Monthly Tax Update

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

2 February 2026

Contents

Corporate tax update

Productivity Commission's final report on corporate tax reform

The Productivity Commission was asked by the Australian Government to conduct five inquiries to identify priority reforms under their five pillar productivity growth agenda. On 19 December 2025, those five inquiry reports were released.

One of the five final inquiry reports, Creating a more dynamic and resilient economy, presents the Productivity Commission's recommendations focused on two key policy reform areas:

- corporate tax reform to spur business investment, and
- regulating to promote business dynamism.

The report notes that current corporate tax settings distort and restrict investment, inhibit competition, growth and innovation among Australian businesses, and discourage overseas firms from setting up in Australia. Further, Australia's corporate tax system is not delivering the best outcomes, with a high statutory rate in comparison to peer countries, while competition for global capital becomes more intense.

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The report recommends that Australia shift to a hybrid corporate tax system, combining a lower company income tax of 20% for small and medium businesses earning up to $1bn, and a tax rate of 28% for larger firms, with a separate net cashflow tax of 5% applied to all companies. Modelling for this inquiry suggests a reformed company tax system could increase investment and labour productivity, in a broadly revenue-neutral manner.

While the Productivity Commission recognises that prior feedback was overwhelmingly opposed to the introduction of a package involving a new tax, their analysis suggests that this is the best revenue-neutral option for promoting investment within Australia's corporate tax system. However, the report also explores alternative proposals that relax the revenue-neutrality constraint and avoid some of the perceived complexity of an additional tax. They involve trade-offs between investment, dynamism and complexity, and come at a cost to the budget:

- The preferred approach would involve partial immediate expensing of new capital combined with a counterpart reduction in interest deduction.
- A marginal allowance for corporate equity could also increase investment but would need to address integrity and implementation challenges.
- Reductions in the company income tax rate are simpler, and will increase investment, though by substantially less than other options, for similar budget impact.

In terms of regulatory reform, the report also recommends that the Australian Government make regulatory reform a key priority with an ambitious whole of government agenda, including major reforms targeting a $10bn reduction in regulatory burden.

The Government has yet to respond to these recommendations.

A summary of key recommendations across all 5 reports and an implementation timeline can be found in the summary report.

Exposure draft legislation to exclude gambling and tobacco activities from R&DTI

Treasury has released exposure draft legislation that would prevent activities related to gambling and tobacco from being eligible for the R&D Tax Incentive. Namely, activities related to gambling services, gambling and gambling-like practices will be excluded from being both core R&D activities and supporting R&D activities.

However, activities conducted solely for the purpose of generating new knowledge about minimising harm from gambling services, gambling or gambling-like practices, would remain eligible to receive support under the R&D Tax Incentive Program.

The amendments, once introduced to Parliament and legislated, would apply in relation to expenditure incurred on R&D activities conducted in income years starting on or after 1 July 2025. Comments closed 30 January 2026.

Critical minerals regulations on eligible processing activities

The Income Tax Assessment (1997 Act) Amendment (Critical Minerals) Regulations 2025 includes critical mineral processing activities which are intended to be eligible for the critical minerals production tax incentive (CMPTI) but do not meet the general definition of CMPTI processing activity in paragraph 419-20(1)(a) of the Income Tax Assessment Act 1997.

The Regulations prescribe processing activities and outcomes with respect to critical minerals to allow these activities to be CMPTI processing activities. The identified processing activities for these regulations relate to the processing of high purity alumina, graphite, and critical mineral-containing precursor cathode active material (pCAM).

The CMPTI applies to expenditure incurred in income years in relation to processing activities (including as prescribed in the Regulations) starting on or after 1 July 2027 and before 1 July 2040.

Corporate restructure did not result in capital benefit

In Commissioner of Taxation v Hicks [2025] FCAFC 171, the Full Federal Court has unanimously dismissed the Commissioner's appeal against the primary judge's decision in Ierna v Commissioner of Taxation [2024] FCA 592, finding that neither section 45B nor Part IVA of the Income Tax Assessment Act 1936 applied to a series of steps that were carried out as part of a restructure by a private group of entities.

The restructure broadly involved the following steps:

- a transfer of units in a unit trust to a new company in consideration for new shares in the company
- a selective share buy-back to allow, in substance, a realisation of pre-capital gains tax (CGT) gains to the new company's shareholders
- an assignment of debt (loan) interests arising from the share buy-back to other associate entities, and
- an election by the new company to form a consolidated group with the unit trust.

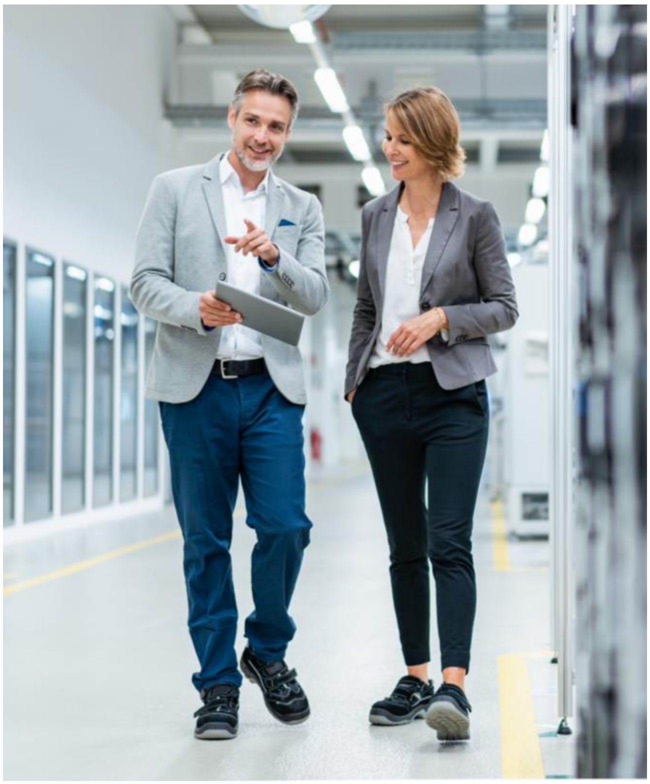
Broadly, the issues in the appeal relate to a scheme that involved the distribution of capital to the shareholders of a company through the selective buy-back of shares in that company. The Commissioner's position was that the taxpayers had realised a capital benefit as a result of the share capital reduction, which was to be assessed in accordance with the section 45B determination. Essentially, this would treat amounts of a return of capital as an unfranked dividend paid out of the profits.

In its decision, the Full Federal Court noted that by the terms of section 45B(1), section 45B is directed at a specific kind of arrangement, whereby capital is returned by a company in lieu of or in substitution for a dividend paid by that company or an associate of that company. The section is not engaged merely because the Commissioner identifies an entity in a group with profits available for distribution and another company makes a capital return.

The facts of this case did not support a conclusion that the capital return by the newly incorporated company was paid in substitution for an assessable dividend in order to enable either of the taxpayers to obtain a tax benefit. Given that the context and purpose of the capital return was to fund the repayment of Division 7A loans, the pattern of dividend distributions did not support a conclusion that a purpose of a party in entering into or carrying out the scheme was for the capital returned to be provided in substitution for a dividend. It was not a purpose of a party in entering into or carrying out the scheme to enable the taxpayers to obtain a tax benefit.

The Commissioner's Part IVA argument was also dismissed. At its essence, the Full Court found that the Commissioner in this case had sought to apply Part IVA to include an amount in assessable income based on the fact that the Commissioner had been able to identify another way in which Division 7A loans may have been repaid which would have resulted in more tax becoming payable. The bare fact that a taxpayer pays less tax, if one form of transaction rather than another is made, does not demonstrate that Part IVA applies.

The Commissioner has since sought special leave to appeal to the High Court against the decision.



Employment taxes update

Proposed employee superannuation onboarding reform

The Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025 to support employers in streamlining the choice of fund process during employee onboarding in connection with the transition to Payday Super. The choice of fund requirements determine which fund an employer should make superannuation guarantee (SG) contributions to, for an employee.

The amendments provide greater flexibility in allowing an employer (or their agent) to request details of an employee's stapled superannuation fund from the Commissioner of Taxation. This aspect of Bill is proposed to commence immediately after receiving Royal Assent.

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FBT exemption for EVs to be reviewed

Treasury is conducting a review of the tax exemptions (from fringe benefits tax (FBT) and import tariffs) for electric vehicles (EVs). This review, mandated under the Treasury Laws Amendment (Electric Car Discount) Act 2022, will assess the effectiveness of both exemptions that apply to zero or low emissions vehicles, considering their impact on the rapid uptake of electric vehicles compared to other factors. Feedback is sought on the current eligibility criteria and other relevant evidence to guide the future of these tax incentives.

Treasury invites submissions on the review until 6 February 2026.

Draft legislative instrument: PAYG withholding variations for payments to indigenous artists without ABN and religious practitioners

The Australian Taxation Office (ATO) has released draft legislative instrument LI 2025/D25, which will reduce the PAYG withholding rate to nil for payments made to indigenous artists who live or work in Zone A (remote areas) and do not quote an ABN in relation to a supply of artistic work. This instrument also removes the obligation to provide a payment summary for these payments, reflecting the nil withholding amount. Public comments were open until 16 January 2026.

In addition, the ATO released draft legislative instrument LI 2025/D26 which sets PAYG withholding to nil for certain payments to religious practitioners and removes some reporting requirements. Comments closed 22 January 2026.

Both instruments wall replace current equivalent instruments which would otherwise sunset on 1 April 2026 and have the same substantive effect as the one it is replacing. Once finalised, they will commence on the day after being registered on the Federal Register of Legislation.

Updated payroll tax rulings regarding on-paid parental leave in VIC, QLD and TAS

The State Revenue Office of Victoria, the Queensland (QLD) Revenue Office and the State Revenue Office of Tasmania have updated their rulings regarding the payroll tax treatment of government-funded Paid Parental Leave and superannuation contributions.

From 1 July 2025, the ATO will pay superannuation contributions directly to employees’ funds for parental leave pay related to children born or adopted on or after that date. The updated rulings confirm that neither government-funded parental leave payments nor government-funded superannuation contributions are classified as ‘wages’ under state payroll tax laws and are therefore exempt from payroll tax. The change will take effect from 1 July 2025.

Tasmania – Payroll tax rebate scheme for apprentices extended

The Taxation and Related Legislation (First Home Owner and Payroll Relief) Bill 2025 has received Royal Assent and amends the *Payroll Tax Rebate (Apprentices, Trainees and Youth Employees) Act 2017* (Tas) to:

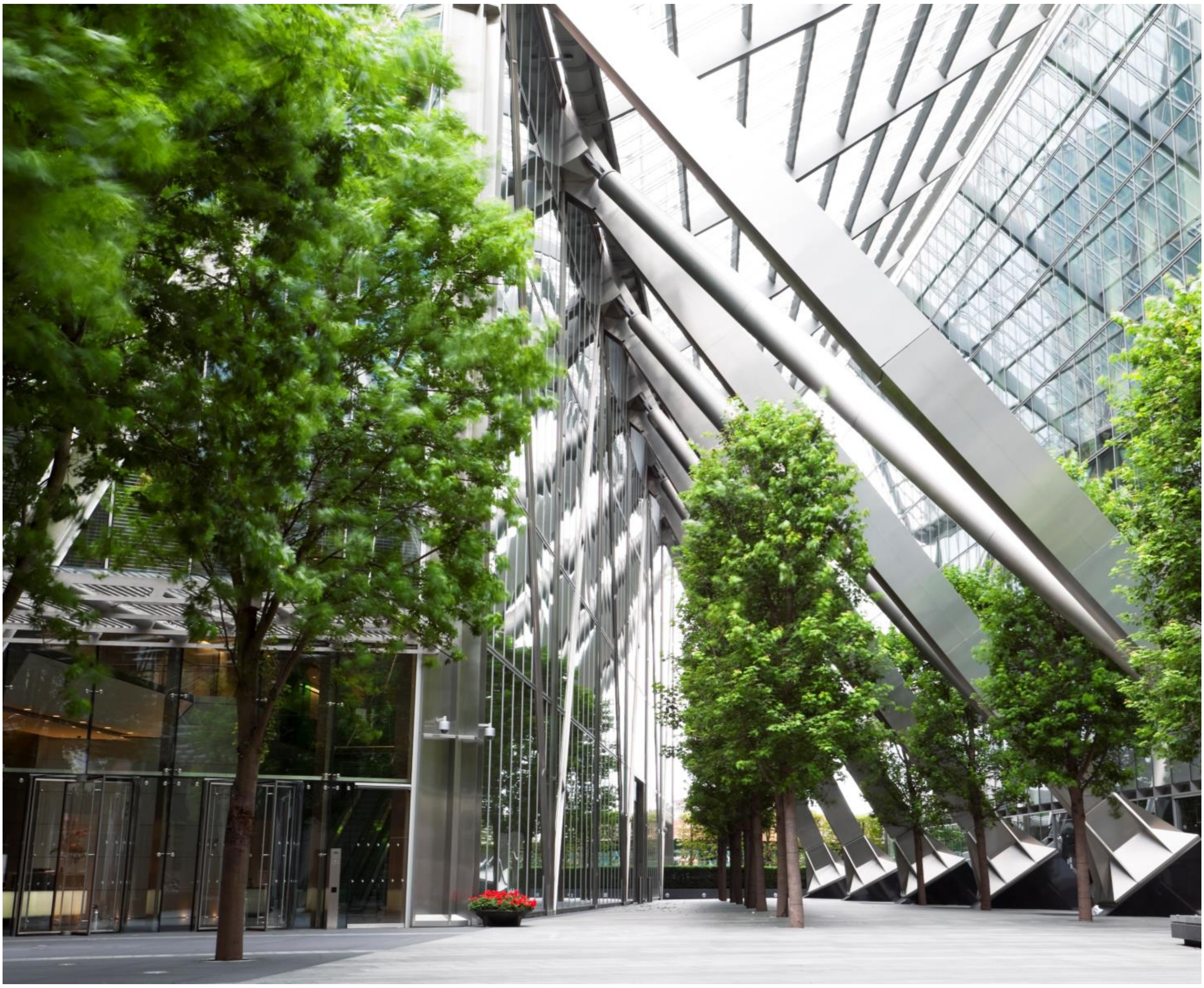
- extend the Tasmanian Payroll Tax Rebate Scheme for eligible apprentices from 1 July 2025 up to and including 30 June 2026, and
- Defer the repeal date of the *Payroll Tax Rebate (Apprentices, Trainees and Youth Employees) Act 2017* from 30 June 2028 to 30 June 2029.

The amendments will commence retrospectively on 30 June 2025 and will be repealed one year after receiving assent.

ACT – Increased payroll tax rate for large employers

On 4 December 2025, the Payroll Tax Amendment Bill 2025 was passed in the Australian Capital Territory (ACT) Parliament and subsequently enacted. As a result, from 1 January 2026, the payroll tax rate in the ACT will increase to 8.75% for large employers. To accommodate this change within the 2025-26 financial year, a split period calculation method will apply.

The new rate and calculation method will not apply to employers with total wages of $150m or less, as well as universities with ACT campuses as defined.



Personal tax update

Employees guide for work expenses updated

The Australian Taxation Office (ATO) has updated its Employees guide for work expenses, which helps employees decide whether their expenses are deductible and what substantiation records need to be kept.

The guide has been updated to include, among other things, information about:

- dental expenses, medical expenses, passport expenses and travel insurance expenses, and
- the calculation of home charging of electricity from 1 July 2024 for individuals with a plug-in hybrid electric vehicle.

Child support data matching

The ATO will acquire child support data from Services Australia for 2024-25 to 2026-27 under a data matching program. Among others, the objectives of this program are to identify and educate individuals who may be failing to meet their lodgement obligations and help them to finalise their lodgement obligations or notify the ATO that an income tax return is not required. The ATO estimates that records relating to up to 300,000 individuals will be obtained each financial year.

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No deduction for occupancy expenses for on-call consultant

In Applebee and Commissioner of Taxation (Taxation and business) [2025] ARTA 2625, the Administrative Review Tribunal decided that while a taxpayer could claim some work-related expenses for the 2020-21 income year, he was not eligible to claim deductions for his occupancy expenses and log-based travel expenses.

The taxpayer was a senior technical solutions consultant who, as part of his job, was required to be on call at times outside normal business hours and was also required to travel for work from time to time.

From late March 2020, the taxpayer worked from his rented home given the restrictions associated with the COVID-19 pandemic, but from early June 2020, he generally continued to work from home three days each week.

The disputed expenses concerning the taxpayer's home office and transport expenses arose during the 2020-21 income year. The taxpayer argued that his home office had the character of a place of business given COVID-19 restrictions, his on-call arrangements and the security restrictions around his work.

The Tribunal, however, was not persuaded that in 2020-21 the taxpayer's dedicated home workspace had the necessary character of his actual workplace/place of business. Instead, it was found to be adjunct to his workplace. Given this finding, the taxpayer would not have been eligible for travel expenses to and from his residence and his workplace office, although he was able to claim an allowance calculated using the cents per kilometre method for other travel.

Consultation to combat financial abuse through coerced directorships

Perpetrators can use tax and corporate systems to financially abuse victim-survivors. One way is through coerced directorships. This is when a victim-survivor is forced or tricked into becoming the director of a company. The victim-survivor can be left responsible for managing the company and being responsible for debts, including certain tax debts.

As part of the Government's commitment to crack down on financial abuse, Treasury has released a consultation paper seeking feedback on options to reduce harms from coerced directorships. These options aim to:

- make it harder to register or appoint directors without their clear consent
- make sure victim-survivors can access defences for insolvency-related directors' duties
- extend the timeframe to respond to Director Penalty Notices, and
- hold perpetrators to account for harm.

Consultation closed 24 December 2025.

Indirect tax update

New GST technical amendments

The Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025, which was enacted on 4 December 2025, introduces a number of technical amendments to the goods and services tax (GST) law among other changes (see Other News for further details).

The following amendments operate to:

- ensure that the supply of disability services funded under the Disability Services and Inclusion Act 2023 is GST-free (applicable to supplies made on or after 1 January 2024)
- ensure that input tax credits and fuel tax credits are attributed appropriately to tax periods and fuel tax return periods, respectively, as intended (applicable in relation to input tax credits and fuel tax credits that are ordinarily attributable to tax periods or fuel tax periods that start on or after 1 July 2012, being the date on which the previous attribution rules came into effect, and also subject to transitional relief),

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- address the interactions between the tax period to which the Commissioner of Taxation has determined an input tax credit for a creditable acquisition is attributable and the time limit rules such that taxpayers only ceases to be entitled to the input tax credit if it has not been taken into account in an assessment of theirs within four years after they were required to lodge the GST return for the tax period to which the input tax credit is attributable under the determination (applicable in relation to input tax credits that would ordinarily be attributable to a tax period that starts on or after 1 July 2012), and
- ensure that a taxpayer can deduct the amount of GST payable by way of reverse charge, to the extent that the GST amount is greater than any input tax credits or reduced input tax credits to which they are entitled. These amendments apply in relation to assessed net amounts that are payable in the income year that includes 1 July 2023 and later income years.

Windfall gain matter to be remitted to Tribunal

In Geocon Land Holdings No. 5 Pty Ltd v Commissioner of Taxation [2025] FCAFC 172, the Full Federal Court has allowed a taxpayer's appeal concerning windfall gains, with the matter to be remitted to the Administrative Review Tribunal for redetermination.

The taxpayer acquired a Crown Lease of land in the Australian Capital Territory and gave monetary and non-monetary consideration in connection with the grant of the Crown Lease, including by building residential apartments on it. The provision of these development services resulted in a number of GST issues, including whether the taxpayer had passed on excess GST to purchasers of residential units in the development when calculating its GST under the margin scheme and, if so, whether it should be refunded by the Commissioner.

One of the issues considered related to the concept of a 'windfall gain' under section 142-15 of the GST law. Division 142 has the effect that, if a taxpayer has paid 'excess GST' and 'passed on' that GST to another entity, the excess GST is deemed by section 142-10 always to have been payable on a taxable supply until the taxpayer has reimbursed the other entity for the GST passed on. If section 142-10 applies, there is a power in section 142-15 to treat section 142-10 as not applying if its application 'would be inconsistent with the principle that excess GST is not to be refunded if this would give an entity a windfall gain'.

In the taxpayer's appeal to the Full Federal Court against the decision of the Administrative Review Tribunal in SFQV and Commissioner of Taxation (Taxation and business) [2024] ARTA 9, the taxpayer's principal position was that section 142-10 did not operate because the 'excess GST' was not 'passed on' within the meaning of section 142-10. Therefore, section 142-10 did not deem the overpaid GST to have always been payable on a taxable supply and the overpaid GST should therefore be refunded.

On this point, the Court found that the Tribunal distorted the factual inquiry required by the law and the question of whether excess GST had been 'passed on', by employing a form of presumption that the taxpayer had passed on the overpaid GST because it was profitable overall, which it could only negate by showing something out of the ordinary or unusual. This wrong approach led the Tribunal to treat relevant evidence as not to the point and, as a matter of substance, to give the term 'passed on' a meaning different to its ordinary meaning. Additionally, the Court found that the fact finding in this case was not sufficiently clear or complete for the Court to conclude. The proceeding was therefore to be remitted for redetermination according to law, with the parties permitted to adduce further evidence on the remittal.

Note that the Commissioner has since applied to the High Court for special leave to appeal against the Full Federal Court's decision.

Dog breeding activities were an enterprise

In Smith and Commissioner of Taxation (Taxation) [2026] ARTA 25, the Administrative Review Tribunal found that a taxpayer's dog breeding activities constituted an enterprise for GST purposes, and other disputed input tax credits were not available in respect of the taxpayer's other entrepreneurial activities.

The taxpayer bred French bulldogs with the puppies sold under formal contracts as a licensed breeder. The Tribunal found that the taxpayer was carrying on dog breeding activities in the form of a business, though it specifically noted that it did not find the taxpayer was carrying on a business due to insufficient evidence due to missing material, missing accounts etc. The Tribunal also found, on balance, that the taxpayer's dog breeding operation was 'in the form of an adventure or concern in the nature of trade,' with the result that the dog breeding operation was an enterprise for the purposes of section 9-20 of the GST law. The Tribunal also found that this was not a private recreational pursuit or hobby or activity carried on by an individual without a reasonable expectation of profit and as such was not excluded from being an enterprise.

This finding meant that in principle the taxpayer could claim input tax credits for creditable acquisitions such as vet fees, dog food, costs of registration as a breeder, though the question of the input tax credits the taxpayer could claim for the dog breeding operation was remitted to the Commissioner for further consideration.

In addition, the Tribunal upheld the Commissioner's decision to either reduce or deny input tax credits that had been claimed in respect of the taxpayer's property investment and consultancy enterprises.

MYEFO and the Indirect Tax Concession Scheme

It was announced in the 2025-26 Mid-Year Economic and Fiscal Outlook (MYEFO) that the Government has extended access to refunds of indirect tax (including GST, fuel and alcohol taxes) under the Indirect Tax Concession Scheme to the diplomatic and consular representations of Angola.

International tax and trade update

Extensions of time to register foreign ownership of Australian assets

Legislative instrument Foreign Acquisitions and Takeovers (Register Notices – Extension of Time) Instrument 2026, effective 9 January 2026, allows the Registrar for the Register of Foreign Ownership of Australian Assets to extend the period in which a person a person must provide a register notice to the Registrar. By way of background, the Register of Foreign Ownership of Australian Assets records certain actions (for example, acquisitions) relating to interests in land, water, entities, businesses and other assets in Australia. It also requires foreign persons who have undertaken such actions to register the interests they acquire or dispose of as a result of the action within 30 days of the registrable event date.

Specifically, the Instrument allows the Registrar, by notice in writing, to extend the period by any number of days and grant any number of subsequent extensions. In practice, foreign persons seeking an extension of the period will need to specify their preferred period.

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Exposure draft law for minor amendment for foreign resident CGT withholding credits

Treasury has released exposure draft legislation and exposure draft regulations that propose miscellaneous minor and technical amendments to Treasury portfolio laws, to help keep laws up to date and working as intended.

From an international tax perspective, the draft Bill proposes to make amendments that ensure that taxpayers are entitled to a tax credit for amounts withheld under the foreign resident capital gains tax (CGT) withholding regime in the same income year that the underlying transaction is assessed for income tax purposes. This change means that the instrument previously issued by the Commissioner under the statutory remedial power (Taxation Administration (Remedial Power – Foreign Resident Capital Gains Withholding) Determination 2017) to give effect to this outcome is no longer required. The amendments, once legislated, would apply to foreign resident CGT withholding payments made on or after the first day of the quarter after the amending Bill is enacted (note that the 2017 Determination will continue to apply to withholding payments made prior to that time).

Amended Pillar Two Rules

Amendments have been made to Australia's Pillar Two global and domestic minimum tax Rules by the Taxation (Multinational-Global and Domestic Minimum Tax) Amendment (2025 Measures No.1) Rules 2025. These changes include:

- 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 (DMT) provisions, and
- clarifying the Investment Entity Transparency Election for Regulated Mutual Insurance Companies.

The amendments apply retrospectively to fiscal years commencing on or after 1 January 2024.

Exemptions from lodging Australian Pillar Two tax returns

Taxation Administration (Exemptions from Requirement to Lodge Australian IIR/UTPR Tax Return and Australian DMT Tax Return) Determination 2025 outlines the Group Entities, GloBE Joint Ventures, and GloBE JV Subsidiaries of Applicable MNE Groups which are exempted from lodging the Australian Income Inclusion Rule (IIR)/Undertaxed Profits Rule (UTPR) Tax Return and Australian Domestic Minimum Tax (DMT) Tax Return. The Determination reduces compliance burdens by exempting lodgments where only nil liabilities would be reported, subject to meeting relevant conditions.

For further information about Australia's Pillar Two lodgment obligations, refer to our Tax Alert.

Transitional approach to Australia's Pillar Two lodgment obligations

The Australian Taxation Office (ATO) has finalised its Practical Compliance Guideline PCG 2025/4, which sets out the ATO's transitional approach to the enforcement of penalties in relation to lodgment obligations arising under Australia's Pillar Two rules.

The guidance adopts a pragmatic compliance approach such that during the transition period (covering fiscal years commencing on or before 31 December 2026 and ending on or before 30 June 2028), the ATO will focus on education, support, and penalty relief for groups that act in good faith and take reasonable measures to understand and comply with their Pillar two lodgment obligations.

The ATO will not be providing a blanket penalty concession to affected groups during the transition period, as the onus is on the taxpayer to demonstrate that they have taken reasonable measures to comply.

The views expressed in the final Practice Statement are substantially the same as in its predecessor draft which was reviewed in our previous Tax Alert.

New and updated ATO website guidance on Pillar Two

The ATO has published new and updated guidance on its website regarding the operation of Pillar Two rules in Australia. This includes:

- Guidance explaining how and when the Pillar Two rules apply and also application to tax consolidated groups, including lodgment obligations, reporting simplification, and how to calculate and allocate top-up tax. The updated guidance also addresses specific issues relevant to Pillar Two obligations, includes information on misaligned fiscal years and prior period adjustments and for certain joint arrangements, including joint operations and GloBE joint ventures and about nominating a designated local entity (DLE).
- Guidance on applying the transitional country-by-country (CBC) reporting safe harbour.

Public country by country reporting exemptions guidance finalised

The ATO has finalised Practice Statement Law Administration PS LA 2025/2, which provides context about the obligations imposed by the public country by country (CBC) reporting regime and guidance on the authority the law provides to the Commissioner of Taxation to exempt an entity from those obligations.

The Practice Statement outlines:

- background on the public CBC reporting regime and exemptions
- considerations relevant to exercising the discretion
- the process for seeking an exemption from public CBC reporting obligations
- the information that reporting entities should provide with an exemption application, and
- guidance about timeframes and review options.

The views expressed in the final Practice Statement remain largely consistent with those initially proposed in its predecessor draft.

Exemptions will be rare and require strong, specific justification supported by evidence. Circumstances that are regularly, routinely or normally encountered are unlikely to be exceptional enough to justify an exemption.

With public CBC reporting due within 12 months after year end, (i.e. first reports will be due by 30 June 2026), affected entities should consider whether they need to engage now with the ATO to seek any appropriate exemption. Entities are encouraged to register with the ATO for public CBC reporting before lodging an application for an exemption, as this improves administrative efficiency. Entities seeking an exemption from public CBC reporting should engage with the ATO early and apply by submitting a written request to the ATO with supporting information. Instructions for applying for an exemption are available on the ATO website.

Read more about the public CBC reporting exemption in our earlier Tax Alert.

Country by country reporting ruling withdrawn

The ATO has withdrawn its Law Companion Ruling LCR 2015/3, which discussed the implementation of the CBC reporting measure, with effect from 19 December 2025. The ATO indicate that this has been withdrawn as it no longer reflects current law and has been superseded by ATO website guidance, including:

- Significant global entities
- Country-by-country reporting entities, and
- Country-by-country reporting guidance.

Detailed information on the local file is also published annually, as most recently represented by Local file instructions 2025, applicable to reporting periods starting on or after 1 January 2024 (note that there have been some clarification changes made in these instructions as compared to the prior year) and Local file/master file 2025.

Draft update to ATO's transfer pricing guidance for inbound distribution arrangements

Practical Compliance Guideline PCG 2019/1 provides guidance on the ATO's transfer pricing risk-assessment framework for inbound distribution arrangements. The ATO has released a draft update, PCG 2019/1DC, which proposes to align the guidance with up-to-date market performance, industry observations and ATO administrative practices.

The draft update also clarifies the scope of the application of the Guideline and Reportable Tax Position (RTP) schedule by introducing a 'white zone' for certain taxpayers. The white zone category will apply to certain taxpayers e.g. those with a signed Advance Pricing Arrangement (APA) or which have recently obtained a low risk or high assurance rating in relation to inbound distribution arrangements and where has not been a material change in the comparability factors or pricing of the inbound distribution arrangement since the applicable income years of the agreement or review.

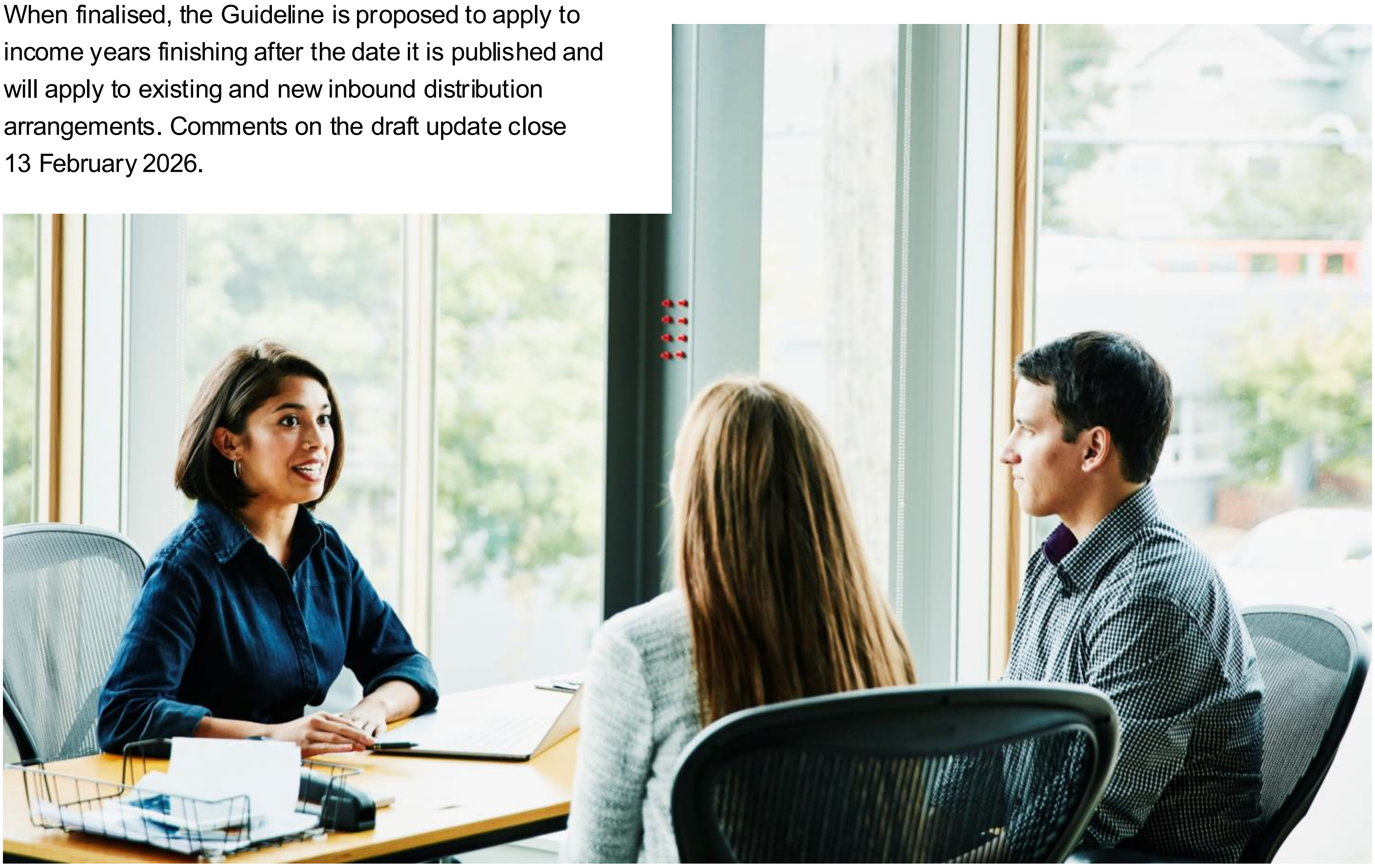
When finalised, the Guideline is proposed to apply to income years finishing after the date it is published and will apply to existing and new inbound distribution arrangements. Comments on the draft update close 13 February 2026.

Update to ATO's simplified transfer pricing record keeping options for low-level loans

The ATO has updated its Practical Compliance Guideline PCG 2017/2, which concerns simplified transfer pricing record-keeping options, to reflect, among other minor changes, the maximum and minimum interest rates for low level inbound and outbound loans covered by the guidance for the 2025-26 year. Specifically, the update provides:

- the maximum interest rate for low-level inbound loans for the 2025-26 year is 4.90%
- the minimum interest rate for low-level outbound loans for the 2025-26 year is 4.90%, and
- examples for inbound and outbound loans using the updated rates.

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.



New global Pillar Two 'Side-by-Side Package'

On 5 January 2026, the Organisation for Economic Cooperation and Development (OECD) announced that 147 members of the Inclusive Framework on BEPS agreed to a new package of administrative guidance under the Pillar Two global minimum tax rules - the 'Side-by-Side Package' - that importantly, among other things, includes a Side-by-Side (SbS) safe harbour, which allows multinationals headquartered in qualifying jurisdictions to be deemed to have no top-up tax under the IIR or UTPR if certain eligibility and election conditions are met. As at time of writing, only the United States is listed in the OECD's Central Record as meeting the criteria as a qualifying jurisdiction under the SbS regime.

This is significant for US-parented groups as it allows for the coexistence of the US global intangible low-taxed income (GILTI) rules and the Pillar Two GloBE rules. The SbS safe harbour will take effect for fiscal years beginning on or after 1 January 2026. For further details, see this PwC Global Tax Policy Alert.

The package also includes:

- a one-year extension of the transitional country-by-country reporting safe harbour (to all fiscal years commencing on or before 31 December 2027, excluding any fiscal year that ends after 30 June 2029),
- a new substance-based tax incentives safe-harbour, which offers favourable treatment for certain R&D and production-based tax incentives, subject to qualifications and caps (see this PwC Global Tax Policy Alert for further detail),
- a permanent simplified effective tax rate (ETR) safe harbour (available in all jurisdictions from the beginning of 2027 or the beginning of 2026 in certain circumstances) - see this PwC Global Tax Policy Alert for details.
- an Ultimate Parent Entity safe harbour for eligible countries (for fiscal years beginning from 1 January 2026) - see this PwC Global Tax Policy Alert for details, and
- a work program for additional simplifications and a commitment to conduct future stocktakes of the SbS and UPE safe harbours.

While many taxpayers have been eagerly awaiting the details of the 'side by side' package, it is important to note that:

- full Pillar Two compliance remains as is in Australia for the 2024 fiscal year (IIR) and 2025 fiscal year (IIR and UTPR), even for those that are members of US-based MNE groups, as the SbS safe harbour is only effective for fiscal years commencing on or after 1 January 2026, and
- in-scope multinationals will need to monitor the enactment of these changes into local law and consider tax provision implications from periods commencing from 1 January 2026.

Refer to this PwC Tax Policy Alert for high-level descriptions of each safe harbour and initial observations.

OECD review on global mobility of individuals

The cross-border movement of individuals, and the ability to use technology to work across borders and remotely, present challenges and opportunities for individuals, businesses and governments. The OECD has released a public consultation paper to support the work of the Inclusive Framework in undertaking a scoping and diagnosis of the tax related issues that arise in connection with the global mobility of individuals.

The first phase of the project has the objective of collecting data and information to enable the development of an informed understanding of the issues relevant to the global mobility of individuals, including regarding any regional variations in the challenges, opportunities and priorities. While initial consultation closed on 22 December 2025, this diagnostic phase will inform how the Inclusive Framework will scope and prioritise future work on the topic of global mobility.

Harmful tax practices report

Under the BEPS Action 5 minimum standard, members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting have committed to counter harmful tax practices with a focus on improving transparency. The latest annual peer review of the implementation of the Action 5 minimum standard - 2024 Peer Review Reports on the Exchange of Information on Tax Rulings - reflects the outcome of the review of the implementation of the Action 5 minimum standard and covers 139 Inclusive Framework member jurisdictions and jurisdictions of relevance.

The report indicates that more than 64,000 exchanges of information have taken place in respect of the over 28,500 tax rulings that have been identified to date. For the 2024 year in review specifically, over 5,500 exchanges of information took place in respect of almost 2,300 identified tax rulings.

The next peer review round will take place in 2027, covering the years 2025 and 2026.

Other OECD news

In other news from the OECD:

- The OECD Secretary-General Tax Report to G20 Leaders (G20 South Africa, November 2025), which was prepared by the OECD ahead of the G20 Leaders' Summit under the South African G20 Presidency, held on 22-23 November 2025, sets out recent developments in international tax co-operation, including the OECD's support of G20 priorities such as the implementation of the BEPS minimum standards, the Pillar Two global minimum tax, and tax transparency. The report also explores OECD work in 2025 that responds to requests made by the South African G20 Presidency, including: an Inclusive Framework stocktake on BEPS implementation and impact over the past ten years; an OECD/Global Forum on Transparency and Exchange of Information for Tax Purposes stocktake on developments in tax transparency over the past 15 years; work on the interaction between tax, inequality, and growth; ways in which multilateral co-operation can bring simplification to international tax rules; and a voluntary international framework promoting the automatic exchange of readily available information on real estate.
- Corporate Tax Statistics 2025, an annual publication that includes information on corporate taxation, multinational enterprise activity, and base erosion and profit shifting (BEPS) practices, reports that in 2022, the share of corporate tax revenues in total tax revenues increased almost two percentage points from 15.9% to 17.8% on average across the 131 jurisdictions covered in the database, and the share of these revenues as a percentage of Gross Domestic Product (GDP) increased from 3.1% to 3.6% on average. This latest report also includes a new disaggregation of CbCR data by group size, as measured by unrelated party revenues and by tax jurisdiction, and new data on BEPS Actions 2 and 12 on hybrid mismatch arrangements and Mandatory Disclosure Rules, as well as an expansion in the coverage of the data on effective tax rates.
- Revenue Statistics 2025, an annual publication that provides internationally comparative data on tax levels and tax structures in member countries of the OECD, includes a special feature on disentangling personal income tax revenue in OECD countries, while also providing final data on tax revenues in OECD countries for 2023 and preliminary data for 2024. In 2024, the average tax-to-GDP ratio of OECD countries increased by 0.3 percentage points to 34.1%. This was the first annual increase since 2021 and elevated the average tax-to-GDP ratio for the 38 countries included in the report to its highest recorded level.
- The Enhanced Monitoring Report on the Implementation of the Standard on Transparency and Exchange of Information on Request 2025 presents the outcomes of the 2025 enhanced monitoring process in the implementation of the Exchange of Information on Request (EOIR) standard by 25 jurisdictions – Andorra, Argentina, Aruba, Austria, Bahrain, Barbados, Belgium, Bermuda, Brazil, Dominica, Dominican Republic, France, Greece, Isle of Man, Japan, Korea, Liechtenstein, Luxembourg, New Zealand, Norway, San Marino, Saudi Arabia, Singapore, Spain, and Turks and Caicos Islands. Similar monitoring reports covering further jurisdictions will be issued in 2026 and 2027.
- The Peer Review of the Automatic Exchange of Financial Account Information 2025 Update represents the latest conclusions of the peer reviews of the legal frameworks put in place to implement the international standards of Automatic Exchange of Information (AEOI) in respect of a predefined set of financial account information exchanged annually between tax authorities to assist them in ensuring the correct amount of tax is paid.

Fiji signs multilateral convention on mutual administrative assistance

On 15 January 2026, Fiji's Minister for Finance, Commerce and Business Development signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Convention enables jurisdictions to engage in a wide range of mutual assistance in tax matters: exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection. For a list of the current jurisdictions participating in the Convention, refer to the OECD's website.

Australia's first double tax treaty with Croatia

On 24 November 2025, the Assistant Minister for Productivity, Competition, Charities and Treasury signed the first ever tax treaty between Australia and Croatia for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance.

The new treaty will enter into force after both countries have completed their domestic requirements and instruments of ratification have been exchanged.

MLI update – synthesised text for Argentina

The Australian Taxation Office (ATO) has published the synthesised text of the tax treaty between Australia and Argentina for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and Protocol, as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI).

State tax update

Tasmania: Draft law for short stay levy

The Tasmanian Government has released draft legislation to introduce a short stay levy in Tasmania. The Tasmanian short stay levy (SSL) is a 5% charge applied to the total booking fee of a short stay accommodation booking in Tasmania where stays are less than 28 consecutive nights.

Unless exempt, the levy will apply to any premises that can accommodate a person even if used for another purpose (such as a residential premises) or if permanent, temporary, fixed or mobile, other than defined accommodation operations (e.g. hotels, inns, traditional bed and breakfasts, caravan parks etc) and specialist accommodation (as defined). For the purposes of the Tasmanian SSL, and unlike the Victorian and ACT equivalents, it does not matter whether all or part of a property is used for short stay accommodation, the SSL will still apply.

Those liable to the SSL (booking platforms or a person taking direct bookings) will be required to register with the Tasmanian State Revenue Office (SRO), lodge a return and a pay the levy to the SRO on a quarterly or annual basis, depending on their prior year's total booking fees.

Let's talk

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The Tasmanian Government anticipates 1 July 2026 as the commencement date. The SSL will apply to all bookings made from that date (i.e. bookings made before the commencement date will not attract the levy, even if the stay begins after that date). The Tasmanian Government will consider consultation feedback ahead of finalising the Bill, which is expected to be introduced during the Autumn 2026 session of Parliament. Comments close 25 February 2026.

Victoria: Draft ruling on consideration for land transfer duty and assumption of tax liabilities

The State Revenue Office Victoria has issued draft revenue ruling DA-070, which explains when an Assumed Tax Liability Amount, which arises under certain land sales contracts where, in addition to the sale price, an amount is required to be paid for or towards a tax liability for which the vendor is liable in respect of the land, forms part of the consideration for a transfer of land under section 20(1) of the Duties Act 2000 (Vic). It also provides specific guidance on land tax, windfall gains tax and congestion levy liabilities. It does not address the meaning of consideration in other sections of the Act (for example, the lease provisions), or the characterisation of other amounts under section 20(1), including late settlement interest and default interest.

Consultation on the draft Ruling closed 24 December 2025. When finalised, the Ruling will take effect on 1 February 2026.

VIC: Land transfer duty ruling finalised regarding economic entitlements in relation to land

The State Revenue Office Victoria has finalised revenue ruling DA-067, which provides guidance on key concepts in the economic entitlement provisions in Part 4B of Chapter 2 of the Duties Act 2000 (Vic). The economic entitlement provisions apply if a person acquires an economic entitlement in relation to relevant land, other than by a transaction that is already a dutiable transaction (for example, a transfer of land).

This includes acquisitions of shares in companies and units in unit trust schemes that are outside the scope of the landholder provisions in Part 2, Chapter 3 of the Act. The Ruling does not provide any guidance on the landholder provisions. DA-067 is effective 26 November 2025 and should be read together with Revenue Ruling DA-065 and DA-066.

VIC: Absentee owner land tax surcharge correctly applied

In Oei v Commissioner of State Revenue (Review and Regulation) [2025] VCAT 1062, the Victorian Civil and Administrative Tribunal has upheld assessments to land tax for the 2018 to 2022 land tax years at the absentee owner surcharge rate.

Ultimately, while the Tribunal accepted that the taxpayer resided in Australia while she studied and worked and, despite moving to Hong Kong for an extended period, had always (subjectively) intended to return, the Tribunal found that she was not ordinarily resident in Australia between 2017 and 2021.

The taxpayer was found to be a natural person absentee and an absentee owner on 31 December for the relevant land tax years, with the result that the Commissioner had correctly imposed land tax for the 2018 to 2022 land tax years at the absentee owner surcharge rate.

NSW: Build-to-rent guidelines and public ruling updated

For the purposes of assessing New South Wales (NSW) land tax, the land value of a parcel of land is to be reduced by 50% if, amongst other things, the Chief Commissioner is satisfied that the building is being used and occupied for a build-to-rent property in accordance with guidelines approved by the Treasurer.

The NSW Treasurer has now released the guidelines for the Chief Commissioner in forming a view on whether a particular property is being used and occupied for a build-to-rent property so that the relevant land tax concession(s) can be granted. These guidelines also provide guidance to the Chief commissioner in forming a view on whether a build-to-rent property meets the construction requirements and the restrictions on subdivision.

Revenue Ruling G 014 has also been updated to reflect the recent guidelines. The ruling, issued 12 December 2025, is effective retrospectively from 23 September 2025.

NSW: Land tax rulings on low-cost accommodation and boarding houses

Revenue NSW has issued the following land tax revenue rulings that specify the maximum tariffs/rents that may be charged during 2026 to qualify for the applicable land tax exemptions:

- Exemption – Land Used and Occupied Primarily for a Boarding House – 2026 tax year
- Exemption – Land Used and Occupied Primarily for Low Cost Accommodation – 2026 tax year

NSW: Confirmation Deeds not declarations of trust

In Campbelltown Central 2 Pty Ltd v Chief Commissioner of State Revenue [2025] NSWSC 1568, the NSW Supreme Court found for four taxpayers, finding that four Confirmation Deeds were not declarations of trust within the meaning of the Duties Act 1997 (NSW) and so were not dutiable transactions.

Each of the four corporate taxpayers in this appeal acquired four separate commercial properties. The taxpayers themselves were each controlled by an individual property developer, who operated his property development business through a corporate group. Each of the taxpayers was a special purpose corporate vehicle, incorporated for the purpose of owning the properties. Each taxpayer had the same ultimate holding company.

A separate member of the corporate group was responsible for financing the purchase of the properties. In June 2020, each of the taxpayers entered into a separate Confirmation Deed with the financing company. The stated purpose of each Confirmation Deed, which were in materially identical terms, was for the relevant taxpayer to acknowledge that the financing company was the beneficial owner of the relevant property owned by that taxpayer, and that the financing company had always held such beneficial ownership since the settlement date for the contract for the purchase of the relevant property.

In November 2021, the Chief Commissioner issued duties notices of assessment to each of the taxpayers, having determined that each of the Confirmation Deeds were a declaration of trust within the meaning of the Duties Act.

The Supreme Court found, among other matters, there was no express declaration of trust anywhere in the Confirmation Deeds and, more broadly, the Confirmation Deeds appeared to be executed against a background where the parties were already treating the properties as being beneficially owned by the financing company, i.e. they were confirming the existing arrangements between the parties.

QLD: Update to duty exemption Ruling for pharmacy businesses

The Queensland (QLD) Commissioner of State Revenue has updated Public Ruling DA000.19.2 to reflect the full commencement of the Pharmacy Business Ownership Act 2024 (Qld) on 1 November 2025.

The Ruling sets out the terms of an administrative arrangement to provide an exemption from transfer duty, landholder duty or corporate trustee duty for certain transactions or acquisitions that occur as part of an eligible pharmacy business complying with the ownership and interest requirements under the Pharmacy Business Ownership Act. The updated Ruling is effective 12 January 2026.

QLD: Ruling on discretion to decrease liability for primary tax

The QLD Revenue Office has issued Public Ruling TAA017.1.1 which sets out the basis on which the Commissioner will exercise the discretion to make a reassessment decreasing liability for primary tax under section 17(1) of the Taxation Administration Act 2001 (Qld). Section 17(1) provides that the Commissioner may make a reassessment of a taxpayer's liability for tax at any time, subject to the time limitations in sections 21 and 22 of the Administration Act.

This public ruling does not apply to reassessments under section 17 that increase or do not change liability for primary tax, or to reassessments that must be made under section 18 or 19 of the Administration Act. The Public Ruling takes effect from 1 December 2025.

As a result of this public ruling, the following rulings have similarly been updated, effective 1 December 2025:

- Public Ruling DA085.1.13 Concession for homes and first homes-occupancy requirements.
- Public Ruling PTA026.2 Employment agency contracts - declaration by exempt clients.
- Public Ruling TAA149C.4.2 Registration of community housing providers as charitable institutions - administrative arrangement.

QLD: New rulings on extension of time to lodge objections

The QLD Commissioner of State Revenue has issued the following public rulings on granting extensions of time in which to lodge an objection:

- Public Ruling FHOGA056.1.1, which sets out the basis on which the Commissioner will make decisions on requests for an extension of time to lodge an objection to a decision on a First Home Owner Grant, or certain decisions to require repayment of an amount in relation to a grant.
- Public Ruling TAA065.1.1, which sets out the basis on which the Commissioner will make decisions on requests for an extension of time to lodge an objection to an assessment or decision relating to duties, payroll tax, land tax, betting tax and mineral royalty laws. It includes the requirements for making a request and the relevant matters that the Commissioner will consider when making the decision.

Both Rulings are effective 5 December 2025.

QLD: Wider relief for AFAD and land tax foreign surcharge

In its 2025-26 Mid-Year Fiscal and Economic Review (MYFER), the QLD Government introduced several changes to Queensland's framework for relief from additional foreign acquirer duty (AFAD) and the land tax foreign surcharge (LTFS). These changes include:

- lowering the number of dwellings needing to be constructed to qualify for relief from 50 to 20
- providing a more holistic consideration of corporate groups and the contributions of group entities in recognition of contemporary structures commonly used in property development and other corporate arrangements
- a pre-approval process for residential developers
- a new five-year averaged significant contributor test for LTFS
- publication of service standards for reviewing relief applications (within 30 working days for frequent applicants and renewals and 60 days for new applicants), and greater clarity in relief criteria.

Further details have been made available in revised public rulings published on the QLD Revenue Office website, with the four following public rulings being issued, effective 15 December 2025.

- Public Ruling GEN012.1, which sets out the terms of an administrative arrangement providing an exemption from AFAD and LTFS for residential land developers undertaking residential land development. This ruling applies to AFAD liabilities arising on or after 15 December 2025 and land tax liabilities arising on or after 30 June 2026.
- Public Ruling LTA000.6.1, which sets out the terms of an administrative arrangement providing an exemption from LTFS for landholders undertaking commercial activities that make a significant contribution. This ruling applies to land tax liabilities arising on or after 30 June 2026.
- Public Ruling DA000.15.5, the title of which has been amended and a new paragraph 8 inserted, setting out the date from which the guidelines in this ruling for ex gratia relief from AFAD cease to apply to AFAD liabilities.
- Public Ruling LTA000.4.4, the title of which has also been amended and a new paragraph 7 inserted, setting out the date from which the guidelines in this ruling for ex gratia relief from the LTFS cease to apply to land tax liabilities.

QLD: Corporate reconstruction exemption from landholder duty

In Special Situations Investing Group III, Inc. v Commissioner of State Revenue [2025] QSC 345, the QLD Supreme Court has allowed the taxpayer's appeal, finding that on proper construction of section 407(1)(a)(i) of the Duties Act 2001 (Qld), a corporate reconstruction was eligible for exemption from landholder duty.

In November 2017, the taxpayer acquired 97.37% of the issued shares in a company via two separate transactions. In 2023, the Commissioner issued two reassessment notices to the taxpayer on the basis that this was an acquisition of an interest of 50% or more in an unlisted corporation that has an interest in land in QLD with an unencumbered value of $2m or more. The relevant company had subsidiaries that owned interests in QLD land with an unencumbered value over $2m, making each a relevant acquisition according to the Commissioner.

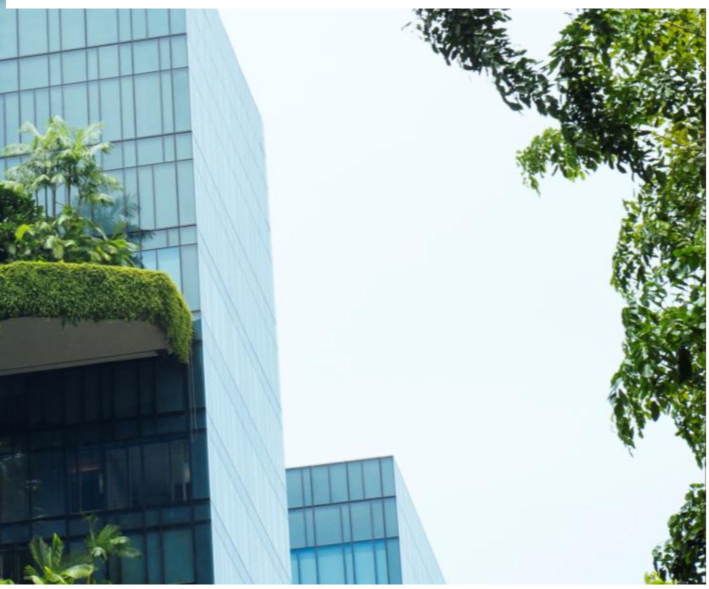
The issue between the parties was whether, at the time of the November 2017 transfers, the shares were 'group property' and that the transferor and transferee were group companies before the property, or an interest of at least 90% in the property, was first owned by the transferor or another group company.

The taxpayer contended that on the proper construction of section 407(1)(a)(i), it should be read as requiring the transferor and the transferee to have been group companies *either* before the property was first owned by the transferor *or* before the property was first owned by another group company. In this way, the taxpayer contends 'or' should be read as 'alternatively before it was first owned by'.

The Supreme Court agreed with the taxpayer's interpretation, finding that the ordinary meaning of 'or' is disjunctive and not conjunctive. This construction accorded with the plain meaning of the text of section 407(1)(a)(i), in the context of the whole of section 407 and of the relevant parts of the Duties Act.

As a result, the Court determined that the shares acquired by the taxpayer in November 2017 were group property and the transfers in which the taxpayer participated were carried out for a corporate reconstruction. The statutory requirements for the exemption from landholder duty were satisfied.

The QLD Commissioner of State Revenue has since appealed against the Queensland Supreme Court's decision.



Superannuation update

Exposure draft law for new Division 296 tax on high superannuation balances

Treasury released for comment exposure draft law for the government's revised Better Targeted Superannuation Concessions policy that was announced on 13 October 2025 and which seeks to impose an additional tax (Division 296 tax) on individuals who have a total superannuation balance (TSB) over $3m.

The proposed Bills include:

- a second threshold of $10m to apply with earnings over this amount subject to a total headline rate of 40% - this rate will apply to earnings on the part of an individual's total super balance above $10m
- indexing both the $3m and $10m thresholds
- moving to a realised earnings approach that aligns with existing income tax concepts, whereby the superannuation fund will calculate the amount of the realised earnings of the fund attributable an individual member, and report that amount to the Australian Taxation Office (ATO)

Let's talk

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

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- transitional rules that exclude capital gains accrued before the start of the policy, i.e. adjust fund earnings so that Division 296 tax is only applied to future earningsspecial rules for working out Division 296 tax as applicable to: individuals with defined benefit interests; State higher level office holders with superannuation interests in constitutionally protected funds; and Australian justices and judges in respect of defined benefit interests in their judicial pension scheme, and
- delaying the start date to 1 July 2026.

The amending law, once legislated, would mean that from the 2026-27 income year onwards, the headline concessional tax rates applying to superannuation earnings are:

- for total superannuation balances up to the $3m threshold – up to 15% on earnings (i.e. unchanged from current tax arrangements)
- for total superannuation balances between $3m and $10m – up to an overall 30% on a percentage of earnings equal to the percentage of the individual's TSB between these thresholds, and
- for total superannuation balances above the $10m threshold – up to an overall 40% on a percentage of earnings equal to the percentage of the individual's TSB above $10m.

As announced in the original measure, for each income year from 2026-27, the Commissioner of Taxation will calculate a Division 296 tax liability and notify individuals of their tax liability for a given income year. Division 296 tax will be levied directly on individuals and imposed separately to personal income tax and superannuation fund tax. Individuals will have the option of paying their tax liability by either releasing amounts from their superannuation or using amounts outside of the superannuation system.

Although closely aligned to existing income tax concepts, when calculating an individual's Division 296 fund earnings, the calculation includes various adjustments such as assessable contributions, net exempt current pension income and modifications relating to capital gains accrued prior to 1 July 2026. The capital gains modifications will be available where a valid choice is made by a small superannuation fund, or for all other funds, via the application of a prescribed factor.

Transitional arrangements apply to the 2026-27 income year so that, for the first year of operation, Division 296 tax will be determined solely by reference to an individual's TSB at the end of that income year. This means individuals who have a TSB of $3m or less on 30 June 2027 will not be subject to Division 296 on earnings for the 2026-27 income year, irrespective of whether their TSB is greater than $3m on 30 June 2026. Outside of the transitional year, the tax will apply if the individual's TSB is greater than $3m either at the start or end of the year.

Transitional arrangements are also proposed to apply if an individual dies before the last day of the 2026-27 income year such that there is no liability to pay Division 296 tax for that year.

The exposure draft materials also include a summary of the proposed content of the regulations to give more clarity on how the Bills will work, including approaches to attributing Division 296 fund earnings to individuals.

Comments on the draft law closed on 16 January 2026. The Government is aiming to introduce the legislation to implement these changes as soon as possible in 2026.

Exposure draft law for minor and technical superannuation amendments

Treasury has released exposure draft legislation and exposure draft regulations that make miscellaneous minor and technical amendments to Treasury portfolio laws, to help keep laws up to date and working as intended.

From a superannuation perspective, the draft law proposes amendments to the Superannuation Industry (Supervision) Act 1993 (SISA) to allow Public Trustees, when acting as a legal personal representative, to appoint an agent as a director of a company that is a trustee for a self-managed super fund and authorise that agent to be remunerated for their services. These amendments are necessary to address a gap in the provisions regarding legal personal representatives who are acting on behalf of a member of a self-managed superannuation fund. Once legislated, this amendment would commence the day after enactment of the amending law.

Separately, the exposure draft Regulations propose to amend the Superannuation Industry (Supervision) Regulations 1994 to allow the regulated superannuation funds to accept paid parental superannuation contribution payments even if the member's tax file number has not been quoted for superannuation purposes to the trustee of the fund. This ensures that funds may allocate the payment to that member's account. Once finalised, this change would commence the day after the instrument is registered.

Comments closed 2 January 2026.

Guidance on education directions for SISA contraventions

The ATO has finalised Practice Statement Law Administration PS LA 2026/1 which sets out what the ATO needs to consider when deciding whether to give a trustee, or a director of a corporate trustee of a self-managed superannuation fund, an education direction under section 160 of the SISA to deal with conduct which has resulted in contraventions of the SISA or the Superannuation Industry (Supervision) Regulations 1994. According to the Practice Statement, issuing an education directive will be appropriate in cases where the person's lack of knowledge or understanding of their obligations contributed to the contraventions. The Practice Statement has effect from 2 October 2025.

Legislative update

The following Bill was introduced into Federal Parliament (and since enacted) since our last edition of Monthly Tax Update:

- Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Bill 2026, which was introduced in the House of Representatives on 20 January 2026, while principally is to insert new laws to eradicate antisemitism, hate, violence and terrorism, and strengthen gun laws, has also made some consequential tax law changes to ensure that compensation payments a taxpayer receives under the national gun buyback scheme are not assessable for income tax purposes and customs amendments related to prohibited material.

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

- The Customs Tariff Amendment (Geelong Treaty Implementation) Bill 2025, which 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.

Let’s talk

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- The Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025, which, among other measures, extends the $20,000 instant asset write off for small business by a further 12 months to 30 June 2026, alongside minor and technical amendments to Treasury portfolio legislation. See also Other News and Indirect Tax Update.

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

- The Taxation Administration (Exemptions from Requirement to Lodge Australian IIR/UTPR Tax Return and Australian DMT Tax Return) Determination 2025, which reduces compliance costs for multinational enterprise groups subject to Pillar Two by exempting certain taxpayers from needing to lodge an Australian domestic minimum tax (DMT) return or an Australian Income Inclusion Rule/Undertaxed Profits Rule (IIR/UTPR) tax return. In simple terms, the exemptions apply to those returns which the Commissioner considers to be unnecessary because they could only ever result in a nil liability (see International Tax and Trade Update for further details).
- The Taxation (Multinational-Global and Domestic Minimum Tax) Amendment (2025 Measures No. 1) Rules 2025, which amends provisions in the Taxation (Multinational-Global and Domestic Minimum Tax) Rules 2024 to ensure that administrative guidance released by the OECD is incorporated appropriately, including:
  - 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 Entity Transparency Election for Regulated Mutual Insurance Companies.
- The Foreign Acquisitions and Takeovers (Register Notices – Extension of Time) Instrument 2026, effective 9 January 2026, allows the Registrar of the Register of Foreign Ownership of Australian Assets to extend the period in which a register notice must be given to the Registrar by a foreign person who is required to register interests in Australian land, water, entities, businesses and certain other asset they acquire or dispose of.
- The Excise Amendment (Remission Increase for Distillers and Brewers) Regulations 2025, which amends the Excise Regulations 2015 to increase the maximum amount of remission an eligible alcohol manufacturer may be entitled to per financial year from $350,000 to $400,000. This applies to certain alcoholic beverages entered for home consumption on or after 1 July 2026. This measure aligns with reforms to increase the maximum amount of producer rebates available per financial year under the A New Tax System (Wine Equalisation Tax) Act 1999, to ensure consistency of treatment between wine producers and other alcohol manufacturers.
- The Income Tax Assessment (1997 Act) Amendment (Critical Minerals) Regulations 2025, which prescribe certain critical minerals processing activities that are intended to be eligible for the Critical Minerals Production Tax Incentive but would not otherwise meet the general test set out in the income tax law. For more information, see Corporate Tax Update.
- The Customs Amendment (2025 Measures No. 1) Regulations 2025, effective 2 December 2025, which amends the Customs Regulation 2015 to allow radioactive substances to be eligible for consideration for post-importation permission, and revise the days prescribed for the availability of officers of Customs to undertake certain customs functions.

By way of recap, the following key tax and superannuation Bills are before Parliament as at the start of the 2026 calendar year:

- The Administrative Review Tribunal and Other Legislation Amendment Bill 2025, which expands the circumstances in which the Tribunal may make a decision without holding an oral hearing and require the Tribunal to make decisions in relation to certain kinds of applications without holding an oral hearing.
- The Superannuation Legislation Amendment (Tackling the Gender Super Gap) Bill 2025, a Private Senator's Bill to amend various super laws to provide spouses with the opportunity to evenly split their superannuation balances on an ongoing annual basis.
- The Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025, which 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
  - 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.
- The Customs Tariff Amendment (Draught Beer) Bill 2025, which amends the Customs Tariff Act to pause the indexation of the customs duty rates on draught beer for two years from 1 August 2025.
- The Excise Tariff Amendment (Draught Beer) Bill 2025, which amends the Excise Tariff Act to pause the indexation of the excise duty rates on draught beer for two years from 1 August 2025.

The next scheduled sitting date for Federal Parliament is 3 February 2026.

Other news update

Mid-Year Economic and Fiscal Outlook (MYEFO) 2025-26

On 17 December 2025, the Treasurer, Jim Chalmers, and Minister for Finance, Katy Gallagher, released the 2025-26 Mid-Year Economic and Fiscal Outlook (MYEFO), which provides updated information on the Government's fiscal position for the year and taking into account of all decisions made since the release of the 2025-26 Federal Budget.

The MYEFO included tax policy decisions taken since the last Budget, including the previously announced new tax treaties with the Ukraine and Croatia and the refinements to the additional tax to apply to high superannuation balances (see Superannuation Update for further information).

It also included extended access to refunds of indirect tax (including GST, fuel and alcohol taxes) under the Indirect Tax Concession Scheme to the diplomatic and consular representations of Angola.

Let's talk

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

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From a general tax perspective, the Government announced that it will implement the OECD Crypto Asset Reporting Framework (CARF) for the automatic exchange of tax relevant information on crypto assets, commencing in 2027 with the first exchange of information with foreign tax authorities to take place in 2028. In parallel, the Government will also implement a domestic crypto tax reporting regime to commence in 2027, for information to be reported to the Australian Taxation Office (ATO) in 2028.

Draft legislation to streamline quarterly TFN reporting for closely held trusts

Treasury has released exposure draft legislation to streamline how closely held trusts report beneficiary tax file numbers (TFNs).

Under the proposals, trustees would report beneficiary TFNs at the same time as the trust tax return is lodged for income years that the beneficiary is presently entitled to a share of income of the trust. This requirement would replace the obligation for trustees to report quarterly on a separate form on TFNs quoted to them by a beneficiary. These amendments support pre-filling of beneficiary income tax returns, helping to ensure the right amount of tax is being paid by trustees and beneficiaries.

Once legislated, these amendments would generally apply from 1 July 2026. Comments closed 1 February 2026.

ATO reflections on small business tax

In a speech to the Institute of Public Accountants (IPA) National Congress 2025, Second Commissioner, ATO, Kirsten Fish, discussed challenges facing the small business tax sector, as well as the opportunities ahead.

The Second Commissioner noted, among other matters, that the small business income tax gap continues to be the largest component of the total tax gap, with 47% of the $58.2bn total tax gap attributable to the small business income tax shortfall. This gap is also growing – over two years the small business income tax gap increased from 15% to 17.4%, to a total of $27.2bn. The net GST gap is estimated to be $8.1bn, or 9.1% of expected GST collections, and the ATO knows that small businesses are also responsible for more than half of this amount.

Small business payment performance also lags behind other sectors, with just under 70% of small business tax obligations paid on time, compared to nearly 90% across the broader taxpayer population. Small businesses owe approximately $35.9bn in collectable debt, which is about 66% of the ATO's total collectable debt book. Approximately $26.6bn, or 70%, of this small business debt is self-reported activity statement debt and superannuation guarantee surcharge.

When the ATO considers what drives the small business income tax gap:

- 67% is due to omitted income,
- 25% is due to overclaimed deductions, and
- 7% is attributable to businesses operating outside of the system – running cash-only operations, failing to register, or ignoring their tax obligations.

However, of businesses that were getting their compliance right, the ATO noted that they have a number of things in common. They use business software, keep good records that help them manage their business well, get advice from trusted sources, their tax professional or the ATO website, and set aside funds from cash flow to be available when it's time to lodge and pay.

Looking to the future, the ATO is focused on creating a digitalised tax experience to help small businesses get their tax obligations right from the start, reduce compliance costs, improve certainty, and make it easier to meet tax obligations.

The ATO's recent Letter to the Treasurer and Finance Minister outlines the ATO's commitment to simplify tax and regulatory processes, and support productivity and economic growth for small businesses. This includes:

- encouraging the move from quarterly to monthly BAS lodgement
- embedding pay as you go (PAYG) instalment calculations directly into accounting software
- pre-fill and third-party data use to support small businesses in completing returns, reducing manual errors and improving accuracy.

The ATO's goal is said to reduce the burden of compliance, help businesses stay on top of obligations and be more productive.

ATO consulting on s128F interest withholding tax exemption

The ATO is conducting targeted consultation with the banking and finance sector to seek insights on public offer practices for the issuance of debentures and debt interests for the purposes of the interest withholding tax exemption under s128F of the Income Tax Assessment Act 1936 (ITAA 1936) (dividends, interest and royalties paid to non-residents and to certain other persons). The aim is said to assist the ATO to identify opportunities to provide contemporary guidance on the evidence required to demonstrate eligibility for withholding tax exemptions.

The ATO also reports that it has observed a range of behaviours that suggest some entities may be incorrectly claiming the interest withholding tax exemption as they do not satisfy the eligibility criteria under the 'public offer' test. The consultation is expected to complete in February 2026.

Updated guidance for 'exploration or prospecting' and farm-out arrangements

The ATO has released a draft Taxation Ruling update TR 2017/1DC, which proposes to amend the Ruling to clarify that, consistent with the decision in Commissioner of Taxation v Shell Energy Holdings Australia Limited [2022] FCAFC 2, the ordinary meaning of the term 'exploration or prospecting' is to be determined having regard to the context and history of the relevant provision and that, having undertaken that exercise, the Commissioner maintains his view that the ordinary meaning of that term in the context of subsection 40-730(4) of the Income Tax Assessment Act 1997 (ITAA 1997) is limited to the discovery and identification of the existence, extent and nature of minerals and includes searching in order to discover the resource, as well as the process of ascertaining the size of the discovery and appraising its physical characteristics.

The updates that are the subject of the draft Ruling are proposed to apply to years of income commencing both before and after the date of issue of the addendum that gives effect to them. Comments close 6 February 2026.

Separately, the ATO also issued Addenda to Miscellaneous Taxation Rulings MT 2012/1 and MT 2012/2, which address the application of the income tax and GST laws to immediate and deferred transfer farm-out arrangements respectively, amending those Rulings to clarify the implications of the Shell Energy decision for when a farmee begins to hold an interest in a mining tenement. Specifically, the Addenda clarify that where applicable legislation states that a farmee cannot carry out activities on the relevant mining tenement or have a right to become the legal owner of an interest in the relevant mining tenement until requisite approvals have been obtained, a farmee cannot begin to hold an interest in the mining tenement for the purposes of Division 40 of the ITAA 1997 until those approvals have been obtained. Both Addenda apply from 10 December 2025.

Personal services businesses and Part IVA guidance finalised

The ATO has finalised Practical Compliance Guideline PCG 2025/5, which outlines when the ATO will apply compliance resources to consider the potential application of the general anti-avoidance provisions in Part IVA of the ITAA 1936 to those with alienation arrangements where personal services income (PSI) of an individual is derived through a personal services entity (PSE) that is conducting a personal services business. Alienation arrangements create a compliance risk when they are used to retain income in the personal services entity ('retention of profits' arrangements) or divert income to associates ('income splitting' arrangements), or both, so that overall, less tax is paid.

Although the PSI legislative provisions narrow the scope for Part IVA to apply to alienation arrangements, it continues to remain possible that Part IVA will apply. PCG 2025/5 outlines the types of alienation arrangements the ATO considers to be of 'low' or 'higher' risk of Part IVA applying and the likelihood of the ATO having cause to apply compliance resources to review the arrangement.

An arrangement is considered low risk where the net PSI received through the PSE is assessed in the form of assessable income to the individual whose personal efforts or skills generated that income and tax is not deferred. In contrast, a higher-risk arrangement will include either, or both, an income splitting or retention of profit arrangement which diverts PSI away from the individual or facilitates the deferral of tax. The materiality of the PSI diverted will also be a relevant factor the ATO considers when deciding whether to review an arrangement or pursue Part IVA.

The Guideline also introduces a grace period, in that the ATO will not apply compliance resources to pursue Part IVA where taxpayers have made a genuine attempt to move into a low-risk arrangement by 30 June 2027.

Although the Guideline addresses the likelihood (risk) that an alienation arrangement will bring Part IVA into question, it does not provide detailed guidance on when Part IVA will apply to arrangements involving income splitting or retention of profits. Existing guidance material covering the administration and application of Part IVA more broadly is available in Law Administration Practice Statement PS LA 2005/24.

PCG 2025/5 applies both before and after its date of issue.

Taxpayer Alert for contrived property development arrangements

The ATO is currently reviewing certain property arrangements between related parties involving long-term construction contracts that appear to be designed to create an artificial mismatch between the recognition of income from the property development activity and deductions claimed for the costs of development, such that tax on the profits may be indefinitely deferred. The losses generated are utilised within the group to obtain a tax advantage. Taxpayer Alert TA 2026/1 outlines the features of concern, and the steps taxpayers should consider if they are involved in similar arrangements.

In these arrangements, a special purpose developer entity is interposed between an entity that owns the land being developed and another entity undertaking building and construction works on the land. The interposition of the developer artificially separates the landownership and development activities which are, in substance, a single economic activity of property development.

The ATO is actively reviewing arrangements involving long-term construction contracts that exhibit features similar to those described within the Alert and will engage with taxpayers involved in these arrangements involving related parties that raise compliance risks. In addition, the ATO will shortly publish a draft Practical Compliance Guideline for comment to accompany the Taxpayer Alert. The draft Guideline will outline the ATO's proposed compliance approach, including indicators of higher-risk arrangements and illustrative examples likely to attract scrutiny, including when the ATO is likely to undertake further compliance activity through reviews and audits.

Commissioner entitled to amend out-of-time assessment for capital gain

In Sunna v Commissioner of Taxation [2025] FCA 1499, the Federal Court has found that the Commissioner was entitled to amend a taxpayer's assessment to include a net capital gain in his 2019 return, despite being outside the usual time limits, and despite the fact that the same gain had been erroneously reported on the taxpayer's 2020 return, which was outside the amendment period, and a later year.

In June 2019, the taxpayer entered into a contract for the sale of a property. After having received a deposit in 2020, in August 2022, the contract of sale settled with the taxpayer receiving the balance of the sale price. The taxpayer's 2019 tax return did not report a net capital gain and instead any gain was reported in part across the taxpayer's 2020 and 2023 tax returns.

It was clear to the Court that the framework of section 104-10(3) of the ITAA 1997 operates to retrospectively impose a capital gains tax (CGT) liability in circumstances where the settlement of a contract for the disposition of a CGT asset occurs in an income year that is subsequent to the year in which the contract was entered into. Under section 170(1) of the ITAA 1936, the Commissioner is, generally, unable to amend assessments for an individual any time after two years from the date of the original assessment to the taxpayer. There are some exceptions to this general rule, including under section 170(10AA) where the amendment is made 'for the purpose of giving effect to' the operation of section 104-10(3) of the ITAA 1997.

As such, the Federal Court found that the taxpayer's appeal in relation to the amended 2019 assessment must be dismissed. There was nothing arising from the original 2020 assessment which inhibited the force and operation of section 170(10AA) in relation to amending the 2019 assessment.

However, although the Court concluded that, as the Commissioner was empowered to amend the original 2019 assessment without having to amend the original 2020 assessment, it could not be said that the making of an amendment to the 2020 original assessment to exclude any erroneously reported gain was 'for the purpose of giving effect to' section 104-10(3). Instead, its substantive purpose was only to correct the errors inherent in the original 2020 assessment. This meant that since more than two years had lapsed following the issuance of the original assessment in May 2020, the original 2020 assessment was to stand.

This outcome left the taxpayer in a position where he was liable for CGT on the sale of the property in each of two different income years, even though the assessment in the 2020 year was erroneous in substance and amount. To that end, the Court noted that section 14ZW(2) of the Taxation Administration Act 1953 provides that a taxpayer may request an extended period in which to lodge an objection against an assessment. The Court anticipated that on that basis it was likely that the amended 2020 assessment would still, at some later date, be issued to the taxpayer.

The taxpayer has since appealed to the Full Federal Court.

Small business relief unavailable

In Kilgour v Commissioner of Taxation [2025] FCAFC 183, the Full Federal Court unanimously determined that taxpayers were not entitled to small business relief under Division 152 of the ITAA 1997 in respect of capital gains from the sale of shares.

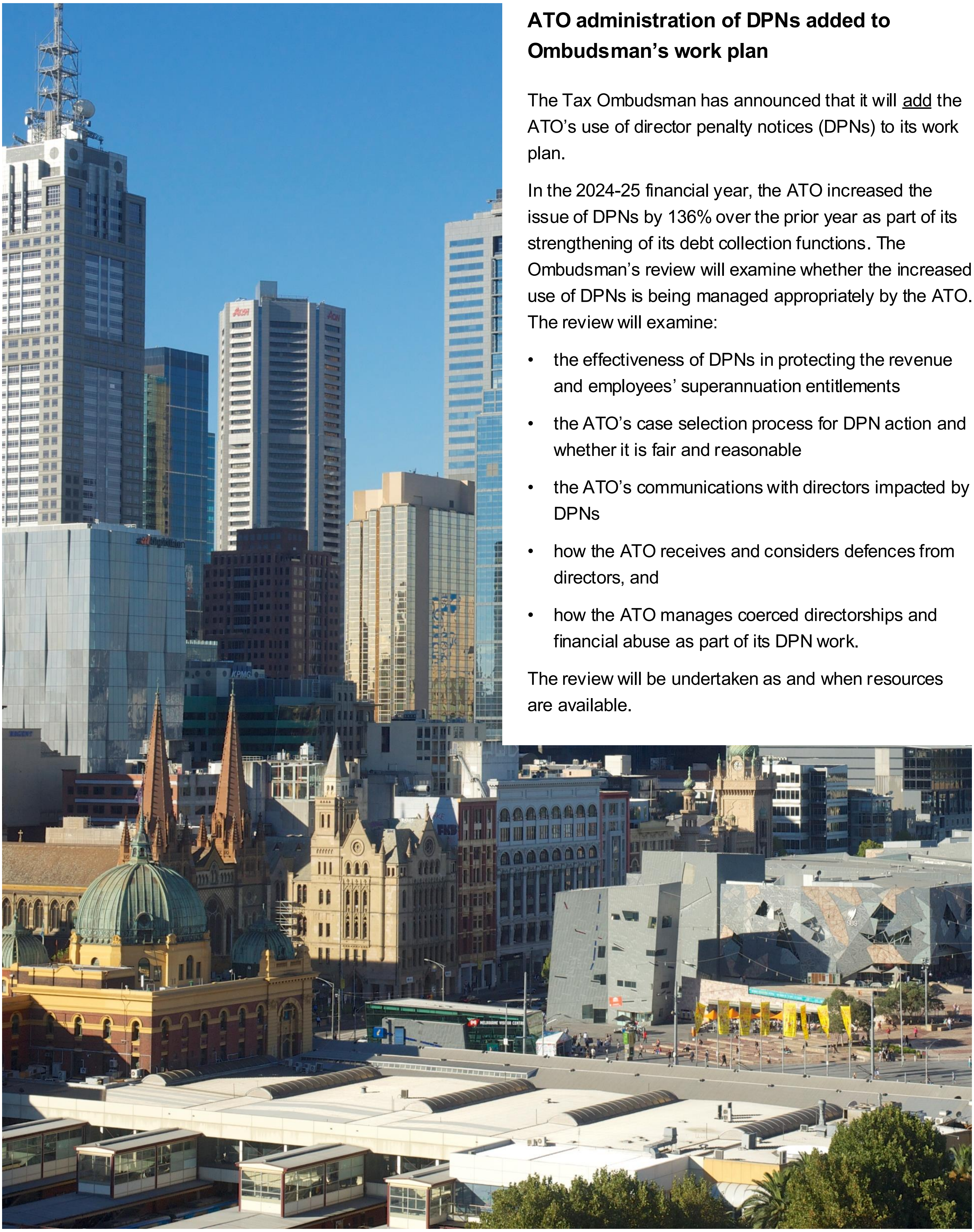
In order to meet the basic conditions for such relief, each taxpayer was required to satisfy the 'maximum net asset value test' in section 152-15. In particular, the net value of each taxpayer's CGT assets 'just before the CGT event' must not have exceeded $6m.

Previously, in Kilgour v Commissioner of Taxation [2024] FCA 687, the Federal Court had found that the parties to the share sale agreement had dealt with each other at arm's length, such that the market value substitution rule applicable for CGT purposes did not apply.

That premise was not disputed in the appeal before the Full Federal Court. Instead, one of the issues advanced by the taxpayers to the Full Federal Court was whether the primary judge had misapplied section 152-15 by failing to value the shares 'just before the CGT event'.

The Full Federal Court noted that the prescription that the CGT event occurs 'just before' the execution of an agreement for the transfer of the CGT asset does not in terms carry with it a requirement that an actual transaction must be ignored for all purposes when ascertaining the market value of the CGT asset at the immediately preceding moment in time. Whether an actual transaction may permissibly inform the valuation task must depend upon the facts and circumstances of the particular case. By having regard to the price recorded in the share sale agreement just before its execution (and the history of dealings leading to that point), the Court concluded that the primary judge did not deviate from the requirement that the CGT asset be valued at the time immediately before the share sale agreement was signed. As such, the taxpayers were unable to satisfy the maximum net asset value test and access small business relief, and the appeal was dismissed.

The taxpayers have since applied to the High Court for special leave to appeal the decision.



ATO administration of DPNs added to Ombudsman's work plan

The Tax Ombudsman has announced that it will add the ATO's use of director penalty notices (DPNs) to its work plan.

In the 2024-25 financial year, the ATO increased the issue of DPNs by 136% over the prior year as part of its strengthening of its debt collection functions. The Ombudsman's review will examine whether the increased use of DPNs is being managed appropriately by the ATO. The review will examine:

- the effectiveness of DPNs in protecting the revenue and employees' superannuation entitlements
- the ATO's case selection process for DPN action and whether it is fair and reasonable
- the ATO's communications with directors impacted by DPNs
- how the ATO receives and considers defences from directors, and
- how the ATO manages coerced directorships and financial abuse as part of its DPN work.

The review will be undertaken as and when resources are available.

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