Monthly Tax Update

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

December 2025

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Corporate tax update

Collective investment vehicles to be required to complete annual RTP schedule

The Australian Taxation Office (ATO) has announced that collective investment vehicles (CIVs) and large superannuation funds will be required to complete the Reportable Tax Position (RTP) schedule from 2026.

The RTP schedule is an obligation that is currently completed by Australia's largest public and private companies. The instructions to the RTP schedule, yet to be issued, will outline the specific questions that these taxpayers are required to answer.

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Employment taxes update

Payday Super now law

The Bills to give effect to the Payday Super regime (Superannuation Guarantee Charge Amendment Bill 2025 and the Treasury Laws Amendment (Payday Superannuation) Bill 2025) are now law. The new Payday Super regime, which commences on 1 July 2026, will broadly require employers to make an eligible Superannuation Guarantee (SG) contribution before the end of the seventh business day after a 'Qualifying Earnings' day. Numerous other changes were made to *Superannuation Guarantee (Administration Act 1992)* with consequential amendments to other laws, as part of the revised superannuation guarantee regime.

The Australian Taxation Office (ATO) has released a range of guidance pages, including outlining what payments are qualifying earnings, when employers need to pay SG and how to make payments under Payday Super.

For more information on how to prepare for the Payday Super changes, see our Tax Alert.

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SBSCH to close permanently

The Small Business Superannuation Clearing House (SBSCH) will permanently close from 1 July 2026, aligning with the start of Payday Super.

Small businesses are urged to transition early to alternative SG payment solutions. The ATO notes that many payroll products already include super payment capabilities that can be enabled or configured ahead of time. Alternatively, businesses can look for options from super funds or digital service providers who can offer payroll services, software or commercial clearing houses. The last day for existing users of the SBSCH to use the service, make any final payments and download reports is 30 June 2026.

Draft instrument: PAYG withholding variation for directors and office holders

The ATO has issued a draft legislative instrument (LI 2025/D24) that reduces to nil the PAYG withholding on payments to individuals appointed as directors, committee members, or office holders where the individual is required to remit the full amount to another entity of which they are a director, partner, or employee.

The draft also removes payment summary and Single Touch Payroll reporting for these redirected payments, preventing unnecessary withholding and reporting where amounts are effectively paid to another entity rather than retained by the individual. Once finalised, this instrument will replace the 2016 instrument (F2016L00222), expanding it to address STP requirements introduced since then and maintaining continuity of treatment once the 2016 instrument sunsets on 1 April 2026.

The instrument will commence the day after it is registered on the Federal Register of Legislation, with the last day for submitting comments on the draft being 5 December 2025.

Updated guidance on calculating plug-in hybrid electric vehicle home charging rate

The ATO has finalised its update to Practical Compliance Guideline PCG 2024/2 to include a methodology to calculate the cost of electricity when a plug-in hybrid electric vehicle (PHEV) is charged at an individual's home. This will be relevant to employers who provide a PHEV to an employee or their associate resulting in the provision of a fringe benefit and the employee or their associate charges the PHEV using electricity at a residential premises, where the electricity cost directly attributable to charging that vehicle cannot be practically segregated from the cost of running other electrical appliances in the home. (See Personal tax section for further details.)

Tasmanian payroll tax relief for apprentices

The Taxation and Related Legislation (First Home Owner and Payroll Relief) Bill 2025, currently before the Tasmanian Legislative Council includes the following amendments to:

- Extend the Payroll Tax Rebate Scheme for eligible apprentices from 1 July 2025 to 30 June 2026, and
- Postpone the repeal date of the Payroll Tax Rebate (Apprentices, Trainees and Youth Employees) Act 2017 (Tas) from 30 June 2028 to 30 June 2029.

Personal tax update

Value of goods taken from trading stock

The Australian Taxation Office (ATO) has released Taxation Determination TD 2025/7 which sets out the amounts that the ATO will accept as estimates of the value of goods taken from trading stock for private use by taxpayers in named industries (predominantly within food and hospitality) in the 2025-26 income year.

Final guidance on calculating plug-in hybrid electric vehicle home charging rate

The ATO has finalised its update to Practical Compliance Guideline PCG 2024/2 to include a methodology for individuals who incur work-related car expenses to calculate the cost of electricity when a plug-in hybrid electric vehicle (PHEV) is charged at an individual's home. This extends the PCG's application from applying to only electric vehicles to also apply to PHEVs, with taxpayers able to choose to utilise the methodology outlined in PCG 2024/2 on a year-by-year basis.

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Under the update, the Commissioner will not have cause to apply compliance resources to review a calculation of electricity costs of charging a PHEV at a residential premises that are claimed from 1 July 2024 as a work-related car and motor vehicle deduction where the specified methodology is followed. The PCG also applies in the case of working out any fringe benefit tax for an employer where the employee charges the vehicle using electricity at a residential premises (see Employment Taxes section of this update for further details).

Draft guidance on rental property income and deductions

The ATO has released draft Taxation Ruling TR 2025/D1, which provides guidance for individuals that earn income from their rental property from:

- The short-term rental market (such as using online booking or sharing platforms), including renting out a holiday home or letting a room(s) in a home, or
- Letting out a property, or part of a property to long-term tenants

The draft Ruling explains:

- When amounts received for the use of a rental property will be assessable income
- When losses or outgoings incurred in relation to a rental property can be claimed as deductions
- How to apportion deductions when there are both income-producing and non-income-producing uses of a rental property, and
- When certain deductions for a holiday home, that is also used as a rental property, will be denied because it is a 'leisure facility' (under section 26-50 of the Income Tax Assessment Act 1997).

The draft Ruling also includes a transitional compliance approach in acknowledgment that individuals who are not in business may have entered into arrangements that may fall under section 26-50 without realising that the ATO would consider whether section 26-50, in addition to the general deduction provision in section 8-1, applied to an individual's circumstances. Specifically, the Commissioner will not devote compliance resources to reviewing whether section 26-50 will apply to expenses incurred in relation to holiday homes that are rental properties before 1 July 2026, if those expenses are incurred under an arrangement entered into prior to 12 November 2025.

When the final Ruling is issued, it is proposed to apply to years of income commencing both before and after its date of issue (subject to the above transitional compliance approach). Comments close 30 January 2026.

The ATO has also withdrawn Taxation Ruling IT 2167, effective 12 November 2025 on the basis that Draft Taxation Ruling TR 2025/D1 modernises the views expressed in IT 2167 to the extent that they continue to apply and incorporates developments in case law.

Indirect tax update

GST Determination on when sunscreen products GST-free

The Australian Taxation Office (ATO) has released Goods and Services Tax (GST) Determination GSTD 2025/2, which explains the ATO's view on when a supply of a sunscreen product is GST-free.

A supply of a product that contains sunscreen is GST-free where that product is of a kind of sunscreen preparation for dermal application, with an SPF of 15 or more, that is required to be included in the Australian Register of Therapeutic Goods (ARTG) under the Therapeutic Goods Act 1989 and is marketed principally for use as sunscreen.

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The ATO acknowledges there is a degree of generality in relation to whether a product is of a kind marketed principally for use as sunscreen. To determine whether a product meets this requirement, the ATO notes that it is necessary to consider the kinds of products that are marketed as such and then determine if the product in question is a product of that kind. The Determination provides further discussion on the matter but also notes that whether a sunscreen product is of a kind marketed principally for use as sunscreen is a matter of overall impression, with no one factor determinative. However, the Determination indicates that labelling and packaging, including the name, of a product is a primary and consistent source of marketing information and as such, of particular importance as to the overall impression that the product is of a kind principally marketed for use as sunscreen.

In acknowledgment, that there may be practical difficulties for suppliers across the supply chain in determining whether a sunscreen product is required, or in a class of goods required, to be included in the ARTG under the Therapeutic Goods Act 1989, the ATO is adopting a practical compliance approach on this matter. If a sunscreen product is treated as being required, or in a class of goods required, to be included in the ARTG under the Act in good faith because the product is included in the ARTG and has an AUST L or AUST R number, the ATO will not have cause to devote compliance resources to reviewing this treatment. A product will still need to meet all the other attributes set out in paragraph 12 of the Determination to be GST-free.

The Determination applies both before and after its date of issue.

Draft GST Determination regarding supplies of formula products

The ATO has issued draft Goods and Services Tax Determination GSTD 2025/D1 which explains the ATO's view on which formula products are GST-free under table item 13 of Schedule 2 to the A New Tax System (Goods and Services Tax) Act 1999 as beverages or ingredients for beverages of a kind marketed principally as food for infants. It also explains the ATO view on whether supplies of formula products are GST-free under table item 1 or table item 2 as milk products.

Based on the ATO's view that the ordinary meaning of an 'infant' is child up to the age of 12 months, formula which is marketed principally for children from the age of 12 months is not, therefore, GST-free. Furthermore, the ATO indicates that formula products are not of a kind specified in table item 1 as they are not a kind of milk or powdered milk - this is because, while formula products contain a high proportion of milk solids (but below 95%), they also contain additional ingredients including sweeteners and oils. In addition, powdered formula products are not of a kind specified in table item 2 as they are not beverages – although when sold pre-mixed and ready-to-drink, formula products are beverages but do not consist of at least 95% of the listed product specified in table item 1.

Since past ATO advice and practice, including reviews of this issue, has contributed to some uncertainty about the GST classification of formula products for children aged from 12 months, the ATO has confirmed that for taxpayers that have treated the supply of these products as GST-free in good faith, it will not devote compliance resources to formula products, or to products that are marketed principally as an ingredient for formula products for children aged from 12 months, until the end of the first quarterly tax period that ends at least four months after the draft determination is finalised. The determination also indicates that if a taxpayer takes action to now claim input tax credits on acquisitions of the products, not only will the transitional compliance approach not apply, but the taxpayer will also need to review its on-supply of the products and remit the GST payable on those taxable supplies.

The determination will not take effect until finalised, however when finalised, it will apply both before and after its date of issue. Comments closed 28 November 2025.

Draft update to ruling on commercial residential premises

The ATO has released a draft update to Goods and Services Tax Ruling GSTR 2012/6DC to clarify how the GST law applies to modern build-to-rent developments and whether such premises should be classified as 'residential premises' or 'commercial residential premises' for GST purposes. The update also provides further clarity on the characteristics of hostels and boarding houses.

The updates that are the subject of this draft Ruling are proposed to apply both before and after the date of issue of the addendum that gives effect to them. Comments close 19 December 2025.

Determinations for care services

Treasury has registered the following legislative instruments in respect of the GST treatment of residential care, non-residential care, and aged care services:

- The A New Tax System (Goods and Services Tax) (GST-free Supply - Residential Care - Non-government Funded Supplier) Determination 2025, which applies from 1 November 2025 to repeal and remake the 2015 version of the Determination, ensures that aged or disabled residents of non-government funded residential aged care services will receive GST-free all the residential care services that are GST-free to aged or disabled residents of approved residential care homes accessing Commonwealth funded aged care services under the Aged Care Act 2024.
- The A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Government Funded Supplier) Determination 2025, which applies from 1 November 2025 to repeal and remake the 2015 version of the Determination, ensures that aged care services that are GST-free when funded by the Commonwealth government are also GST-free when funded by a State or Territory government, while reflecting the changes in concepts and language between the Aged Care Act 1997 and the Aged Care Act 2024.
- The GST-Free Supply (Care) Determination 2025, which applies from 1 November 2025 to repeal and remake the GST-free Supply (Care) Determination 2017, ensures that care services that are similar to those that are GST-free when supplied to aged or disabled people are GST-free when supplied to a targeted person. It also lists specific services which, when provided to carers of targeted persons, are also GST-free. A targeted person is an individual who has a moderate, severe, or profound disability, lives at home, and is at risk of needing long term care in a hospital or other institution, or residential care.

Draft legislative instrument to input tax supplies for fund-raising events

The ATO has released draft legislative instrument A New Tax System (Goods and Services Tax) (Frequency of Fund-raising Events) Determination 2026, which proposes to allow an endorsed charity, a gift-deductible entity, or a government school to treat all supplies it makes in relation to a fund-raising event as being input taxed where it holds 15 or fewer like or similar fund-raising events in a prescribed accounting year. Prescribed accounting year is defined in the instrument to mean the 12-month period ending on the date the entity balances its accounts.

The instrument will commence on the day after it is registered on the Federal Register of Legislation. Comments closed on 28 November 2025.

Draft legislative instruments on attribution rules

The ATO has released the following draft legislative instruments regarding the GST attribution rules for attributing GST, input tax credits and adjustments to a tax period:

- The A New Tax System (Goods and Services Tax) (Attribution Rules – Certain Motor Vehicle Incentive Payments made to Motor Vehicle Dealers) Determination 2026, which allows a motor vehicle dealer to attribute the GST on the sale of a motor vehicle to the tax period in which the dealer knows the total amount they will receive for that vehicle. This would usually be when they enter into a contract with the customer to sell the vehicle. The instrument only applies in circumstances where the dealer receives an amount as an incentive payment from the vehicle manufacturer, distributor or importer in an earlier tax period, which forms a part of the total amount they will receive for the vehicle, or if the dealer issues an invoice for that incentive payment in the earlier tax period. The 2026 instrument, once finalised, will repeal and replace the 2015 Legislative Instrument that would otherwise sunset on 1 April 2026.
- The A New Tax System (Goods and Services Tax) (Attribution Rules – Prepayment for a Telecommunication Supply) Determination 2026, which allows telecommunications providers to delay attribution of GST for certain telecommunication supplies (such as telephone, mobile, or internet services) to the tax period in which an invoice is issued (or would have been issued) for the supply in cases where a prepayment for that supply has been received in an earlier tax period. It will prevent the basic GST attribution rules from applying inappropriately in these circumstances. The instrument, once finalised, will repeal and replace the 2016 Determination that would otherwise be sunset on 1 April 2026.
- The A New Tax System (Goods and Services Tax) (Attribution Rules – Supplies of Electricity Distribution Services) Determination 2026, which allows a supplier of electricity distribution services to attribute GST and adjustments on supplies it has made to the tax period in which it receives from its billing agent all the information that is necessary to ascertain the total amount it will receive for the supply. This applies in circumstances where a billing agent issues an invoice for the supply on behalf of the supplier. Once finalised, the instrument will repeal and replace a 2016 Determination that would otherwise be sunset on 1 April 2026.

Comments for all the above draft legislative instruments closed 28 November 2025.

Draft WET legislative instrument on claim lodgment of New Zealand producer rebate

The ATO has released draft legislative instrument A New Tax System (Wine Equalisation Tax) (New Zealand Producer Rebate Claim Lodgment) Determination 2026, which allows eligible New Zealand wine producers that export wine to Australia to claim a producer rebate, in the form of a wine tax credit, at any time within 4 years after the wine tax credit arises. It will reduce compliance costs for New Zealand wine producers that are not registered for GST in Australia by giving them more flexibility to claim their wine tax credits.

The draft instrument, once finalised, will commence on the day after it is registered on the Federal Register of Legislation. It will repeal and replace Wine Equalisation Tax New Zealand Producer Rebate Claim Lodgment Determination (No. 34) 2016, that would otherwise be sunset on 1 April 2026.

Comments close 5 December 2025.

Anti-avoidance case remitted to Administrative Review Tribunal

In Commissioner of Taxation v ACN 154 520 199 Pty Ltd (in liquidation) [2025] FCAFC 146, the Full Federal Court, by majority, allowed the Commissioner's appeal, remitting this long-running input tax credit (ITC) dispute back to the Administrative Review Tribunal.

The underlying dispute between the Commissioner and the taxpayer has a long history, and concerns notices of assessment and amended assessment issued by the Commissioner negating the taxpayer's claimed entitlement to ITCs. By way of background, the taxpayer acquired scrap gold that was subsequently converted or refined into precious metal, i.e. gold in investment form of at least 99.5% fineness, before it was sold to dealers in precious metal. However, the application of the general anti-avoidance provisions within Division 165 of A New Tax System (Goods and Services Tax) Act 1999 was brought into question, as the taxpayer had acquired refining materials from 'Fraudulent Suppliers' in transactions that were taxable supplies to the taxpayer.

By majority, the Full Federal Court allowed the Commissioner's appeal, with the majority of the Full Court taking the view that the Administrative Appeals Tribunal's (AAT) decision (in HNMF and Commissioner of Taxation (Taxation) [2023] AATA 4067) misconstrued and misapplied section 165-5(1)(c)(i) in adopting and applying a facilitative purpose analysis in its consideration of the 'dominant purpose' statutory inquiry mandated in Division 165. In addition, the Tribunal was found to have misconstrued and misapplied the section 165-5(c)(ii) 'principal effect' inquiry by failing to focus on the fiscal effect of the scheme, as well as section 165-5(1)(c) by disregarding that a purpose or object of Division 165 is to deter artificial or contrived schemes.

The Full Court determined that the AAT decision be set aside for errors of law, and the matter be remitted to the Administrative Review Tribunal.

The outcome of this case is similar to the recent decision of the Full Federal Court in the separate matter in Commissioner of Taxation v CPG Group Pty Ltd [2025] FCAFC 147, which also involved a disputed entitlement to input tax credits under a gold refining scheme. In that case, the Full Federal Court by majority determined that the initial AAT decision be set aside, with the appeal to be remitted to the Administrative Review Tribunal for further hearing and determination according to law.

Input tax credits largely denied for video content creator

In Fraser and Commissioner of Taxation (Taxation) [2025] ARTA 2153, the Administrative Review Tribunal has largely refused a taxpayer's appeal, finding that only a few of the disputed transactions where creditable acquisitions on which input tax credits could be claimed.

The taxpayer carried on a business of video production and content creation. During the relevant tax periods the taxpayer made purchases of various goods and services, including furniture and electrical equipment, construction materials, tools, fuel, travel, and insurance in relation to which he claimed input tax credits. This also included expenditure relating to the purchase of a vehicle, which the taxpayer said was to be used as a prop for proposed video content. The Commissioner's position was that none of the purchases in dispute were made for a creditable purpose, not having been acquired for the purpose of carrying on an enterprise, and that some of the purchases were for private use.

While the Tribunal acknowledged that the taxpayer provided a volume of documentation as proof of their expenditure on various items on which they had claimed input tax credits, the Tribunal noted that such evidence did not of itself give rise to the entitlement of an input tax credit. While three transactions were identified by the Tribunal as having supporting documentation sufficient to conclude that the purchases were made for a creditable purpose such that those items were creditable acquisitions, none of the remaining items were creditable acquisitions. In respect of the vehicle, the Tribunal could not conclude that the taxpayer discharged their onus of proof that they had acquired the car, to any extent, in carrying on their enterprise.

Offshore merchant data matching program to improve GST compliance

The ATO has issued a Gazette Notice in respect of its offshore merchant data-matching program, in which the ATO will acquire merchant data from the 'big four' Australian banks (ANZ, CBA, NAB and Westpac) for 2024-25 through to 2026-27.

The program is designed to identify offshore businesses supplying digital services, products, or low value imported goods to Australian consumers and ensure compliance with GST obligations, by identifying those offshore businesses required to register and pay Australian GST on supplies of such imported services, digital products, and low value imported goods made to Australian consumers.

The ATO estimates that records relating to approximately 9,000 offshore merchants will be obtained each financial year.

International tax and trade update

Lodgment deferral for CBC reporting statements

The Australian Taxation Office (ATO) has announced that, due to the year-end holiday period, it is providing country-by-country (CBC) reporting entities with a lodgment deferral until Friday, 30 January 2026 for reporting periods that ended on 31 December 2024 and had a due date of 31 December 2025.

Such entities with CBC reporting obligations will need to lodge each of the respective statements for this period–local file, master file, and CBC report–by 30 January 2026.

This due date also applies to statements with a replacement reporting period that ended on 31 December 2024. The ATO will apply this deferral automatically.

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Draft guidance for completing the public CBC report

The ATO has recently released draft guidance on the Australian public CBC report, including draft instructions on how to prepare public CBC reports and the XML Schema for the file.

The public CBC reporting regime, commencing for reporting periods starting on or after 1 July 2024, requires certain large groups to publicly disclose selected tax and financial information for Australia, specified countries, and the rest of their global operations. The draft guidance provides practical insights for those working to prepare their first Australian public CBC report. Consultation on the draft guidance closed 28 November 2025.

For further information, refer to our Tax Alert.

ATO guidance on Pillar Two transitional CBC reporting safe harbour

The ATO has released guidance in respect of the transitional CBC reporting safe harbour which is one of four safe harbours available under the Pillar Two global and domestic minimum tax rules. The transitional CBC reporting safe harbour can relieve a MNE group from having to undertake detailed top-up tax calculations for a jurisdiction, if the MNE group can demonstrate, based on CBC reporting and financial accounting data, that it meets one of three tests for that jurisdiction, i.e. the de minimis test, the simplified effective tax rate (ETR) test, or the routine profits test.

The applicable transitional CBC reporting safe harbour test must be satisfied using prescribed transitional CBC reporting safe harbour data. Access to the transitional CBC reporting safe harbour depends on whether an MNE group has filed a CBC report as required or can be treated as having done so under specific assumptions.

An eligible MNE group can elect to apply the transitional CBC reporting safe harbour from the first fiscal year that the MNE group becomes subject to the global and domestic minimum tax for a jurisdiction. It will only apply to a fiscal year within the transition period, being a fiscal year that begins on or before 31 December 2026 and ends on or before 30 June 2028.

Consultation on minor amendments to the global and domestic minimum tax rules

Treasury is consulting on minor amendments to Australia's global and minimum tax rules to keep it consistent with the Organisation for Economic Co-operation and Development (OECD) guidance. Specifically, this includes:

- Clarifying the limited circumstances where securitisation entities would be liable to pay undertaxed profits rules (UTPR) top-up tax
- Inserting an equity investment inclusion election and the related rules on qualified flow-through tax benefits
- Minor amendments to the domestic minimum tax provisions, and
- Clarifying the investment equity transparency election for regulated mutual insurance companies.

The amending rules will commence on the day after registration and will apply to fiscal years commencing on or after 1 January 2024. Comments closed 21 November 2025.

Further reforms to streamline and strengthen foreign investment framework

Treasury has released a discussion paper on the Government's proposals to further streamline and strengthen the foreign investment framework. This includes, among other things:

- An automatic approval pathway so that certain low-risk investments would require notification but not approval before proceeding
- Ways to reduce reporting requirements under the Register of Foreign Ownership of Australian Assets
- Ways to better manage approved investments
- Provide more certainty on timely decisions, and
- New conditions and enforceable undertakings to ensure investments are in the national interest.

Comments close 12 December 2025.

Updates to Practice Statement on advance pricing arrangements

The ATO has updated Practice Statement Law Administration PS LA 2015/4, which provides detailed guidance on advance pricing arrangements (APAs). This update reflects recommendations from the APA Program Review published in 2023 and improvements in the processes implemented since then and to make general updates in line with current ATO style and accessibility requirements.

This includes setting clearer mutual expectations, redefining APA program entry criteria, increasing transparency and clarity on the decision-making process, program governance updates and updates to how collateral issues are treated depending on the stage of the APA process.

Full Federal Court grants stay in royalty withholding tax dispute

The Full Federal Court has allowed a taxpayer's appeal, granting a stay on proceedings in its dispute with the ATO in Oracle Corporation Australia Pty Ltd v Commissioner of Taxation [2025] FCAFC 145, until the conclusion of MAP processes (including by any arbitration). The dispute involves whether 'sublicence fees' under a complex software distribution agreement were royalties for Australian tax purposes and therefore subject to royalty withholding tax.

By way of background, the taxpayer had previously sought a temporary stay of proceedings in its dispute with the Commissioner of Taxation pending conclusion of a mutual agreement procedure (MAP) between the tax authorities of Australia and Ireland under the terms of the Australia-Ireland double tax agreement (DTA). The taxpayer group appealed to the Federal Court against the objection decisions to preserve its domestic rights of appeal and immediately sought the temporary stay to permit the MAP to progress. The ATO subsequently suspended the MAP under the relevant Article of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) which it was permitted to do so since "a case with respect to one or more of the same issues is pending before a court or administrative tribunal".

Initially, the Federal Court refused to grant the taxpayer temporary stay in its dispute with the ATO in Oracle Corporation Australia Pty Ltd v Commissioner of Taxation (Stay Application) [2024] FCA 1262, citing public interest reasons.

The Full Federal Court determined that the primary judge had mistaken the facts in concluding that the present proceedings would provide material guidance on the correct tax treatment for other taxpayers' arrangements.

Rights under transmission lease not TARP

In YTL Power Investments Limited v Commissioner of Taxation of the Commonwealth of Australia [2025] FCA 1317, the Federal Court has addressed the question of what constitutes 'taxable Australian real property' (TARP) which is relevant to determine whether a foreign resident is subject to Australian capital gains tax (CGT).

The taxpayer who had disposed of shares in a company argued that rights conferred under a transmission network lease in relation to leased assets situated on land owned or not owned by the company did not constitute real property situated in Australia which was relevant to work out whether the shares were taxable Australian property (TAP).

The Court determined in all instances that the rights did not constitute 'real property situated in Australia (including a lease of land)' within the meaning of section 855-20(a) of the Income Tax Assessment Act 1997 and hence did not constitute 'taxable Australian real property'. The Court concluded that the decision was a function of the statutory regime that applied to the privatisation of the South Australian electricity industry and of the statutory rights conferred on the operator of the transmission infrastructure in respect of third-party land.

Valuations in issue in another foreign resident CGT case

In Newmont Canada FN Holdings ULC v Commissioner of Taxation (No 2) [2025] FCA 1356, the Federal Court considered a number of issues relevant in determining whether the sale of shares in an Australian company by two non-resident taxpayers amounted to a sale of TAP which would render the gain subject to Australian CGT.

At the time of the share sale, almost all of the income producing assets of the Australian company (and its subsidiaries) were situated in Australia or comprised intangible property that could only be turned to profit by being deployed in mining activities undertaken in Australia. Notwithstanding this substantial Australian nexus, the vendors argued that as foreign residents they were not liable to pay tax on the capital gain arising from the sale of the shares because they were foreign residents at the time of the sale and the shares were not TAP.

TAP includes any 'indirect Australian real property interest', a term that applies to any 'membership interest' held by one entity in another entity where the interest passed both a 'non-portfolio interest test' and 'principal asset test'. It was common ground that the shares passed the non-portfolio interest test. In issue, however, was whether the shares also passed the principal asset test. In this instance, the principal asset test would be passed if the 'sum of the market values' of the Australian company's assets that were TARP exceeded the sum of the market values of its assets that were not TARP.

The parties to the appeal agreed on a list of substantive issues that were in dispute between them that the Federal Court was tasked to resolve. This includes a range of valuation issues (including valuation of mines, mining information, intercompany loans and receivables, stockpiles of ore, derivatives and an interest in a joint venture), the statutory meaning of the words 'real property' and whether it included any of the mining plant and equipment, and whether the market value substitution rule applied in determining the capital proceeds on the sale of the shares and the cost base of those shares.

The matter proceeded by way of the court identifying and determining the issues as agreed between the parties with the court's resolution of those issues to be referred to a referee for further calculations to be undertaken.

Update to OECD Model Tax Convention on Income and on Capital

The OECD has released an update to the Model Tax Convention on Income and on Capital, providing new and detailed guidance on short-term cross-border remote work and on the taxation of income from natural resource extraction.

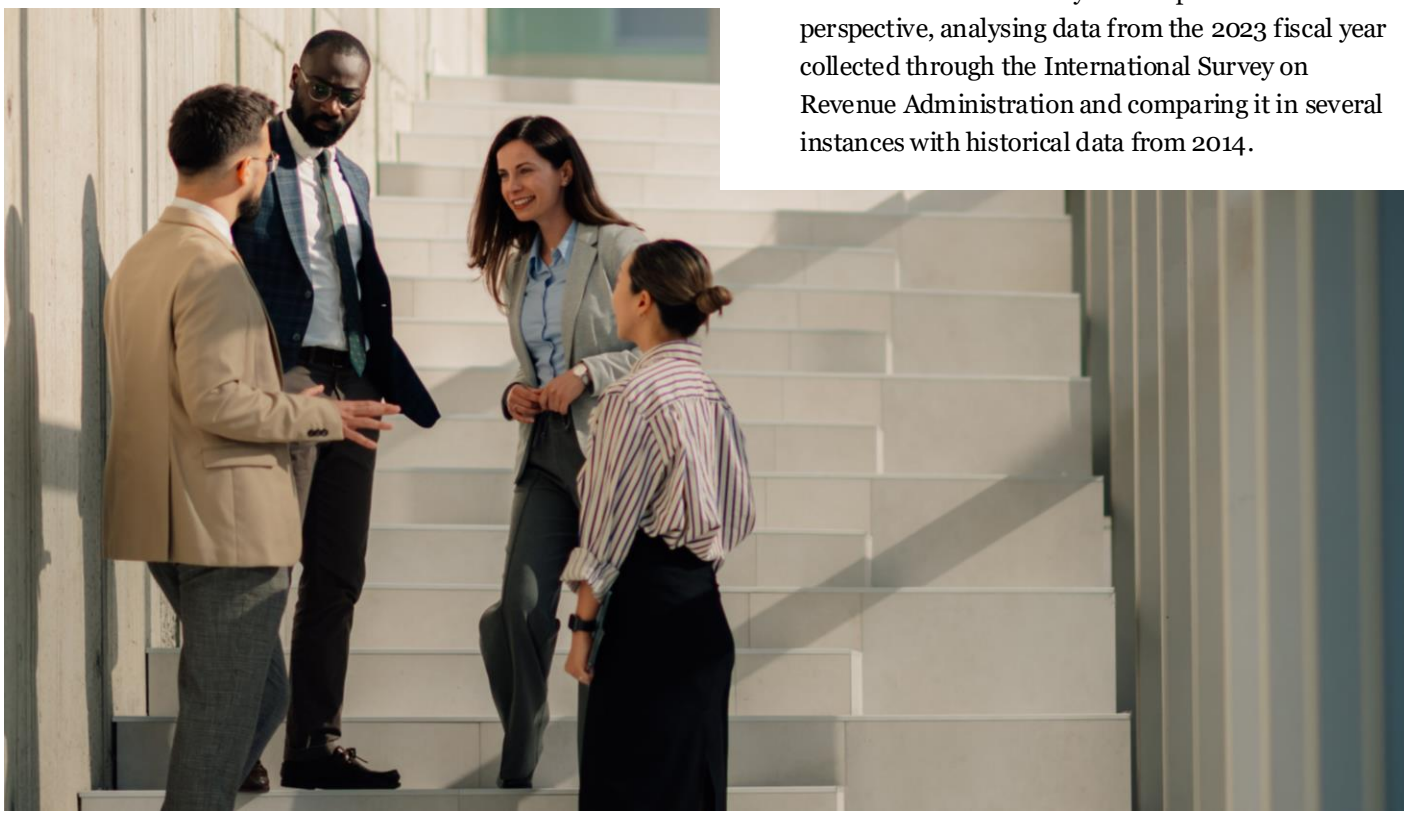
Namely, the 2025 Update to the OECD Model Tax Convention on Income and on Capital clarifies when remote work across borders, such as from a home office, creates a taxable presence for business. The update also introduces a new alternative (optional) provision on activities in connection with the exploration and exploitation of extractible natural resources, together with related commentary. The centrepiece of the alternative provision is a lower permanent establishment threshold, which would be crossed after a non-resident enterprise had operated in a State for more than a bilaterally agreed time period. Changes also expressly indicate that information received through exchange of information can be used for tax matters concerning persons other than those in respect of which the information was initially received; and reflect agreed interpretative guidance on taxpayer access to exchanged information and the disclosure of reflective non-taxpayer specific information about or generated on the basis of exchanged information.

These updates will be reflected in revised condensed and full editions of the OECD Model Tax Convention, to be released in 2026. For more information, refer to our Global Tax Policy Alert.

Other news from the OECD

Since our last update, the OECD has also published the following reports:

- The OECD Report to the G20, which was prepared at the request of the South African G20 Presidency, focuses on ways to improve the design of cross-border business income taxation rules in the context of multilateral tax co-operation to deliver more simplicity. The report explores the key aspects of simplicity, the drivers of complexity, and the trade-offs involved, looking both at the domestic context and the context of multilateral co-operation. The report also considers next steps, including broader consultation and identifying possible priority areas for further work on simplification in cross-border business taxation.
- The 2024 MAP Statistics which covers a record 141 jurisdictions and practically all MAP cases worldwide for 2024. Resolution times remain broadly stable in 2024 at 27.4 months on average, with transfer pricing cases slightly improved at 30.9 months (down from 32 in 2023) and other cases at 24.5 months (up from 23.4 in 2023). The data also shows that 76% of MAP cases reached full resolution, up from 74% in 2023, while only 4% were closed without agreement.
- The 2024 APA Statistics which reports that 80 jurisdictions allowed bilateral APAs, up from 73 in 2023, with 49 actively managing cases. In 2024, the number of bilateral APAs filed rose by 3%, and roughly a quarter of the inventory was closed, consistent with 2023. Notably, jurisdictions continue to prioritise dispute prevention, with several of them reporting that APAs account for more than half of their bilateral transfer pricing caseload.
- A new batch of updated transfer pricing country profiles, reflecting the current transfer pricing legislation and practices of 25 jurisdictions and including for the first time the profiles of Cabo Verde, Guatemala, Thailand, United Arab Emirates, and Zambia. This third batch of country profiles present new information on country-specific legislation and practice regarding the transfer pricing treatment of hard-to-value intangibles and the simplified and streamlined approach for baseline marketing and distribution activities.
- Tax Administration 2025, which is the thirteenth edition of the OECD's Tax Administration Series, presents comparative insights into the performance of both advanced and emerging tax administrations worldwide and highlights key trends and shared challenges facing global tax administrations today. This edition offers a ten-year comparative perspective, analysing data from the 2023 fiscal year collected through the International Survey on Revenue Administration and comparing it in several instances with historical data from 2014.



State tax update

Victoria: State Taxation Further Amendment Bill 2025

The State Taxation Further Amendment Bill 2025 (Vic) has completed its passage through the Victorian Parliament with amendments related to changes to the Congestion Levy Act 2005 (Vic). The Bill, which is now law, makes various amendments to, among others, the Commercial and Industrial Property Tax Reform Act 2024 (Vic), the Duties Act 2000 (Vic), the First Home Owner Grant and Home Buyer Schemes Act 2000 (Vic), and the Land Tax Act 2005 (Vic) - for further details on specific measures, refer to the November 2025 edition of Monthly Tax Update.

One consequence of the Bill is that the rules for New Zealand citizens in relation to foreign purchaser additional duty (FPAD) will change. Currently, FPAD does not apply if a New Zealand citizen holds a special category visa (Subclass 444) at transfer (being settlement). The new test introduced by the Bill requires a New Zealand citizen to satisfy the Commissioner that they ordinarily resided, or will ordinarily reside, in Australia for a continuous period of at least six months within the period commencing 12 months prior to, and ending 12 months after, the date of settlement. The new test applies to all settlements from the day after the Bill receives royal assent, which was given on 25 November 2025.

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Victoria: Compliance areas of focus 2025-26

The Victorian State Revenue Office has highlighted some of its compliance focus areas for 2025-26:

- Payroll tax: A focus on undisclosed wages with a strong emphasis on superannuation, fringe benefit and contractor payments, as well as labour hire and employment agency arrangements.
- Land tax: land incorrectly receiving the principal place of residence or primary production exemption, as well as land owned by trustees and absentee owners.
- Vacant residential land tax: vacant properties where the landowner has failed to make a notification, and properties incorrectly claiming the holiday home exemption.
- Land transfer duty: related party transactions, as well as exemptions and concessions relating to principal place of residence and first home purchases.
- Landholder duty: capital raisings by Victorian landholders, and offshore transactions in corporate groups that own land in Victoria.
- Lease duty: Transactions of leasehold estates in caravan parks and lifestyle villages, and the grant, transfer and/or assignment of leasehold estates associated with the establishment and sale of renewable energy assets.
- First Home Owner Grant: applicants that have failed to meet the residency requirements or disclose a past receipt of the grant by their spouse/partner.

Victoria: Draft revenue ruling regarding notification defaults

The Victorian State Revenue Office has issued draft Revenue Ruling TAA-008v2, which explains the circumstances that amount to a notification default as defined in section 3(1) of the Taxation Administration Act 1997 (Vic) and replaces TAA-008 to:

- Incorporate notification obligations under the Commercial and Industrial Property Tax Reform Act 2024 (Vic), and
- Reflect amendments made to section 46K of the Land Tax Act 2005 (Vic) by the State Taxation Acts Amendment Act 2025 (Vic), which take effect from 1 January 2026.

Comments close 11 December 2025. Once finalised, the Ruling will take effect from 1 January 2026.

Victoria: Vendor payments could not reduce assessable consideration

In Alphington Developments Pty Ltd v Commissioner of State Revenue [2025] VSC 709, the Supreme Court of Victoria has found that payments made by a vendor could not be offset against the purchase price when determining consideration for a dutiable transaction.

The Supreme Court had to determine the consideration for dutiable transactions for the purpose of section 20(1)(a) of the Duties Act 2000 (Vic). Namely, whether consideration was $94.95m (as contended by the Commissioner) or whether it was approximately $76.61m as contended by the taxpayer, the difference being attributable to payments by the vendor in respect of 'demolition works and remediation works' specified within the contract.

The taxpayer argued that the Supreme Court should have regard to the vendor's net position, on the basis that the transfers would not have occurred had the vendor not made the promises of payment.

The Supreme Court disagreed. Firstly, it was the payment of the purchase price that moved the vendor to make the transfers, noting that the proposition could be tested this way—if the vendor had been relieved of the obligation to make payments (for whatever reason) there was little doubt it would have remained willing to proceed with the transfers. Second, the Supreme Court noted that including a payment made by the vendor was not consistent with the normal understanding of consideration, being that which passes to the vendor. Further, the Supreme Court was not satisfied that the parties' payment obligations were interrelated or indivisible obligations such that the Court should account for both in the determination of consideration.

NSW: New guidance for electronic duties returns

Revenue New South Wales (NSW) has made five new electronic duties return (EDR) guides available, which are predominantly aimed to assist property professionals further understand specific duties topics by providing clear explanations, instructions, as well as practical examples to help complete transfer duty assessments. The new guides are:

- Partitions of land – section 30
- Deceased estates – section 63
- Break-up of marriages and other relationships – section 68
- Transfers between married couples/partners – section 104B
- Sale of business.

NSW: Accidental transfer leaves taxpayer liable for duty

In El Chami v Chief Commissioner of State Revenue [2025] NSWCATAD 266, the New South Wales Civil and Administrative Tribunal has dismissed the taxpayer's appeal, finding that an accidental transfer to the taxpayer of a 100% interest in their marital home was liable to ad valorem duty.

The taxpayer's husband (who was the sole owner of their residence) intended to transfer a 50% interest in the property to the taxpayer, with that transfer to fall within the exemption provided by section 104B of the Duties Act 1997 (NSW).

However, following an error on the transfer form executed by the taxpayer's solicitor, the entire 100% interest was transferred to the taxpayer. To rectify this, a few days later a second transfer took place which resulted in the taxpayer holding a 50% interest in the property as intended.

Following an investigation, the Commissioner reassessed the taxpayer to ad valorem duty on the first transfer (the second transfer was not in dispute). The Commissioner argued that the first transfer was a valid and dutiable transaction which transferred a 100% interest in the property and that it was liable for duty and not exempt. The taxpayer, however, argued that no duty should be payable, as the first transfer was done in error.

The Tribunal disagreed. While it accepted that a genuine error was originally made by the solicitor, there was no evidence that the solicitor engaged with the taxpayer (or the land registry) to ensure that the error was appropriately corrected. Rather, upon realising the error, the solicitor did not seek to deregister or cancel the transaction but, rather, effected a second, also valid, transfer which took as its starting point full ownership of the property by the taxpayer. The result was two separate transactions, each of which was separately recorded and registered, and required to be separately considered in respect of its liability to duty, with the result that the first transfer was liable to ad valorem duty.

NSW: Discretionary trust subject to surcharge tax land

In RM Thornton Family Trust Pty Ltd ATF RM Thornton Family Trust v Chief Commissioner of State Revenue [2025] NSWCATAD 283, the New South Wales Civil and Administrative Tribunal found that the taxpayer – a discretionary trust - was liable to surcharge land tax for the relevant land tax years.

The Tribunal was to determine whether the taxpayer was liable to surcharge land tax as it was deemed to be a 'foreign person' for the purposes of section 5D of the Land Tax Act 1956 (NSW) because the trust did not irrevocably exclude foreign persons from being potential beneficiaries of the trust by the relevant taxing date.

While the Tribunal accepted evidence that members of the family who could be potential beneficiaries under the terms of the trust deed were not 'foreign persons', it was not sufficient for the taxpayer to establish that the family beneficiaries were Australian citizens or that there were no distributions to any other beneficiaries, as that did not satisfy the requirements of the 'no foreign beneficiary requirement'. The terms of the original trust deed showed that the eligible beneficiaries were not limited to natural persons, and included companies of which any beneficiary or the trustee held a share, trustees of any trusts in which any of the beneficiaries had any interest, and charities, societies, authorities, institutions, churches or religious orders, corporations or entities to which a deductible distribution was made.

Accordingly, the trust did not, in its original terms, satisfy the 'no foreign beneficiary requirement' and at the relevant taxing dates, the trust deed did not contain provisions that excluded a foreign person from being a potential beneficiary of the trust. While the trust deed was amended in November 2024 to exclude foreign persons as beneficiaries, the Tribunal noted that amendments to a deed cannot operate retrospectively to bind the Commissioner or change the application of a taxation law.

NSW: Land with multiple uses not eligible for primary production land tax exemption

In E-Synergies.com Pty Ltd Pty Ltd ATF the Num-Num Trust v Chief Commissioner of State Revenue [2025] NSWCATAD 262, the New South Wales Civil and Administrative Tribunal has found that the taxpayer had not discharged the onus of proof to show that the dominant use of land during the relevant years was for a purpose of primary production within the meaning of section 10AA(3) of the Land Tax Management Act 1956 (NSW).

In the relevant land tax years, the taxpayer owned certain land in NSW that was zoned rural. The taxpayer leased part of the land to a different entity that had a right to graze cattle on the leased land. The land, however, had multiple uses, which included the grazing of cattle, the rental of two residential dwellings on the land (a villa and a cottage), growing bamboo and trees, the operation of a cafe/restaurant on the land between 2019 and 2021, bottling and selling mineral water taken from the land, and growing fruit, vegetables, herbs and roots.

Where land is rural land, the availability of the land tax exemption depends on whether the land is 'land used for primary production'. Land will fall within this description if the 'dominant use' of the land is a use that falls within one of the subparagraphs of section 10AA(3).

While the Tribunal acknowledged that at least 80% of the land area was used for activities that went to primary production within the meaning of section 10AA(3), the Tribunal noted that the land area used for each type of activity was not itself determinative of the question of what was the dominant use of the land, with other factors needing to be considered.

Whether measured in terms of the relative expenditure for each use, the intensity of each use on a temporal measure or the deployment of paid labour, the Tribunal found that the nature, extent and intensity of use of the land for the production of crops and for the maintenance of cattle (whether taken together or individually) did not surpass the level of use of the land for either the cafe/restaurant in 2020 and 2021 or residential occupancy in the years following. Further, comparatively meagre returns from the sale of forest products, fruit, greens and cattle went towards showing that the relevant primary production activities were less influential uses of the land during all the years in issue.

Together, this weighed in favour of a conclusion that the dominant use of the land was not primary production. As to the taxpayer's argument that they should not be prevented from claiming the primary production exemption in circumstances where hardship had required that they also earn income from other activities to obtain a viable return, the Tribunal noted that the terms of section 10AA(3) do not allow for exemption where the dominant use of land becomes for an activity that does not comprise a relevant primary production activity, as is what happened in this case.

WA: Connected entities exemption guidance updated

RevenueWA has updated Ruling DA 19, which sets out how the Commissioner interprets certain terms relevant to applying for a connected entities duties exemption in Western Australia (WA). The exemption from duty applies to relevant transactions between corporations and unit trust schemes that are members of a family. This exemption can be revoked automatically following certain events, or at the discretion of the Commissioner. The update was made to guidance concerning the effective date of a transaction, as well as other minor clarifying updates. DA 19.3 replaces DA 19.2 and is effective 21 October 2025.

Tasmania: 2025-26 Interim Budget

On 6 November 2025, the Treasurer of Tasmania delivered an interim Budget, following the 2025 Tasmanian State Election, which was held on 19 July 2025.

No new tax measures were announced in the Budget. Instead, it reiterated the following measures:

- An extension of the payroll tax rebate scheme for apprentices for an additional 12 months to 30 June 2026, and
- The increase in the First Home Owner Grant from $10,000 to $30,000 for eligible transactions from 1 July 2025 until 30 June 2026.

Both measures are contained within the Taxation and Related Legislation (First Home Owner and Payroll Relief) Bill 2025 (Tas), which at the time of writing is before the Tasmanian Parliament.

Superannuation update

Large super funds to be required to complete annual RTP schedule

The Australian Taxation Office (ATO) has announced that large superannuation funds and collective investment vehicles (CIVs) will be required to complete the Reportable Tax Position (RTP) schedule from 2026.

The RTP schedule is an obligation that is currently completed by Australia's largest public and private companies. The inclusion of super funds and CIVs brings the reporting obligations of these entities into line with other large taxpayers that have a significant impact on the Australian economy and will complement the ATO's current engagement and assurance approaches, streamline its information gathering process and enable the ATO to better tailor its engagements. The instructions to the RTP schedule, yet to issue, will outline the specific questions that these large taxpayers are required to answer and will include public advice and guidance that is specific to their industry.

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Payday super legislated

The legislation (Treasury Laws Amendment (Payday Superannuation) Bill 2025 and the Superannuation Guarantee Charge Amendment Bill 2025) to implement Payday super—which reforms the superannuation guarantee framework to incentivise employers to make superannuation contributions for their employees broadly at the same time as they pay the employee's qualifying earnings—is now law.

The reforms will apply to superannuation guarantee contributions in respect of qualifying earnings days on or after 1 July 2026. For further information, refer to Employment Taxes Update.

Legislative update

The following tax or superannuation related Bills were introduced into Federal Parliament since our last update:

- The Customs Tariff Amendment (Geelong Treaty Implementation) Bill 2025, which was introduced to the House of Representatives on 30 October 2025, amends the Customs Tariff Act 1995 to implement a waiver on customs duties for goods imported under the Nuclear-Powered Submarine Partnership and Collaboration Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland, done at Geelong on 26 July 2025.
- The Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025, which was introduced to the House of Representatives on 26 November 2025, makes a range of amendments to tax and superannuation law, among others, to:
  - support employers to streamline the choice of fund process during employee onboarding to support the transition to Payday Super
  - provide income tax and withholding tax exemptions for World Rugby and its wholly-owned subsidiaries

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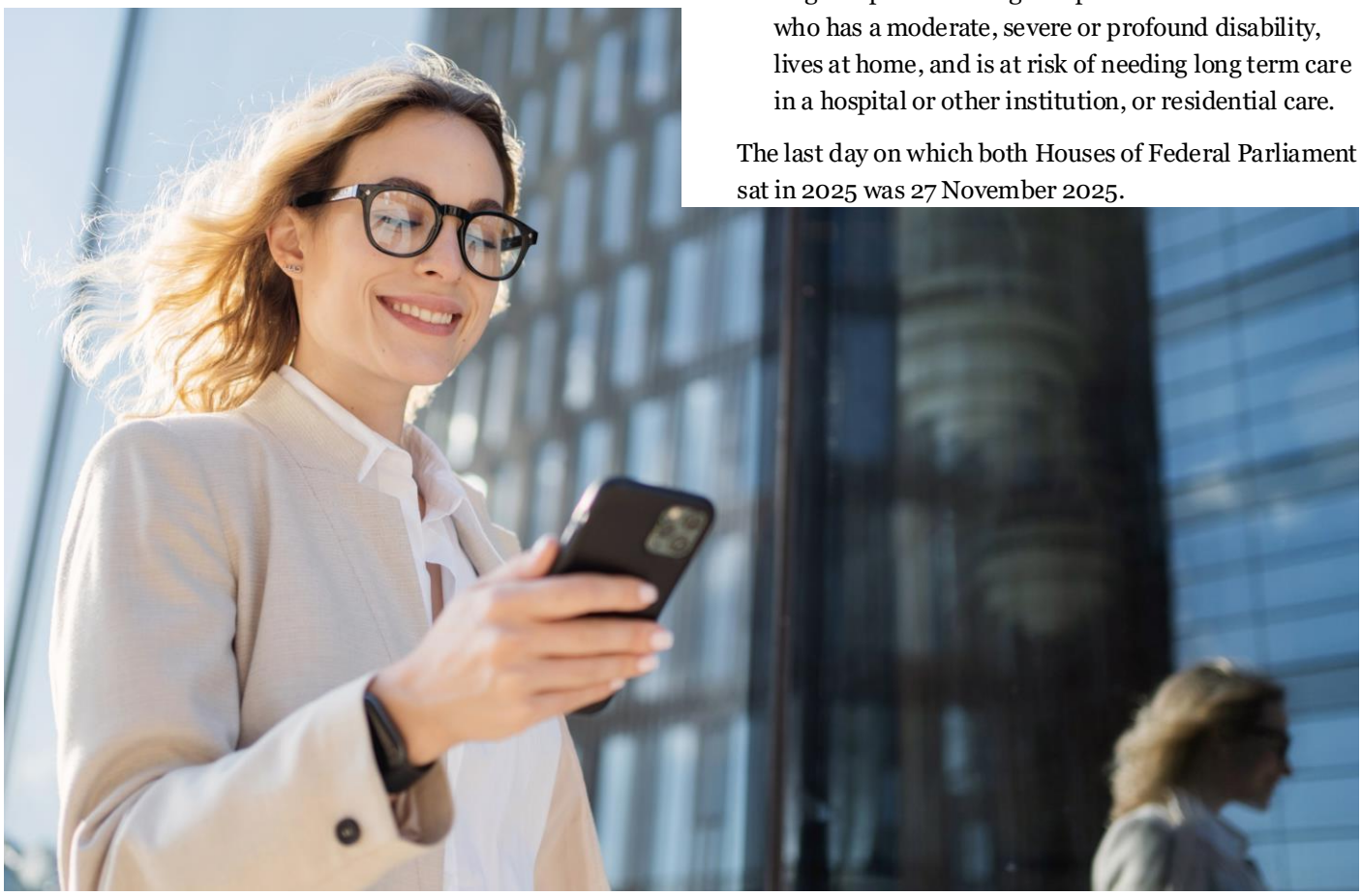
- give effect to the Australia-Portugal double tax agreement
- update the list of deductible gift recipients, and
- increase the maximum amount of wine equalisation tax (WET) producer rebate from $350,000 to $400,000 per financial year, from 1 July 2026.

Since our last update, the following tax or superannuation Bills have completed their passage through Parliament and received Royal Assent:

- The Treasury Laws Amendment (Payday Superannuation) Bill 2025 and the Superannuation Guarantee Charge Amendment Bill 2025, which implement the new Payday Super reforms to the superannuation guarantee framework to incentivise employers to make superannuation contributions for their employees at the same time as they pay the employees' qualifying earnings. The Bills will apply to superannuation guarantee contributions in respect of qualifying earnings days on or after 1 July 2026. Refer to the Employment Taxes section of this monthly Update for further details.



The following Commonwealth revenue measures were registered as legislative instruments since our last update:

- The A New Tax System (Goods and Services Tax) (GST-free Supply - Residential Care - Non-government Funded Supplier) Determination 2025, which intends for aged or disabled people in like care situations, who are living in privately funded residential accommodation, to be treated similarly in terms of their access to GST-free services, as aged or disabled people living in approved residential care homes under the Aged Care Act 2024.
- The A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Government Funded Supplier) Determination 2025, which ensures that aged care services that are GST-free when funded by the Commonwealth government are also GST-free when funded by a State or Territory government.
- The GST-Free Supply (Care) Determination 2025, which ensures that care services that are similar to those that are GST-free when supplied to aged or disabled people are GST-free when supplied to a targeted person. A targeted person is an individual who has a moderate, severe or profound disability, lives at home, and is at risk of needing long term care in a hospital or other institution, or residential care.

The last day on which both Houses of Federal Parliament sat in 2025 was 27 November 2025.

Other news update

Effective life of depreciating assets

The Australian Taxation Office (ATO) has withdrawn Taxation Ruling 2022/1 which sets out the Commissioner's effective life of depreciating assets effective from 31 October 2025. The Income Tax Assessment (Effective Life of Depreciating Assets) Determination 2025 contains Tables A and B which list the effective life determinations the Commissioner has made to date and continues to apply after the withdrawal of TR 2022/1. The Determination is periodically updated to incorporate determinations in respect of additional assets as effective life reviews are completed.

Draft legislative instrument for withholding variation for certain insurance or compensation claim payments

The ATO has released draft Legislative Instrument LI 2025/D18, which varies the amount a payer must withhold from certain insurance and compensation payments to nil, where the payee has not quoted their Australian business number (ABN).

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Where a payment is made in circumstances where an ABN is not quoted but would ordinarily be required to be quoted by a payee, an amount may be required to be withheld from that payment under subsection 12-190(1) in Schedule 1 of the Taxation Administration Act 1953.

The draft instrument varies to nil the amount required to be withheld from certain payments made in settlement of an insurance or compensation claim. This variation applies to payments that are made by:

- An insurer to another entity in settlement of a claim under an insurance policy
- An entity operating a statutory compensation scheme to another entity in settlement of a claim for compensation under that scheme, or
- An entity operating a compulsory third-party scheme to another entity in settlement of a claim for compensation under that scheme.

The draft instrument repeals and replaces a 2016 instrument which would otherwise be sunset on 1 April 2026. The draft instrument has the same substantive effect as the 2016 instrument and once finalised, will commence on the day after it is registered. Comments on the draft closed on 28 November 2025.

Draft Determination issued for ancillary funds on provision of benefits

The ATO has released draft Taxation Determination TD 2025/D3 which sets out the ATO's view on when an ancillary fund is providing a benefit. Ancillary funds are charitable trusts established solely to fund and support eligible deductible gift recipients. Although ancillary funds are themselves deductible gift recipients, they do not undertake charitable work, instead acting as intermediaries between donors and eligible deductible gift recipients that do.

The draft Determination covers both private and public funds, which are governed by the respective Taxation Administration (Private Ancillary Fund) Guidelines 2019 and the Taxation Administration (Public Ancillary Fund) Guidelines 2022. Subsection 15(4) of the Guidelines says that an ancillary fund may make its mandatory distributions by 'the provision of money, property or benefits'. Subsection 22(3) of the Guidelines prohibits ancillary funds from providing benefits to certain related entities. TD 2025/D3 explains the ATO's views on the meaning of:

- The 'provision of [...] benefits' in subsection 15(4) of the Guidelines, and
- To 'provide any benefit, directly or indirectly' in subsection 22(3) of the Guidelines.

When the final Determination is issued, it is proposed to apply both before and after its date of issue. Comments close 30 January 2026.

Senate inquiry on the operation of the CGT discount

A Senate inquiry will be held into the operation of the capital gains tax (CGT) discount. The Senate Select Committee, which is to present its final report by 17 March 2026, will inquire into and report on, among other things:

- The contribution of the CGT discount to inequality in Australia, particularly in relation to housing
- The role of the CGT discount in suppressing Australia's productivity potential by funnelling investment into existing housing assets
- The use of the CGT discount by trusts, and
- Whether the discount is fulfilling its original intended purpose and has a role in Australia's future tax mix.

Submissions to the inquiry close on 19 December 2025.

Taxpayer Alert on barter credit schemes

The ATO has issued a Taxpayer Alert TA 2025/3 concerning arrangements that improperly access deductions for donations of 'barter credits'.

The ATO is currently reviewing cases where taxpayers have entered into a non-recourse or limited recourse borrowing arrangement that is purported to access barter credits or trade dollars from a barter exchange. The barter credits acquired by the taxpayer are purportedly donated to a deductible gift recipient (DGR), with the taxpayer led to believe that they can claim an income tax deduction in their tax return for the nominal face value of the donated barter credits.

The Taxpayer Alert describes the typical features of such arrangements, noting that, while each case depends on the relevant facts and circumstances, the ATO is concerned that these arrangements are, at best, ineffective for tax purposes and may even be unlawful. The ATO is also concerned that some taxpayers may be entering into these arrangements under the mistaken belief that they are entitled to tax deductions for the full nominal face value of barter credits donated to a DGR.

The ATO is actively reviewing these arrangements and engaging with relevant taxpayers, barter exchanges and DGRs to ensure that all parties have correctly met their income tax obligations. In the course of these reviews, the ATO will also consider any related goods and services tax obligations.

The ATO is also developing its technical position on the arrangements and will publish further guidance in due course.

Private groups: What's on the ATO's radar for 2025-26?

The ATO has refreshed its areas of focus for privately owned and wealthy groups to reflect its priorities for 2025-26.

This year, the ATO is paying close attention to:

- The use of business money for personal or other group purposes, with a particular focus on Division 7A arrangements and the tax treatment of lifestyle assets
- The tax consequences of succession planning activities, including where private groups restructure, dispose of assets, transfer wealth or implement arrangements aimed at minimising or avoiding tax
- Tax risks arising from specific industries or activities such as property and construction, private equity and international dealings, and
- Ensuring compliance with core tax obligations, including:
  - Correctly reporting income, sales, capital gains
  - Meeting eligibility requirements for concessions or entitlements claimed, and
  - Timely lodgment of returns and schedules and payment of tax debts.

ATO's 2024-25 annual report

The ATO has released its 2024-25 annual report, which informs Parliament, stakeholders and the community about the ATO's performance for the past financial year.

Pre-CGT trust asset retains majority underlying interest

In XLZH and Commissioner of Taxation (Taxation) [2025] ARTA 2154, the Administrative Review Tribunal has allowed a taxpayer's appeal, finding that a sale of shares held by a discretionary trust retained their pre-CGT status.

The taxpayer was a beneficiary of the discretionary trust that was settled prior to 20 September 1985, being the start date of the capital gains tax (CGT) provisions. In the 2020 income year, the trustee disposed of shares in a company, which it had acquired pre-CGT and for which the beneficiary received a distribution in connection with the proceeds of the disposal of the shares. The matter in dispute was about whether the appointment of a corporate discretionary object to the trust in 2011 had the effect that the 'majority underlying interests' in the pre-CGT assets of the trust ceased from that time onwards. If this was the case, then in accordance with Division 149 of the Income Tax Assessment Act 1997 the shares would have ceased to be a pre-CGT asset and the Commissioner's assessment to CGT to the beneficiary would stand.

Ultimately, the Tribunal determined that the shares continued to be a pre-CGT asset, and that the capital gain should be disregarded. The Tribunal was satisfied, or thought it reasonable to assume, that at all times on and after 20 September 1985 and before the particular time in 2011, majority underlying interests in the shares were had by ultimate owners who had majority underlying interests in those shares immediately before that time. Among other things, the Tribunal found that the mere appointment of a discretionary object does not, by virtue of that fact alone, mean that more than 50% of the 'beneficial interests' that 'ultimate owners' had (whether directly or indirectly) in the asset and in any income that may be derived from the asset have changed (or have not changed). Consequently, the shares continued to retain their pre-CGT status.

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