to allow them to rely on adequate alternative records holding all the prescribed information
  - the skills and training boost for small businesses (with aggregated annual turnover of less than \$50 million) in the form of a bonus deduction equal to 20 per cent of eligible expenditure for external training provided to employees incurred from 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 until 30 June 2024
  - the technology investment boost for small businesses (with aggregated annual turnover of less than \$50 million) in the form of a bonus deduction equal to 20 per cent of eligible expenditure on expenses and depreciating assets for purposes of their digital operations or digitising their operations and incurred from 7:30pm (by legal time in the Australian Capital Territory) on 29 March 2022 until 30 June 2023
  - amendments to extend and adapt certain financial reporting and auditing requirements of the *Corporations Act 2001* to apply to registrable superannuation entities from 1 July 2023
  - modifications to the deductible gift recipient listings; and
  - amendments to various taxation laws to confirm the tax treatment of certain defined benefit pensions following the Full Federal Court decision in Douglas and provide a non-refundable tax offset for recipients of certain military invalidity benefits.
- [Treasury Laws Amendment \(Modernising Business Communications and Other Measures\) Bill 2022](#), which was introduced into the House of Representatives on 23 November 2022, includes measures to modernise various laws in relation to communication methods available to consumers, businesses and regulators and also makes a number of miscellaneous and technical amendments to taxation laws, among others, to ensure they operate as intended and correct technical or drafting defects.
- [Crimes Amendment \(Penalty Unit\) Bill 2022](#), which was introduced into the House of Representatives on 9 November 2022 (and since passed both Houses of Parliament), proposes to increase the penalty unit value from \$222 to \$275 for offences committed on or after 1 January 2023.

## Let's talk

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

### Chris Morris

Sydney  
Australian Tax Leader  
+61 (2) 8266 3040  
[chris.morris@pwc.com](mailto:chris.morris@pwc.com)

### Michael Bona

Brisbane  
Global Tax Leader  
+61 (7) 3257 5015  
[michael.bona@pwc.com](mailto:michael.bona@pwc.com)

### Warren Dick

Sydney  
Tax Reporting & Strategy Leader  
+61 (2) 8266 2935  
[warren.dick@pwc.com](mailto:warren.dick@pwc.com)

### Trinh Hua

Sydney  
Tax Market Leader  
+61 (2) 8266 3045  
[trinh.hua@pwc.com](mailto:trinh.hua@pwc.com)

### James O'Reilly

Brisbane  
Tax Leader  
+61 (7) 3257 8057  
[james.oreilly@pwc.com](mailto:james.oreilly@pwc.com)

### Jason Karametos

Melbourne  
Industries Tax Leader  
+61 (3) 8603 6233  
[jason.karametos@pwc.com](mailto:jason.karametos@pwc.com)

### Kirsten Arblaster

Melbourne  
Tax Leader  
+61 (3) 8603 6120  
[kirsten.arblaster@pwc.com](mailto:kirsten.arblaster@pwc.com)

### Rob Bentley

Perth  
Tax Leader  
+61 (8) 9238 5202  
[robert.k.bentley@pwc.com](mailto:robert.k.bentley@pwc.com)

### Alistair Hutson

Adelaide  
Partner  
+61 (8) 8218 7467  
[alistair.hutson@pwc.com](mailto:alistair.hutson@pwc.com)

### Sarah Hickey

Sydney  
Financial Services Tax Leader  
+61 (2) 8266  
[sarah.a.hickey@pwc.com](mailto:sarah.a.hickey@pwc.com)

### Amy Etherton

Newcastle  
Partner  
+61 (2) 4925 1175  
[amy.etherton@pwc.com](mailto:amy.etherton@pwc.com)

### Sophia Varelas

Melbourne  
National Leader, R&D and Government Incentives  
+61 417 208 230  
[sophia.varelas@pwc.com](mailto:sophia.varelas@pwc.com)

Since our last update, the following additional tax and superannuation related Bills have completed their passage through Parliament:

- [Treasury Laws Amendment \(Electric Car Discount\) Bill 2022](#) which provides a Fringe Benefits Tax (FBT) exemption for the use, or availability for use, of certain cars. Amendments were made to the Bill during its passage such that the exemption for petrol-based plug-in hybrids will end on 1 April 2025, and that a review of the amendments relating to the exemption for FBT and customs purposes must be undertaken within three years.
- [Treasury Laws Amendment \(2022 Measures No. 2\) Bill 2022](#) which, among other things, included the introduction of a sharing economy reporting regime which will require electronic platform operators to provide certain information on certain transactions to the Australian Taxation Office (ATO) (for more details, see our previous [Insight](#)), removal of the \$250 non-deductible threshold for work-related self-education expenses and expanded eligibility for the downsizer contribution scheme by allowing individuals aged 55 years and above to make contributions to their superannuation fund from the proceeds of selling their main residence.
- [Treasury Laws Amendment \(2022 Measures No. 3\) Bill 2022](#), which among other things, amends the *Taxation Administration Act 1953* to enable the provision of information to be disclosed by the ATO to Australian Government agencies in administering major disaster support programs (the proposed amendments to the *Superannuation Industry (Supervision) Act 1993* to provide for an alternative annual performance test for faith based products were excluded from the Bill during its passage through Parliament)
- [Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2022](#) which doubles the maximum penalties for contraventions of the *Foreign Acquisitions and Takeovers Act 1975* which relate to residential land and update the fee cap for indexation
- [Income Tax Amendment \(Labour Mobility Program\) Bill 2022](#) which reduces the tax rate applicable to certain income earned by foreign resident workers who participate in the Pacific Australia Labour Mobility Scheme.
- [Treasury Laws Amendment \(Australia-India Economic Cooperation and Trade Agreement Implementation\) Act 2022](#) which gives effect to the taxation arrangements under the India-Australia Economic Cooperation and Trade Agreement to stop the Australian taxation of payments or credits to Indian firms for providing certain technical services remotely (not through a permanent establishment) to Australian customers.

- [Customs Amendment \(Australia-United Kingdom Free Trade Agreement Implementation\) Act 2022](#) and [Customs Tariff Amendment \(Australia-United Kingdom Free Trade Agreement Implementation\) Act 2022](#) which prescribes new rules of origin for goods that are imported from the United Kingdom of Great Britain (UK) and Northern Ireland and provide for preferential entry of goods that satisfy those rules in accordance with the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland.
- [Customs Amendment \(India-Australia Economic Cooperation and Trade Agreement Implementation\) Act 2022](#) and [Customs Tariff Amendment \(India-Australia Economic Cooperation and Trade Agreement Implementation\) Act 2022](#) to give effect to the preferential entry of goods under the India-Australia Economic Cooperation and Trade Agreement signed on 2 April 2022

The following measures have been registered since our last update:

- [Customs \(International Obligations\) Amendment \(India-Australia Economic Cooperation and Trade Agreement Implementation\) Regulations 2022](#) which specify the circumstances under which an importer of goods may apply for a refund of any excess duty paid on Indian originating goods and goods that would have been Indian originating goods
- [Customs \(Indian Rules of Origin\) Regulations 2022](#), which prescribes the rules used to determine whether goods are Indian originating goods, including the methods used to determine the qualifying value content of goods (a calculation used in determining whether a good made from originating and non-originating materials is an Indian originating good) for the purposes of the India-Australia Economic Cooperation and Trade Agreement, to be eligible for preferential tariff treatment. The Regulations also prescribe the valuation rules for different kinds of goods and set out the classes of records that must be retained by Australian exporters and producers of Australian originating goods.
- [Customs Tariff Amendment \(India-Australia Economic Cooperation and Trade Agreement Implementation\) Regulations 2022](#), which amends the *Customs Tariff Regulations 2004* to prescribe goods that, under the India-Australia Economic Cooperation and Trade Agreement, will have a rate of duty other than Free.
- [Customs \(Regional Comprehensive Economic Partnership Agreement—Entry into Force for Indonesia\) Notice 2022](#) which declares that the Regional Comprehensive Economic Partnership Agreement done on 15 November 2018 enters into force for Indonesia on 2 January 2023.

- [Customs \(International Obligations\) Amendment \(Australia-United Kingdom Free Trade Agreement Implementation\) Regulations 2022](#), which specify the circumstances under which an importer of goods may apply for a refund of any excess duty paid on UK originating goods and goods that would have been UK originating goods
- [Customs \(United Kingdom Rules of Origin\) Regulations 2022](#) which prescribes the rules used to determine whether goods are UK originating goods, including the methods used to determine the regional value content of goods (used in determining whether a good made from originating and non-originating materials is a UK originating good) under the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland. The Regulations also prescribe the valuation rules for different kinds of goods and set out the classes of records that must be retained by Australian exporters and producers of Australian originating goods.
- [Taxation Administration \(Remedial Power – Disclosure of Protected Information by Taxation Officers\) Repeal Determination 2022](#) to provide that particular representatives of an executor or administrator of a deceased taxpayer's estate are covered entities for the purposes of allowing taxation officers to disclose protected information about a deceased taxpayer to relevant representatives of an executor or administrator of their estate.
- [Consular Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Bhutan\) Determination 2022](#) and [Diplomatic Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Bhutan\) Determination 2022](#) to extend the Indirect Tax Concession Scheme to the consular representation and diplomatic missions and accredited staff of Bhutan.
- [Income Tax Assessment \(Eligible State and Territory COVID-19 Economic Recovery Grant Programs\) Amendment Declaration \(No 5\) 2022](#) which declares the COVID-19 Small Business Hardship Scheme provided by the Australian Capital Territory as an eligible program for purposes of making a payment received under the program as non-assessable non-exempt income.



# Other News

## Consultation on beneficial ownership register

The Government has released a [consultation paper](#) seeking comments on the design of a public register of beneficial ownership in Australia. This was part of the Government's pre-election commitment to introduce a package of measures to enhance multinational tax integrity and increase tax transparency in Australia.

The Government has proposed that it will adopt a phased approach to the introduction of a public register of beneficial ownership. Initially, the proposed changes will only require entities regulated under the *Corporations Act 2001*, including unlisted companies, to maintain a register (some parts of which will be available to the public) of certain natural persons, companies, registered managed investment schemes, Corporate Collective Investment Vehicles and trusts which satisfy certain criteria to be registered as a beneficial owner.

This will be followed, in future phases, by additional entities and legal vehicles being subject to these requirements, and the centralisation of this information in a single public register. The Government intends to consult on the approach to the future phases at a later stage.

Comments on the consultation paper can be made until 16 December 2022. For further information, refer to our [Insight](#).

## ATO's findings report into Top 500 private groups program

The Australian Taxation Office (ATO) has issued its findings report on its [Top 500 tax performance program](#). Broadly, the Top 500 population consists of Australia's largest family or closely controlled private group. Based on the report, the key area of justified trust where improvement is required is around effective tax governance – the ATO often finds that organisational knowledge is concentrated in the hands of one or two individuals; policies and procedures are not documented, or are not optimally designed or not operating effectively in practice; and IT systems are not sufficiently reliable or are non-existent.

Going forward, areas of ATO focus listed include:

- the misuse of trusts to facilitate wealth extraction
- ordinary income and deductions, which may involve bad debts, long-term construction contracts, valuation of trading stock
- international transactions, including transfer mispricing of intellectual property and cross-border related party financing
- aggressive approaches to the capital allowance provisions, and
- application of the CGT provisions to transactions that did not involve property disposals.

## ATO's findings report for Top 5,000 private groups program

The ATO has issued its findings report for its [Top 5,000 program](#) for private groups in Australia that have net wealth of over \$50 million. As at 31 August 2022, the ATO has reported it has reviewed around 5,300 transactions, activities and events of Next 5,000 private groups that were worth over \$22 billion. The report provides some insight into the information the ATO has obtained on its reviews to date. The ATO indicates that in 2023-24 it will be focussing on groups that are:

- experiencing rapid growth which may lead to incorrect reporting if the tax governance framework is not fit for purpose to support the expansion
- expanding offshore and/or engaging in cross-border transactions with related parties
- entering into arrangements such as intra-group transactions to inappropriately transfer domestic wealth
- undertaking wealth extraction including by the use of private equity funds, and
- considering tax efficient structures to pass on wealth to the next generation.

## Let's talk

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

**Chris Morris**  
Sydney  
Australian Tax Leader  
+61 (2) 8266 3040  
[chris.morris@pwc.com](mailto:chris.morris@pwc.com)

**Michael Bona**  
Brisbane  
Global Tax Leader  
+61 (7) 3257 5015  
[michael.bona@pwc.com](mailto:michael.bona@pwc.com)

**Warren Dick**  
Sydney  
Tax Reporting & Strategy Leader  
+61 (2) 8266 2935  
[warren.dick@pwc.com](mailto:warren.dick@pwc.com)

**Trinh Hua**  
Sydney  
Tax Market Leader  
+61 (2) 8266 3045  
[trinh.hua@pwc.com](mailto:trinh.hua@pwc.com)

**James O'Reilly**  
Brisbane  
Tax Leader  
+61 (7) 3257 8057  
[james.oreilly@pwc.com](mailto:james.oreilly@pwc.com)

**Jason Karametos**  
Melbourne  
Industries Tax Leader  
+61 (3) 8603 6233  
[jason.karametos@pwc.com](mailto:jason.karametos@pwc.com)

**Kirsten Arblaster**  
Melbourne  
Tax Leader  
+61 (3) 8603 6120  
[kirsten.arblaster@pwc.com](mailto:kirsten.arblaster@pwc.com)

**Rob Bentley**  
Perth  
Tax Leader  
+61 (8) 9238 5202  
[robert.k.bentley@pwc.com](mailto:robert.k.bentley@pwc.com)

**Alistair Hutson**  
Adelaide  
Partner  
+61 (8) 8218 7467  
[alistair.hutson@pwc.com](mailto:alistair.hutson@pwc.com)

**Sarah Hickey**  
Sydney  
Financial Services Tax Leader  
+61 (2) 8266  
[sarah.a.hickey@pwc.com](mailto:sarah.a.hickey@pwc.com)

**Amy Etherton**  
Newcastle  
Partner  
+61 (2) 4925 1175  
[amy.etherton@pwc.com](mailto:amy.etherton@pwc.com)

**Sophia Varelas**  
Melbourne  
National Leader, R&D and Government Incentives  
+61 417 208 230  
[sophia.varelas@pwc.com](mailto:sophia.varelas@pwc.com)



## Strengthening the ABN system

Treasury has released [exposure draft materials](#) which propose amendments to strengthen the Australian Business Number (ABN) system. Under this proposal, a person's registration in the Australian Business Register (that is, the person's ABN) can be cancelled by the Registrar in either of the following circumstances:

- where a person is required to lodge income tax returns, they have failed to lodge returns for two or more income years and those returns remain outstanding, or
- the person fails to confirm the accuracy of their details held by the Registrar in a 12-month period together with confirmation that their ABN is still required.

The measures also enable for the reinstatement of the registration following its cancellation if the above conditions have been rectified.

Submissions were due by 29 November 2022.

## ABN cancellation program continues

Although there are the proposed measures as noted above to strengthen the integrity of the ABN system, in the meantime, the ATO continues to review ABNs to identify potentially inactive ABNs for [cancellation](#). An ABN may be identified under the program if no business activity has been reported in an income tax return or there are no signs of business activity in other lodgments or third-party information. The ATO will advise what actions to take if an ABN is identified for cancellation and what actions are needed to keep the ABN active if the entity is still entitled to an ABN.

## ATO will no longer issue cheques for small amounts of interest

The ATO has introduced a cheque threshold so taxpayers whose bank account details are not up to date will only receive a cheque for Interest on Early Payment if the amount is over \$9.99. Lesser amounts will remain on the taxpayer's account for a maximum of 12 months provided the amount has not been offset against an outstanding debt or paid with another credit. If the taxpayer's bank account details are still not up to date after 12 months, then the credit will be issued via cheque.

## Venture Capital Tax Concessions Review – Final report

Treasury and Industry Innovation and Science Australia has completed its review of Australia's venture capital tax concession programs and issued its [report](#) into whether the current settings are fit-for-purpose and support genuine, early stage Australian startups. The programs in-scope for the review included:

- Venture Capital Limited Partnerships;
- Early Stage Venture Capital Limited Partnerships;
- Australian Venture Capital Fund of Funds; and
- Investments made directly by foreign residents registered under Part 3 of the Venture Capital Act 2002.

The review found that overall:

- The tax concessions and investment vehicles offered by the programs in scope of the review have been well received.
- These programs have supported the growth of the Australian venture capital sector, which has experienced increased levels of venture capital investment, and the development of venture capital fund managers—the two primary objectives of the programs.
- Stakeholders recognised that the programs are just one contributing factor to the growth of the venture capital sector, but noted that their removal would be detrimental to the venture capital sector, and there were some calls for changes to the programs.

## Editorial

PwC's Monthly Tax Update is produced by the PwC's Financial Advisory Marketing and Communications team, with technical oversight provided by PwC's Tax Markets & Knowledge team.

### Jannette Krezel

Senior Manager, Tax Markets  
jannette.krezel@pwc.com

### Lynda Brumm

Principal, Tax Markets & Knowledge  
+61 (7) 3257 5471  
lynda.brumm@pwc.com

### Natalie Stewart

Senior Manager, Tax Markets & Knowledge  
+61 (3) 8603 2336  
natalie.a.stewart@pwc.com

### Jason Dutt

Senior Associate, Employment Taxes  
jason.dutt@pwc.com



[pwc.com.au](http://pwc.com.au)

© 2022 PricewaterhouseCoopers. All rights reserved. PwC refers to the Australia member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details. This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors. Liability limited by a scheme approved under Professional Standards Legislation. At PwC Australia our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 250,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com.au](http://www.pwc.com.au).

D0419143