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PwC's Monthly Tax Update

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

July 2022

Corporate Tax Update

ASIC areas of focus for financial reporting

The Australian Securities and Investment Commission (ASIC) has released its areas of focus for reporting periods ending 30 June 2022. Asset values continue to be an area of focus, with ASIC calling out the treatment of deferred tax assets and whether it is probable that these will be realised. Other areas of focus include provisions, an assessment of solvency, events occurring after year end and consideration of what matters should be disclosed in a financial report.

Take care with loss carry back tax offset claims

The Australian Taxation Office (ATO) has identified that many companies are making errors in their income tax return when claiming the loss carry back tax offset. In particular, the ATO has noticed errors with companies not completing all disclosures required on the return including at Item 13 (the loss carry back labels), Item 8 (opening and closing franking account balance) and Label E of the calculation statement on refundable tax offsets.

The ATO has issued a loss carry back tax offset tool available to assist as a general guide to determining eligibility and the resulting disclosures in the company tax return

Compliance approach for UPEs and deemed dividend rules extended

The ATO has amended Practical Compliance Guideline PCG 2017/13 that sets out the compliance approach in relation to the repayment of loans resulting from unpaid present entitlements (UPEs) owing from a trust to a private company beneficiary where the deemed dividend rules may be applicable. The updated PCG extends the guidance to UPEs that arise on or before 30 June 2022. For UPEs arising from 1 July 2022, the views set out in Taxation Determination TD 2022/D1 are proposed to apply.

Federal Court affirms AAT decision regarding R&D activities

The Federal Court has affirmed a decision made by the Administrative Appeals Tribunal (AAT) in Ultimate Vision Inventions Pty Ltd v Innovation and Science Australia [2022] FCA 606 that six algorithms developed by the taxpayer were not 'R&D activities' for the purposes of the research & development (R&D) tax incentive. In the decision under review, the AAT had found there was insufficient evidence that registered core R&D activities had actually occurred. The Federal Court decision found that although the AAT had substantially copied the submissions made by Innovation and Science Australia in addressing the appeal at first instance, the taxpayer was not denied procedural fairness. The Court was not persuaded that the Tribunal failed to bring an independent mind to bear upon its review.

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Employment Taxes Update

ESS changes from 1 July

The Australian Taxation Office (ATO) has issued a reminder to employers that from 1 July 2022 the cessation of employment will no longer give rise to a taxing point for the purposes of the employee share scheme (ESS) rules. As a result, an employer will not need to report when an employee with an ESS interest ceases employment. Other taxing points applying to ESS interests will continue to apply

Payroll tax measures in QLD State Budget

The 2022-23 Queensland State Budget was delivered on 21 June 2022 by Treasurer and Minister for Trade and Investment, Cameron Dick. From a payroll tax perspective, the following measures were announced in the Budget and were introduced into the Queensland Parliament in the Revenue Legislation Amendment Bill 2022:

- a new mental health levy on certain payroll tax liabilities from 1 January 2023, applicable at a rate of 0.25 per cent annual Australian taxable wages greater than AUD 10 million with a further 0.5 per cent levy on annual Australian taxable wages greater than AUD 100 million;
- payroll tax relief for small and medium employers from 1 July 2023 with the ceiling for payroll tax deductions increased from AUD 6.5 million to AUD 10.4 million and a deduction of AUD 1 for every AUD 7 of taxable wages above AUD 1.3 million (increased from AUD 1 for every AUD 4 of taxable wages); and
- an extension to the rebate for wages paid or payable to apprentices and trainees to 30 June 2023.

For all other tax measures arising from the Budget, refer to the State Taxes section of this update for further details.

Payroll tax measures in NSW State Budget

The New South Wales (NSW) Treasurer, Mr Matt Kean, handed down the NSW Budget 2022–23 on 21 June 2022. The following payroll tax measures were announced in the Budget:

- payroll tax relief for employers of aged care workers who pass on payments received under the Commonwealth's Aged Care Workforce Bonus Payment program to their workforce, and
- payroll tax exemption under a subprogram of the "Future Economy Fund" which is designed to encourage businesses of future industries to establish or expand in NSW.

For all other tax measures arising from the Budget, refer to the State Taxes section of this update for further details.

Payroll tax measure in Tasmanian State Budget

As part of the 2022-23 Tasmanian Government Budget delivered on 26 May 2022, an extension of the payroll tax rebate scheme for youth employees and for apprentices and trainees for a further two years was announced.

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Global Tax and Trade Update

OECD progress on two-pillar solution

The Organisation for Economic Cooperation and Development (OECD) has released consultation documents on the Amount A - Tax Certainty Framework for Amount A and Tax Certainty for Issues Related to Amount A under Pillar One of the two-pillar solution to address the challenges of the digitalisation of the economy.

Pillar One introduces a new taxing right over a portion of the profit of large and highly profitable enterprises for jurisdictions in which goods or services are supplied or consumers are located. The tax certainty framework is intended to guarantee certainty for multinational enterprises that are subject to the rules, including in relation to double taxation, by eliminating the risk of uncoordinated compliance action in jurisdictions where a multinational operates. The tax certainty framework also contains a number of reviews to provide certainty that an out-of-scope group is not subject to the Amount A rules, for the methodology to be applied by a group in future periods in relation to aspects of Amount A and a comprehensive review to provide certainty over all aspects of Amount A in respect of past periods. The framework also contains a binding dispute prevention and dispute resolution mechanism to prevent double taxation from arising. Comments on the consultation documents were due by 10 June 2022. Read more in PwC's Tax Insight.

At the World Economic Forum summit in Davos, Mathias Cormann, Secretary-General of the OECD made some comments about the progress of the Two-Pillar solution to address the tax challenges of the digitalisation of the economy. He noted that there are some technical issues to be worked through to reach agreement to implement Pillar 1 reforms (i.e. a fairer distribution of profits and taxing rights among countries) which require a multilateral instrument and the ambitious timeframe to implement by 2023 may not be achieved. This now means practical implementation likely will not be until 2024. As for Pillar 2 reforms (relating to a minimum 15 per cent tax rate), he noted that some countries have already commenced steps to implement it into their domestic law and that as more do so, the momentum for that across the globe will grow.

EU Ministers fail to reach agreement on Pillar Two Directive

European Union (EU) Finance Ministers met on 17 June 2022 to discuss a new compromise text for the introduction of the Pillar Two minimum 15 per cent tax rate for multinational groups operating in the EU. The unanimous agreement required to implement the text did not occur due to reservations by Hungary relating to the war in Ukraine and uncertainty in relation to the economic consequences of the proposal. Further work will be done over the coming days to reach political agreement and the measure is expected to continue under the Czech Presidency of the EU Council which commences from 1 July 2022. Read more in PwC's Tax Insight.

Other OECD updates

A public consultation meeting was held on the Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard focusing on key questions identified in the consultation documents and submissions. A recording of the meeting has been made available by the OECD.

A meeting of the OECD Ministerial Council was held on 9 and 10 June 2022 on the theme of "The Future We Want: Better Policies for the Next Generation and a Sustainable Transition. As part of the outcomes of the meeting, the Ministerial Council adopted the Recommendation on the Ten Global Principles for Fighting Tax Crime to provide guidance on devising and updating national strategies to address tax crime. The OECD also arranged a recorded side event on the impact of tax and transfer systems on gender equality. The event explored how governments can support gender equality through the tax system and how to reduce the gender gap in tax policy design.

The OECD has released the following reports:

Tax Co-operation for the 21st Century: OECD Report for the Group of Seven (G7) Finance Ministers and Central Bank Governors that considers the implications of international tax developments for national tax administrations, including the two pillar solution to address tax challenges arising from the digitalisation of the economy. The report provides recommendations to strengthen cooperation in relation to coordinated international rules, addresses how the information exchange architecture may evolve and notes how the G7 may assist developing countries with implementing the two pillar solution.

Towards Seamless Taxation: Supporting Small and Medium Enterprises (SMEs) to Get Tax Right that looks at how technology can assist SMEs with taxation obligations to reduce the overall compliance burden and increase compliance.

China ratifies MLI

China has deposited its instrument of approval for the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI). The MLI will enter into force on 1 September 2022 for China.

EU proposal to implement debt-equity bias reduction allowance

The European Commission has published an European Union (EU) Directive proposal regarding a debt-equity bias reduction allowance (DEBRA) and a limitation of the tax deductibility of exceeding borrowing costs. This proposal aims to address the disparity in treatment between debt and equity financing by introducing a tax-deductible allowance for equity investments over a ten year period, as well as further limiting the ability to deduct interest on debt investments. The proposed rules would apply to taxpayers that are subject to corporate income tax in one or more EU Member States, including permanent establishments of non-EU head offices. Read more in PwC's Tax Insight.

Customs duty: No failure to keep goods safely

The Full Federal Court has held in Hurley v Collector of Customs [2022] FCAFC 92 that a failure to pay duty on imported alcohol that was entered into home consumption, did not constitute a failure to keep goods safely. The taxpayer in the decision had imported the alcohol under a periodic permission settlement that allowed it to be delivered for home consumption, subject to a condition that duty would be paid at a later time. The relevant customs law refers to a failure to keep goods safely in the context of goods that were subject to customs control. The Collector of Customs issued a statutory demand under a provision that was applicable when goods had failed to be kept safely while under customs control. The Court found that the goods were not subject to customs control from when they were entered for home consumption and as no duty was payable at that time, they could not be said to have failed to be kept safely.

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Indirect Tax Update

ATO justified trust reviews

The Australian Taxation Office (ATO) has recently begun issuing early notification letters for its next round of Combined Assurance Reviews (CAR) under its Justified Trust Program. Referred to as "CAR 2.0", from a Goods and Services Tax (GST) perspective many of the questions remain the same but with some key differences. It is clear that the ATO's expectations in terms of what taxpayers have been doing to prepare for a Justified Trust review has increased. In this regard, those taxpayers who have prepared beforehand are more likely to be on the front foot with the ATO and better able to optimise their level of assurance.

Read more in our Tax Alert.

ATO view of AAT decision on GST turnover

The ATO has issued a decision impact statement on the Administrative Appeals Tribunal decision in Collins & Anor ATF the Collins Retirement Fund v Commissioner of Taxation [2022] AATA 628. This case concerned the sale of subdivided lots and whether the proceeds from these sales were excluded from the GST turnover of a superannuation fund for purposes of GST registration. The sale of the subdivided lots would be excluded if they occurred by way of transfer of a capital asset or solely as a consequence of ceasing to carry on an enterprise or solely as a consequence of substantially and permanently reducing the size or scale of an enterprise. The AAT found that the land sales were made in the course of carrying on an enterprise and as a consequence of that enterprise.

The ATO considers that the AAT's reasoning is consistent with GST Ruling GSTR 2001/7 on the meaning of GST turnover and noted that the activities of some entities are deemed to be an enterprise under s9-20 of the *A New Tax System (Goods and Services Tax) Act 1999* and accordingly requiring only the turnover threshold for registration to be considered. Comments on the decision impact statement are due by 8 July 2022.

Luxury car tax threshold

The ATO has published the luxury car tax threshold for the 2022-23 income year which is AUD 71,849 (increased from AUD 69,152) and the fuel efficient car threshold is AUD 84,916 (increased from AUD 79,659).

ATO alert for GST fraud

The ATO has issued a reminder to taxpayers about GST fraud, which may involve inventing fake Australian Business Numbers and business activity statements in order to obtain a GST refund. These schemes have been circulating online and through social media and may have possible consequences including prosecution or criminal charges.

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Personal Tax Update

Guidance on crypto donations

The Australian Taxation Office (ATO) has released webpage guidance on the tax treatment of the donation of crypto-assets, which are considered gifts of property for tax purposes. Taxpayers are only eligible to claim a deduction for donations that are made to a deductible gift recipient (DGR) which can be found through an Australian Business Number Look-up search. The ATO guidance also notes that the donation of crypto assets may have capital gains tax (CGT) implications except in circumstances where a gift is made under a will, the donation is made under the Cultural Gifts Program or the asset is a personal use asset. The guidance notes that most taxpayers will need to report the transaction in the CGT and gifts and donations sections of the income tax return.

ATO focus areas for tax time

The ATO has announced the following four key focus areas for tax time 2022 for individuals:

- record keeping
- work-related expenses
- rental property income and deductions, and
- capital gains from crypto assets, property and shares.

When claiming deductions, the ATO reiterated the importance of being able to show that you spent the money yourself and were not reimbursed, the expense was for the purpose of producing income and a record of the expense.

The ATO has also reminded taxpayers to not 'double dip' on expenses by claiming an expense twice. A common example that the ATO sees is when a taxpayer uses the working from home shortcut method to claim working from home expenses while at the same time claiming additional amounts for expenses such as internet and the decline in value of furniture. Another common example was taxpayers using the cents per kilometre method to claim car expenses, while at the same time separately claiming for expenses such as registration and fuel.

ATO view of trust disclaimer case

The ATO has issued a decision impact statement on the decision of the High Court in Commissioner of Taxation v Carter [2022] HCA 10 which found that a disclaimer of an entitlement to trust income could not operate retrospectively.

The ATO views the decision as settling the practical effect of disclaiming trust entitlements in a legally effective manner and notes that any disclaimer must be made before the end of the income year in order to be valid.

Underpaid wages were assessable

The Administrative Appeals Tribunal (AAT) has decided in Guttikonda & Anor v Commissioner of Taxation [2022] AATA 1325 that lump sum payments received in respect of the historic underpayment of wages were assessable as ordinary income.

No release from tax debt

The AAT has refused to grant a taxpayer release from his tax debt in Dua v Commissioner of Taxation [2022] AATA 1520. The AAT noted that the taxpayer's income varied considerably between his tax return, his application for release from the debt made to the ATO and in a declaration made to the AAT. These declarations also did not disclose dividend and interest income that had been received by the taxpayer and as a result evidenced a failure to make full and frank disclosure of income and outgoings. The income/outgoings test was not satisfied as a number of expenses, such as private school fees and excessive loan repayments, were not considered to be necessities according to normal community standards. The AAT also found that the taxpayer provided no evidence to support his disclosed assets and liabilities, had recently purchased a Porsche and second property and had failed to disclose overseas bank accounts until the ATO had become aware of these accounts. As a result, the taxpayer had not established that being required to meet his taxation obligations would result in serious hardship.

Tax scam myths

The ATO has released the top three myths relating to scams that could lead to taxpayers divulging personal information. The three myths outlined are that:

- only older individuals fall for scams when in practice, individuals aged between 25 and 34 lost the money to tax scams in 2021
- scams are easy to spot when in fact many scams are sophisticated and use official language with websites that mimic the ATO website, and
- scams happen only during tax time when many scams occur year-round, including scams relating to fake tax debts, or including requests to update financial information.

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State Taxes Update

Queensland 2022-23 State Budget

The 2022-23 Queensland State Budget was delivered on 21 June 2022 by Treasurer and Minister for Trade and Investment, Cameron Dick. The Budget forecasts a net operating surplus of AUD 1.915 billion for 2021-22 as a result of a surge in coal and oil prices, as well as increased housing activity. Modest deficits are forecast in the 2022-23 and 2023-34 years before a forecast return to surplus in the 2024-25 year.

A number of tax measures were announced in the Budget and have since been introduced into the Queensland (QLD) Parliament in the Revenue Legislation Amendment Bill 2022. These measures include:

- three new additional royalty rate tiers for the purposes of calculating coal royalties, with the following tiers applicable from 1 July 2022:
  - 20 per cent on that part of the average price per tonne that exceeds AUD 175 and is less than AUD 225
  - 30 per cent on that part of the average price per tonne that exceeds AUD 225 but is less than AUD 300, and
  - 40 per cent on that part of the average price per tonne that exceeds AUD 300, and
- an exemption from additional foreign acquirer duty for retirement visa holders purchasing a principal place of residence from 1 January 2023.

While not part of the 2022-23 Budget, the Bill also introduces the following amendments:

- a change in how land tax is calculated for individuals and entities that hold freehold land outside of Queensland as announced in the 2021–22 Budget Update Mid-Year Fiscal and Economic Review. From 1 July 2023, the taxable value of interstate land holdings will be aggregated with properties held in Queensland to determine the applicable land tax rate for the Queensland properties
- retrospective exemption from transfer duty and vehicle registration duty for certain transactions relating to particular small business restructures from 7 September 2020 or 28 June 2021, and
- retrospective exemption from transfer duty to certain dutiable transactions involving the vesting of dutiable property under the *Succession Act 1981* from 3 April 2017 and the *Aboriginal and Torres Strait Islander Land Holding Act 2013* from 6 August 2019.

In addition there were also payroll tax changes announced in the Budget, including a new mental health levy (refer to the Employment taxes section of this update for details), and a new funding model for Queensland's racing industry was announced. A new 5 per cent racing levy will be applied to the betting tax rate and bonus bets will be incorporated into the calculation of betting tax liabilities from 1 December 2022. Following this change, the proportion of betting tax revenue allocated to the racing industry will increase from 35 per cent to 80 per cent.

New South Wales 2022-23 State Budget

The New South Wales (NSW) Treasurer, Mr Matt Kean, handed down the NSW Budget 2022–23 on 21 June 2022. A budget deficit of AUD 11.3 billion is projected for 2022-23 reflecting investment in the health system, continuing support for COVID-19 and flood response and a comprehensive suite of measures to boost household budgets. It proposes a return to surplus by 2024-25.

Tax-related measures announced in the Budget include the following:

- First home buyers will be provided with an option to pay an annual property tax instead of stamp duty if the purchase price of the property is AUD 1.5 million or less. The property tax will be based on the property's unimproved land value and set at AUD400 plus 0.3 per cent of the property's unimproved land value for owneroccupiers, or AUD 1,500 plus 1.1 per cent of land value for investment properties. The measure will apply from 16 January 2023, subject to transitional relief for eligible first home buyers that exchange contracts in the period between enactment of legislation and 15 January 2023 who will be able to opt in and receive a refund of transfer duty paid. (Refer to this fact sheet for more details).

- There will be a reduction in the discount available for early payment of land tax to 0.5 per cent (currently 1.5 per cent) from 1 January 2023.
- The foreign investor land tax surcharge of 2.0 per cent will increase to 4.0 per cent per annum from the 2023 land tax year.
- The point of consumption (PoC) tax rate will increase to 15 per cent from 1 July 2022 and the effective betting tax rates (including totalizator and fixed odds bets) charged under the *Betting Tax Act 2001* (NSW) will be adjusted to 15 per cent.

Payroll tax measures were also announced in the Budget (refer to the Employment taxes section of this update for details).

South Australia 2022-23 State Budget

The 2022-23 South Australia State Budget was delivered on 2 June 2022 by Treasurer Stephen Mullighan. The Budget focuses on recovery from the effects of COVID-19, investing in health care services, major infrastructure projects, economic growth and education.

The Budget aims to deliver a net operating surplus of AUD 233 million in 2022-23, with operating surpluses forecast during each year of the forward estimates with an AUD 643 million operating surplus in the 2025-26 year. Overall net debt is expected to increase from AUD 16.9 billion at 30 June 2022 to AUD 25.2 billion at 30 June 2026.

There were no new announced taxes or tax increases in the 2022-23 Budget, however state taxation revenue estimates were revised up by AUD 556 million in 2021-22 and are expected to increase by 10.5 per cent during the year. This growth is driven by higher conveyance duty collections, reflecting strong residential property activity and rising prices. State taxation revenue is forecast to decrease in the 2022-23 year by 1.7 per cent on the basis of lower property market activity.

Tasmanian 2022-23 State Budget

The 2022-23 Tasmanian Government Budget was delivered on 26 May 2022 by Treasurer Michael Ferguson. The Tasmanian economy is forecast to grow by 2.75 per cent in 2022-23 despite the challenges of COVID-19 and other national and global events. A net operating deficit of AUD 474 million is forecast in 2022-23 with a net operating surplus of AUD 19.1 million in 2023-24.

Several changes to taxation measures have been announced, following the State's aim to maintain a competitive tax environment. These include:

- changes to land tax rates and thresholds, including:
  - an increase in the tax-free threshold from AUD 49,999 to AUD 100,000
  - an increase in the top tax band threshold from AUD 400,000 to AUD 500,000, and
  - reducing the tax rate applying to land valued between AUD 100,00 and AUD 500,000 from 0.55 per cent to 0.45 per cent
- an extension to the eligible period for the First Home Buyer and Pensioner Duty Concession for a further 12 months
- an increase to the First Home Buyer and Pensioner Duty Concessions maximum value threshold to AUD 600,000 (from AUD 500,000)
- an extension of the payroll tax rebate scheme for youth employees and for apprentices and trainees for a further two years, and
- the introduction of a 2 per cent Foreign Investor Land Tax Surcharge, which will apply to residential land acquired by a foreign person that is not used as a principal place of residence (since enacted - see comment later).

Tax measures now law in Victoria

The State Taxation and Treasury Legislation Amendment Bill 2022 (Vic) is now law after completing its passage through the Victorian Parliament. The amending Act contains various tax-related measures including:

- an exemption from motor vehicle duty for wheelchair accessible motor vehicles providing unbooked commercial passenger services, applicable from 1 July 2022
- a replacement to the provision allowing for a refund of land tax where a person is absent because of the construction or renovation of a residence with an exemption
- a land tax exemption for land on which a specialist disability accommodation enrolled dwelling is being constructed
- extends an exemption from payroll tax available for employment agents to situations where a service provider is a common law employee of an employment agent
- an exemption from windfall gains tax to universities, where the university is a charity and revenue from the land will be used to fund charitable purposes.

A number of administrative amendments relating to the timing of a deemed assessment using the on-line duty payment system, the receipt and disclosure of information and the time limit for the Commissioner of State Revenue to permit out of time objections are also implemented under this Act.

QLD land tax and special disability trusts

The State Penalties Enforcement (Modernisation) Amendment Act 2022 (QLD) amends the *Land Tax Act 2010* (QLD) to ensure that trustees of special disability trusts are able to utilise a higher tax-free threshold and lower land tax rates that apply to individuals. Previously, only trustees of bankrupt individuals or the Public Trustee managing the estate of an incapacitated individual were entitled to the beneficial treatment. The measures commence from 30 June 2022.

Tasmanian foreign investor land tax surcharge and duties amendments

The following Bills to implement a foreign investor land tax surcharge, clarify foreign investor duty surcharge and clarify provisions relating to conveyance duty are now law in Tasmania following their passage through Parliament:

The Land Tax Amendment (Foreign Investors) Bill 2022 and Land Tax Rating Amendment (Foreign Investors) Bill 2022 which introduce a 2 per cent foreign investor land tax surcharge on interests in residential land acquired by a foreign person, owned by a foreign company, or owned by a trust that becomes foreign from 1 July 2022.

- The Duties Amendment Bill 2022 which makes a number of amendments in relation to Tasmania's foreign investor duty surcharge regime and conveyance duty including:
  - in relation to the foreign investor duty surcharge confirming that from 1 July 2018:
    - commercial residential properties are not subject to the surcharge
    - members of a self-managed superannuation fund have a beneficial interest in the assets of the fund for the purposes of the surcharge, and
    - beneficiaries of testamentary estates have a beneficial interest in the assets of the estate for the purposes of the surcharge.
  - relief from foreign investor duty surcharge for Tasmanian based developers that build at least 50 residential properties in a 12 month period, applicable from 1 July 2022, and
  - recognise non-interest based purchases of property (such as those undertaken in Islamic finance arrangements) as a dutiable transaction from 1 July 2022 and to ensure that these property purchases are only subject to duty once.

NSW land tax rulings

Revenue New South Wales (NSW) has issued the following Revenue Rulings which deal with NSW land taxes:

- Revenue Ruling LT 097v3 which reviews the land tax exemption available for land used for primary production. The new ruling clarifies the application of the law concerning requirements such as whether land is being used for the dominant purpose of primary production, whether that primary production activity has a significant and substantial commercial purpose or character and whether land is being used for the purpose of profit on a continuous and repetitive basis. The ruling replaces LT 097v2 with effect from 1 May 2022.
- Revenue Ruling LT 031v2 that explains how land tax is calculated where land is used partially for a retirement village or for aged care. An exemption from land tax is available for land that is solely for a retirement village or aged care establishment with a partial reduction in the average land value available for where land is used only partly for an exempt purpose. The new ruling provides additional guidance relating to development approvals for unused portions of land or where a building is partially used for a non-exempt purpose. The ruling replaces LT 031 with effect from 1 May 2022.

SA: Redemption of units found to be a dutiable transaction

The Supreme Court of South Australia has held in Edge Developments (SA) Pty Ltd & Ors v Treasurer of the State of South Australia & Anor 2022 [2022] SASC 55 that a redemption of units in a unit trust constituted a dutiable transaction on the basis that the redemption resulted in certain unitholders increasing their prescribed interest in the unit trust which was held to be a land holding entity at the relevant time.

The unit trust that was the subject of the case held a Performance Charge over certain parcels of land which entitled that trust to proceeds from the sale of a development conducted on the land. After the development of the land had been completed, a unitholder of the trust entered into a Deed of Redemption in respect of the units that it held in the trust. As a result of the redemption, the percentage interest in the trust held by two other unitholders increased from approximately 70 per cent to 100 =['per cent.

At issue was whether the unit trust held a deemed beneficial interest in the land as a result of the Performance Charge and was therefore a land holding entity and whether the redemption of units was exempt from duty on the basis that a conveyance of the interest in the underlying land assets would not attract ad valorem duty. The taxpayers argued the Performance Charge did not create an interest in land for the purposes of the common law, and even if an interest was created, it was excluded by way of a provision excluding a mortgage, lien or charge over land from the definition of a land asset. As an alternative argument, if the taxpayer was found to have an interest in the land, a conveyance of the underlying land would have been exempt from ad valorem duty as the unitholders had increased their interest in the Performance Charge.

The Supreme Court found in favour of the Treasurer, stating that it was clear in the legislation that a party with an interest in proceeds of sale had an interest in the underlying land, with the Performance Charge giving rise to a beneficial interest in the proceeds. While the Court accepted that the Performance Charge was a charge excluded from the definition of land asset, the interest of the unit trust in the land was not solely pursuant to that charge but also pursuant to the provision deeming an interest in the land. Therefore the unit trust held more than one interest in land and was a land holding entity. The Court rejected the argument that an underlying land transaction would not have been subject to ad valorem duty on the basis that the applicants had increased their interest in the unit trust as a land holding entity.

PwC webcast – State budgets in focus

PwC's State Taxes team presented a webcast on 23 June 2022 entitled "State Budgets in Focus", covering the announcements in the respective State budgets. A video-on-demand recording of the webcast can be found here.

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Superannuation Update

Reminder about new superannuation thresholds for 2022-23

A reminder that with effect for the financial year commencing from 1 July 2022, new thresholds apply for many superannuation matters. Refer to the Australian Taxation Office's (ATO) published list of key superannuation rates and thresholds for the 2022-23 income year. Of particular note is the annual amounts that can be contributed to superannuation, including:

- the concessional contributions cap is AUD 27,500
- the non-concessional contributions cap is AUD 110,000 (for individuals with a total superannuation balance of less than AUD 1.7 million at 30 June 2022)
- the capital gains tax cap amount for non-concessional contributions is AUD 1.65 million, and
- the maximum super contribution base for superannuation guarantee purposes is AUD 60,220 per quarter.

Regulation adjusting super entitlements under Family Law orders

The Australian Government Actuary has made the Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2022 that adjusts the superannuation entitlements of separated and divorced spouses, and of separated de facto couples (except in Western Australia, pending commencement of the *Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020* (WA)) provided under orders or agreements made under the *Family Law Act 1975 (Cth)*. The instrument relates to base amount splits of future superannuation benefits payable under a defined benefit superannuation interest or interest in a self-managed superannuation fund (SMSF). The instrument commences on 1 July 2022.

Extension to non-arm's length income compliance approach

The ATO has updated PCG 2020/5 to extend the transitional compliance approach in relation to the non-arm's length income rules for superannuation funds until 30 June 2023. The transitional approach provides that the ATO will not allocate compliance resources to determine whether the non-arm's length provisions apply to all of the income of a superannuation fund where non-arm's length expenditure is of a general nature and has a sufficient nexus to ordinary or statutory income. As a result, the compliance approach outlined in LCR 2021/2 has been delayed until 1 July 2023.

Reminder on SMSF record keeping

The ATO has issued a reminder to trustees of SMSFs to maintain appropriate records. Good record keeping practices can avoid disputes between trustees by ensuring members are responsible and accountable for their decisions. As an example, the ATO recommends that all trustees agree to fund investments and this agreement is recorded in meeting minutes that are signed by all trustees. The ATO points to its guidance on starting a SMSF and record keeping in an SMSF in relation to record keeping requirements.

APRA updates

The Australian Prudential Regulation Authority (APRA) and Australian Securities and Investments Commission have released new frequently asked questions on the retirement income covenant that aims to assist registrable superannuation entity (RSE) licensees in developing their retirement income strategies to meet the requirements of the covenant. APRA has also published further frequently asked questions on the Your Future, Your Super performance test that applied to MySuper products from 1 July 2021 and trustee-directed products from 1 July 2022.

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Legislative Update

Federal Parliament has not yet reconvened following the formation of the new Government and accordingly there have been no new tax or superannuation Bills introduced. The new Parliament is scheduled to resume sittings on 26 July 2022.

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

- the Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2022 that adjusts the superannuation entitlements of separated and divorced spouses, and of separated de facto couples (except in Western Australia), and
- to ensure business continuity, before the Commissioner of Taxation can assume full responsibility as Registrar for registry functions and powers with the progressive transfers of the registers onto the new Australian Business Registry Services (ABRS) platform in line with the Modernising Business Registers (MBR) program delivery which is to be fully rolled out by 2024, a series of legislative instruments to ensure the continued operation of registry services in accordance with current practices pending the transfer of certain registry functions from the Australian Securities and Investments Commission to the Commissioner of Taxation, including:
  - Corporations Act — Transitional Registry Disclosure Framework 2022
  - Corporations Act — Transitional Registry Operations Data Standard 2022
  - Business Names Registration — Transitional Registry Disclosure Framework 2022
  - Business Names Registration — Transitional Registry Operations Data Standard 2022
  - Australian Business Register — Transitional Registry Disclosure Framework 2022
  - Australian Business Register — Transitional Registry Operations Data Standard 2022
  - SMSF Approved Auditor — Transitional Registry Disclosure Framework 2022
  - SMSF Approved Auditor — Transitional Registry Operations Data Standard 2022
  - National Consumer Credit Protection — Transitional Registry Disclosure Framework 2022, and
  - National Consumer Credit Protection — Transitional Registry Operations Data Standard 2022

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Other News

Crypto currencies to be excluded from foreign currency tax arrangements

The Treasurer, The Hon Dr Jim Chalmers MP, has announced that the Government will clarify current arrangements in tax law that will mean crypto assets such as Bitcoin will not be regarded as a foreign currency for tax purposes. Capital gains tax will continue to apply to crypto assets that are held as investments. This clarification will be backdated to 1 July 2021 for the avoidance of ambiguity following the decision by the Government of El Salvador to allow Bitcoin as legal tender.

Treasury post-Budget briefing

The Secretary to the Treasury, Dr Steven Kennedy, has delivered a post-Budget briefing on the economy, the fiscal outlook and longer-term Federal budget challenges. In his address, the Secretary discussed identifying structural savings or additional tax revenues as a means to fund the Government's priorities. He also stated there was little case for lowering most taxes including company tax, pointing to other countries such as the United Kingdom that are increasing company taxes. It was also noted there is no case to extend the temporary tax arrangements put in place to support the economy through COVID-19.

Albanese Government Ministry announced

Details of the Albanese Government Ministry have now been released, including the following relevant to taxation, business and trade:

- Treasurer: The Hon Dr Jim Chalmers MP
- Minister for Small business: The Hon Julie Collins MP
- Assistant Treasurer: The Hon Stephen Jones MP
- Minister for Financial Services: The Hon Stephen Jones MP
- Minister for Trade and Tourism: Senator the Hon Don Farrell
- Minister for Finance: Senator the Hon Katy Gallagher
- Minister for Industry and Science: The Hon Ed Husic MP
- Assistant Minister for Competition, Charities and Treasury: The Hon Dr Andrew Leigh MP

Second Commissioner speech on the 'tax gap'

Australian Taxation Office (ATO) Second Commissioner, Jeremy Hirschorn, has delivered a speech to the accounting members association, CPA Australia. In the speech, he outlined the ATO's most recent estimate of the 'tax gap' of AUD 33.5 billion, primarily resulting from small business and individuals. To address the tax gap, the ATO is seeking to address the following concerns with small businesses:

- how to bring small businesses that operate in the shadow economy into the tax system
- how to prevent businesses from making simple mistakes based on poor systems or a failure to obtain advice, and
- helping business to pay outstanding tax debts and to get them to re-engage with the system.

In relation to individuals, the ATO aims to address the following problems:

- the over-claiming of work related expenses and creating a common understanding of what is allowable
- the over-claiming of expenses related to property investments, and
- understanding what assets have been dealt with during the year, particularly digital assets such as cryptocurrencies or non-fungible tokens.

As part of its approach to helping taxpayers, the ATO is focusing on providing practical certainty, early engagement and minimising the risk of errors. The release of guidance in relation to reimbursement agreements and Division 7A (private company deemed dividends) is an example of how the ATO is seeking to provide certainty on challenging issues and recognises that reasonable minds may differ in certain areas. In relation to early engagement, the ATO has issued a number of awareness letters under its programs for the disclosure of business tax debts and director penalty notices, with the letters leading to approximately AUD 4 billion of debts being covered by payments or payment plans. In order to minimise the number of taxpayer errors, the ATO is using real time nudge messaging to identify and correct errors.

It's tax time – 2022 tax returns and schedules

The ATO has released the return forms, schedules and instructions for 2022-23 income year tax lodgments. The full list of forms can be accessed under the 'Tax Time 2022' heading on the Forms and Instructions page.

Depreciation car limit for 2022-23

The ATO has published the car limit for capital allowance purposes for the 2022-23 income year. The limit is AUD 64,741 for the 2022-23 year (increased from AUD 60,733).

Update for charities

The Australian Charities and Not-for-profits Commission (ACNC) has released its initial findings from its review of the integrity of the Charity Register. The report follows the review of the records of thousands of charities to determine that information on the Charity Register is accurate and contains charities that are entitled to be registered having regard to three criteria:

- deductible gift recipients (DGRs) to ensure they continue to be entitled to DGR status
- certain charities to ensure they are carrying on a charitable purpose that is entitled to registration, and
- whether charities have provided all information required to maintain registration.

In particular for DGRs, the ACNC revoked the registration of 19 per cent of the DGRs selected for review. Where the ACNC identified minor issues, the ACNC provided further guidance on how to rectify the issue. The most common errors identified were when a charity had not provided its governing document or when a charity had not provided details of all Responsible People. For more significant issues, the ACNC often establishes an agreement outlining issues that need to be rectified and the actions the charity has agreed to undertake within a timeframe.

The ATO has begun calling DGRs that are not currently registered as a charity with the ACNC advising them of the requirement to be registered (or operated by a registered charity) from 14 December 2021 unless they are an Australian government agency. There are transitional arrangements in place until 14 December 2022 for entities that are currently a DGR but not a registered charity.

ATO to resume offsetting debts

The ATO has advised that it has resumed offsetting clients' tax refunds or credits to pay off debts on hold. This was paused in January 2020 to allow credits that would otherwise have been applied to those debts to instead be refunded.

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Editorial

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

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PwC's Monthly Tax Update

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