PwC's Monthly Tax Update

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

June 2023

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Corporate Tax Update

Changes to the Petroleum Resource Rent Tax

In the lead-up to the 2023-24 Federal Budget, the Government has announced its commitment to implementing changes to the Petroleum Resource Rent Tax (PRRT). This was also confirmed in the Federal Budget. The main changes include:

- introducing a 90 per cent cap on the use of LNG project deductions to offset assessable income earned by LNG producers under the PRRT, from 1 July 2023
- amend the PRRT legislation to clarify that exploration for petroleum' is limited to the 'discovery and identification of the existence, extent and the nature of the petroleum resource' and does not extend to 'activities and feasibility studies directed at evaluating whether the resource is commercially recoverable'
- allowing taxpayers to lodge PRRT returns once they start holding an interest in an exploration lease or retention lease
- allowing taxpayers to report PRRT on a single return for multiple projects
- allowing the adoption of a substituted accounting period for PRRT purposes
- allowing the Commissioner the power to administratively exempt PRRT projects where they are "clearly unlikely" to pay PRRT in the foreseeable future, and
- amend the anti-avoidance rules to apply in a similar manner to the income tax anti-avoidance provisions, and give the Commissioner powers to apply them to arrangements under the Gas Transfer Pricing Regulations.

Some of these changes represent the implementation of eight of the eleven recommendations of the GTP Review which has recently been completed by the Government, as well as another eight recommendations from the Callaghan Review- which were unannounced and unenacted measures of the previous Government.

The Government plans to consult on the design and implementation details for the deductions cap and on the draft GTP rules later this year. Consultation on other policy changes, including recommendations from the Callaghan Review and the anti-avoidance rules, will occur in early 2024.

Other corporate specific 2023-24 Federal Budget measures

A number of measures were announced in the 2023-24 Federal Budget on 9 May 2023 which have particular relevance to corporate taxpayers. This included the following measures:

- amendments to be made to reduce compliance costs for general insurers by aligning tax outcomes with the newly introduced accounting standard AASB 17 Insurance Contracts, with effect for income years commencing on or after 1 January 2023
- ensure that deductions for mining, quarrying and prospecting rights (MQPR) can only commence when they are used and not merely held. An additional clarification will also be made to limit the circumstances in which a licence conversion will lead to the creation of a new MQPR. Both amendments will apply to MQPRs acquired or starting to be used after 7:30pm (AEST) on 9 May 2023.

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- an increase in the Location Offset rebate rate to 30 per cent from 2024-25, whilst increasing the minimum Qualifying Australian Production Expenditure thresholds to $20.0 million for feature films and $1.5 million per hour for television series. The Government will also provide funding from 2024-25 for the Australia-India Audio-Visual Co-Production Agreement to enable eligible producers to access the Producer Offset, a refundable tax offset for approved Australian expenditure.
- the proposed patent box concessional tax treatment for income derived from exploiting Australian medical and biotechnology innovation, agricultural sector innovation and low emissions technology innovation patents that was announced by the former Government will not proceed.

Other Federal Budget measures are also noted in other relevant sections of this Monthly Tax Update.

For the key changes related to taxation of corporates highlighted above, our in depth analysis can be found here.

Oil company not entitled to R&D tax offset

In Lakes Oil NL and Innovation and Science Australia (Taxation) [2023] AATA 811 the Administrative Appeals Tribunal (AAT) has upheld a decision of Innovation Science Australia in finding that an oil company's activities did not qualify for the research and development (R&D) as they fell within an excluded category of activities that included exploring, prospecting or drilling and did not meet the definition of 'experimental activities'.

The taxpayer contended that the activities being undertaken were eligible core or supporting R&D activities, and that part of the activities were to develop new technologies and techniques adapted to the geological features of the region. The AAT rejected this, holding that the evidence suggested that a key purpose of the activities was to determine more precisely the location of deposits even if there may have been other purposes that were served.

End of financial year reminders for the R&D Tax Incentive

As we near the end of the financial year, entities that incur R&D expenditure as a payment to an associate or associates should ensure that these amounts are fully paid by 30 June 2023 in order to be able to claim the R&D tax offset for these amounts. Where all or part of a payment to an associate is incurred but not paid in the income year, the R&D benefit can only be claimed in the future income year in which it is paid (and on the condition that the company has not claimed a deduction under the general income tax provisions for the unpaid amounts). Entities seeking to obtain an Advance or Overseas Finding for R&D activities conducted in the year ending 30 June 2023 have until 30 June 2023 to submit an application.

Also note that the rate of the R&D tax incentive for the current income year is dependent on the company's aggregated annual turnover (which also includes the annual turnover of any entities the company is 'connected with' or that are its 'affiliates') and the entity's notional R&D deductions. Those with aggregated turnover of less than AUD 20 million can access a refundable R&D tax offset at a rate 18.5 per cent above the claimant company's tax rate, provided they are not controlled by income tax-exempt entities. Companies with a turnover of at least AUD 20 million have access to a non-refundable tax offset at a rate equal to the claimant company's tax rate plus 8.5 per cent for R&D expenditure between 0 and 2 per cent R&D intensity and 16.5 per cent for R&D expenditure above 2 per cent R&D intensity (intensity is measured as the company's R&D expenditure as a proportion of total expenses for the year). The rate of the R&D tax offset is reduced to the company tax rate for that portion of an entity's notional R&D deductions that exceed AUD 150 million in the income year.

Employment Taxes Update

Full Federal Court decision on contractor superannuation guarantee obligations

In *JMC Pty Ltd v Commissioner of Taxation* [[2023] FCAFC 76] the Full Federal Court allowed an appeal against the earlier decision of the Federal Court in *JMC Pty Ltd v Commissioner of Taxation* [[2022] FCA 750]. The Federal Court at first instance had found that a lecturer engaged by a higher education provider was an employee of that provider within both under the ordinary meaning of the term, and also, under the extended definition in the superannuation guarantee legislation.

In considering whether the primary judge had erred in relation to the key questions of (i) whether the lecturer had real contractual power to subcontract or assign the performance of the teaching services with consent, and (ii) whether the applicant had control over how, when and where the teaching services were to be provided, the Full Federal Court found that, taken as a whole, the contract did not provide the nature and degree of control that would result in an employment relationship.

In reaching this decision, the Full Federal Court found that the primary judge had erred in overstating the significance of the right of the applicant to prevent subcontracting under the contract by withholding consent, and also, in attributing significance to the question of whether the right to subcontract had in fact been exercised. Relevantly, it was held that significance should have been given to the right to subcontract, and an expectation that the applicant would not unreasonably withhold authorisation to do so.

Additionally, the Full Federal Court did not agree that the provision of lesson plans by the applicant amounted to significant control of the lecturer. Instead, the lesson plans were considered to indicate very little control being exercised beyond the broad parameters of what information was to be covered during classes. Further, the fact that the lectures were provided under a timetable was not viewed as an exercise of control, but rather, as a matter of necessity for an education provider. The fact that the lecturer was able to negotiate his availability for when lectures could be scheduled in the timetable instead suggested a degree of freedom as to when the work would be performed.

As to the extended meaning of employee in s 12(3) of the Superannuation Guarantee (Administration) Act 1992, the Full Federal Court found that the right to subcontract provided within the contract indicated that the contract was not "wholly or principally for the labour of the person". While the lecturer could perform the contract personally, it was equally true that he could have subcontracted or assigned the contract with the applicant's consent. Ultimately, the Court determined that s 12(3) requires attention to the rights under the contract rather than the actual performance of the contract. In this respect, the contract was one for the provision of teaching services and not principally for the labour of the lecturer.

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'Pay-day' superannuation announcement

In the lead up to the 2023-24 Federal Budget handed down on 9 May 2023 the Government announced that from 1 July 2026, employers will be required to pay their employees' superannuation guarantee (SG) entitlements on the same day that they pay their salary and wagesCurrently, the legislative requirement is for SG contributions to be made on a quarterly basis.

The Government will consult on changes to the design of the SG charge to align with the increased payment frequency, with the final design to be considered as part of the 2024-25 Federal Budget. The Government also intends to provide additional funding to the ATO over 4 years from 1 July 2023 to improve data matching capabilities to identify and act on cases of SG underpayment by employers, and for consultation and co-design.

Refer to our detailed analysis of the Federal Budget that considers these further.

Victorian Budget 2023–24

The Victorian Government has announced a new COVID Debt Repayment Plan in the recent Victorian Budget which includes a temporary levy for additional payroll tax on large businesses with national payrolls above $10 million a year from 1 July 2023. The levy will apply for 10 years until 30 June 2033.

An additional payroll tax rate of 0.5% will apply for businesses with national payrolls above $10 million, and businesses with national payrolls above $100 million will pay an additional 0.5%. The additional rates will be paid on the Victorian share of wages above the relevant threshold. Payroll tax exemptions, such as those for hospitals, charities, local councils, and wages paid for parental and volunteer leave will continue to apply.

In addition, it was announced that, from 1 July 2024, the Victorian payroll tax-free threshold will increase from $700,000 to $900,000, and subsequently increase further to $1 million from 1 July 2025.

The government will also introduce a "phase out" to better target the benefits of the tax-free threshold to small businesses. This will result in the tax-free amount reducing for each dollar a business pays in wages over $3 million. Businesses with wages over $5 million will not benefit from the tax-free threshold. These changes to payroll tax will commence from 1 July 2024.

Tasmanian Budget 2023–24

During the month, the Tasmanian Budget for 2023-24 was also handed down. The Budget included an announcement that the existing Payroll Tax Rebate Scheme providing payroll tax relief to businesses operating in Tasmania that employ apprentices, trainees and youth employees would be extended to 30 June 2023. The payroll tax rebate is provided for a 2-year period from the date that apprentices and trainees are employed and one year from the date that youth employees are employed.

Global Tax and Trade Update

International tax measures announced in 2023-24 Federal Budget

In the 2023-24 Federal Budget, a number of measures were announced that affect taxpayers operating cross-border.

Specifically it was announced that Australia would implement a global minimum tax and domestic minimum tax as part of the Organisation of Economic Cooperation and Development (OECD) / G20 Two-Pillar Solution to address digitalisation of the economy:

- a global minimum tax at a 15 per cent rate which includes the following elements:
- The Income Inclusion Rule which will apply for income years starting on or after 1 January 2024. This rule will apply to Australian multinationals and Australian entities which are subsidiaries of a foreign-headquartered multinational located in a jurisdiction that has not implemented this rule.
    - The Undertaxed Profits Rule which will apply for income years starting on or after 1 January 2025. Where no Income Inclusion Rule applies, the Undertaxed Profits Rule will apply to foreign multinationals that operate in Australia.
    - The Undertaxed Profits Rule which will apply for income years starting on or after 1 January 2025. Where no Income Inclusion Rule applies, the Undertaxed Profits Rule will apply to foreign multinationals that operate in Australia.
- a 15 per cent domestic minimum tax, with an effective date for some measures from 1 January 2024.

Our in depth analysis can be found here.

Furthermore, it was announced that the general anti-avoidance rule for income tax contained in Part IVA of the *Income Tax Assessment Act 1936* (Cth) will be expanded so that it can apply to:

- schemes that reduce tax paid in Australia by accessing a lower withholding tax rate on income paid to foreign residents, and
- schemes that achieve an Australian income tax benefit, even where the dominant purpose was to reduce foreign income tax.

The expanded rule will apply to income years commencing on or after 1 July 2024, regardless of whether the scheme was entered into before that date.

Updated ruling on UK and US treaty exemption for interest of financial institutions

The Australian Taxation Office (ATO) has issued updated Taxation Ruling TR 2005/5 on the right to tax United States (US) and United Kingdom (UK) resident financial institutions under the US and the UK double tax agreements in respect of interest income arising in Australia.

The update clarifies certain aspects of the second limb of the definition of "financial institution" as used in Australia's double tax agreements with the US and the UK. This updated ruling also applies to financial institutions of other countries where the relevant double taxation agreement (DTA) uses identical or substantially similar wording.

This Addendum applies both before and after its date of issue. However, for the 2018-2019 and earlier income years the Commissioner does not intend to take compliance action to the extent a taxpayer assessed it was not liable to interest withholding taxes before 28 November 2018 (the date of issue of the first draft Addendum to TR2005/5), where the taxpayer:

- determined it was a financial institution on the basis that its spread activities was the largest contributor to its overall profits when compared with each of its other activities separately rather than combined, and

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- has not undertaken or entered into an artificial or contrived arrangement affecting its interest withholding tax obligations or a tax avoidance scheme whose outcome depends, in whole or part, on reduced or no withholding taxes.

New draft PCG on intangible arrangements

The ATO has issued a new draft Practical Compliance Guideline PCG 2023/D2 that deals with intangible arrangements following the consultation on the previous version issued in 2021. The new draft focuses on issues that may arise from restructures or other changes related to intangible assets, including the mischaracterisation of Australian activities in connection with intangible assets. The risk factors in the risk assessment framework are also broader than previously.

This Guideline focuses on the ATO's compliance approach (primarily relating to the potential application of the general anti-avoidance rules or the transfer pricing rules) with respect to:

- arrangements involving migration of intangible assets (i.e.any restructure or change associated with intangible assets that allows another entity to access, hold, use, transfer or benefit from the intangible assets), and
- arrangements involving mischaracterisation of Australian activities connected with the development, enhancement, maintenance, protection and exploitation (DEMPE) of intangible assets of intangible assets.

PCG 2023/D2 does not address the proposed integrity measure to deny deductions for payments relating to intangible assets connected with low corporate tax jurisdictions announced in the 2022-23 October Budget, nor does it have any impact on other intangibles related alerts such as TA 2018/2 (mischaracterisation of activities or payments in connection with intangible assets) and TA 2022/2 (treaty shopping arrangements).

Refer to our Tax Alert for further details.

Comments can be made on the draft PCG until 16 June 2023.

UK free trade agreement enters force

The Government has announced that the Australia-United Kingdom Free Trade Agreement (A-UKFTA) will enter force on 31 May 2023, following the expected completion of UK domestic processes. Under the new agreement there will be no tariffs on over 99 per cent of Australian goods exports to the UK, including Australian exports of wine, short- and medium-grain rice, honey, nuts, and manufactured products such as auto parts, electrical equipment, and cosmetic products.

After five years, all UK imports will enter Australia duty free.

On services exports, the agreement includes commitments on the movement of business people, making it easier to do business in the UK market. For example, it provides a framework for professional bodies to agree to streamline licensing processes to facilitate the movement of qualified professionals between Australia and the UK. and within two years of entry into force, Australians will be able to apply for working holidays in the UK to the age of 35 years (up from the age of 30), and stay for a maximum of three years instead of two.

Excise and 2023-24 Federal Budget initiatives

In the lead up to the Federal Budget, the Government announced a number of measures relating to tobacco and vaping products, proposing stronger regulation and enforcement of all e-cigarettes, including new controls on their importation.

In addition, it proposes to increase the tax on tobacco by five per cent per year for three years in addition to normal indexation increases from 1 September 2023. It also announced that it will progressively align the tax treatment of loose-leaf tobacco products (such as roll-your-own tobacco) with the manufactured stick excise rate between 1 September 2023 and 1 September 2026, by progressively lowering the 'equivalisation weight' from 0.7 to 0.6 grams, to ensure these products are taxed equally.

The Government will also expand compliance activity to address illicit tobacco and work with relevant agencies and state and territory governments to develop an appropriate multi-jurisdictional approach.

Trade and 2023-24 Federal Budget initiatives

As part of the 20234-24 Federal Budget, the Government announced it would provide additional funding proposed to support global trade:

- in 2023-24 to continue initiatives to modernise and improve Australia's international trade system, including delivering the simplified trade system reforms and continuation of the Trade Information Service
- over four years from 2023-24 funding to increase capability in Australia's biosecurity system and maintain existing services, and
- over three years from 2023-24 to deliver new digital systems to facilitate and streamline the import of goods through integration with business systems.

For further information on the above, refer to our in depth analysis.

Indirect Tax Update

Luxury car tax threshold for 2023-24

The Australian Taxation Office (ATO) has advised that the luxury car tax threshold for the 2023-24 financial year is $89,332 (up from $84,916 in the current 2022-23 financial year) for fuel-efficient vehicles and $76,950 (up from $71,849) for other vehicles. The luxury car tax is payable at the rate of 33 per cent on the GST-exclusive value above the threshold.

GST and 2023-24 Federal Budget

In the 2023-24 Federal Budget handed down on 9 May 2023, no changes were made to the goods and services tax regime for the current and future income years. However, the following compliance changes were announced:

- additional funding will be provided to the ATO over four years from 1 July 2023 to continue a range of activities that promote GST compliance. These activities are said to ensure businesses meet their tax obligations, including accurately accounting for and remitting GST, and correctly claiming GST refunds. Funding through this extension is also said to help the ATO develop more sophisticated analytical tools to combat emerging risks to the GST system.

- the GDP adjustment factor for GST instalments (and pay as you go (PAYG) instalments) will be set at 6 per cent for the 2023-24 income year in relation to instalments that fall due after the enabling legislation receives Royal Assent (a Bill is already before Parliament). This is a reduction from 12 per cent under the statutory formula.

Indirect tax concession scheme extended

The Government has made the following Determinations which upgrade the Indirect Tax Concession Scheme (ITCS) packages to Saudia Arabia diplomatic mission and consular posts in Australia and staff accredited to those posts:

- Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Saudi Arabia) Determination 2023 and
- Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Saudi Arabia) Determination 2023.

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Personal Tax Update

Personal tax and 2023-24 Federal Budget

In the 2023-24 Federal Budget handed down on 9 May 2023, no changes were made to already legislated personal income tax rates and thresholds for the current and future income years. However, the following measures were announced:

- the Medicare levy low-income thresholds for singles, families, seniors and pensioners will increase for the 2022-23 income tax year
- low income earners will also be eligible for a Medicare Levy exemption on eligible lump sum payments, for example, compensation for underpaid wages, from 1 July 2024, and
- the Australian Taxation Office (ATO) and the Treasury will be provided additional funding to extend the Personal Income Tax Compliance Program for two years from 1 July 2025 and expand its scope from 1 July 2023. This extension is intended to ensure the ATO can continue to deliver a combination of proactive, preventative and corrective activities in key areas of non-compliance, and to expand the scope of the program to address emerging areas of risk, such as deductions relating to short-term rental properties to ensure they are genuinely available to rent.

For further insight into the Budget measures related to personal tax and superannuation, our in depth analysis can be found here.

Draft determination on car expense deductions for 2023-24

The ATO has issued a draft determination that proposes to set the rate for calculating work-related motor vehicle expenses deductions at 85 cents per kilometre for the income year commencing 1 July 2023. The current rate for the 2022-23 income year is 78 cents per kilometre.

This rate is proposed to apply to eligible taxpayers who use the cents per kilometre method to calculate the income tax deductions for their work-related car expenses. Comments on the proposal were closed on 22 May 2023.

ATO focus for 2023 tax time

In a recent media release the ATO has identified rental property deductions, work-related expenses and capital gains tax as key focus areas for 2023 tax time.

The ATO has issued the reminder to taxpayers about these areas where the ATO has identified common mistakes, and are particularly focused on addressing these and supporting taxpayers and registered tax agents to get their claims right this year.

In relation to rental properties, the ATO is particularly focused on interest expenses and ensuring rental property owners understand how to correctly apportion loan interest expenses where part of the loan was used for private purposes (or the loan was re-financed with some private purpose). The ATO has sophisticated data matching capabilities which include rental property-related data and has recently implemented a new residential investment property loans data matching program.

Taxpayers should also note the changes to the methods for calculating working from home deductions for the current year including the eligibility and record-keeping requirements.

In relation to capital gains from homes used for income producing properties, the ATO is reminding taxpayers of the importance of keeping records of the income-producing period and the portion of the property used to produce income to calculate your capital gain.

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State Taxes Update

WA land tax relief for build-to-rent developments

The Land Tax Assessment Amendment (Build-to-Rent) Bill 2023 (WA), which was introduced into the WA Parliament on 17 May 2023, proposes a 50 per cent land tax exemption for land used for new eligible build-to-rent developments from the 2023-24 assessment year. The exemption applies for 20 consecutive assessment years from the first year the development meets the eligibility requirements. The exemption will cease to apply if the land no longer meets the criteria. Also the land tax exemption will be retrospectively removed if a build-to-rent development ceases to qualify for the exemption within the first 15 years.

Where parts of a development are used for unrelated purposes, such as commercial activities or unrelated residential accommodation, the exemption will be proportionally reduced.

Northern Territory Budget

The 2023-24 Northern Territory (NT) Government Budget was delivered on 9 May 2023. The 2023-24 Budget has been described as a budget focusing on long term investment in the future of the Northern Territory. It was announced that this budget marks the first time since the 2016-17 Budget was brought down that the NT Budget is projecting a fiscal balance surplus within its three year forward estimates period. The 2023-24 Budget also anticipates there will be net operating surpluses from 2024-25 onwards and notes that the return to surplus is partly attributed to upward revisions to goods and services tax (GST) revenue, totalling $923 million over the budget cycle to 2025-26 compared to the 2022-23 Budget.

Key proposed legislative changes introduced under this Budget include the abolishment of stamp duty on the conveyance of non-land property (except for chattels conveyed with an interest in land) and on the conveyance of chattels with a lease that has nil or nominal dutiable value. The Stamp Duty Amendment Bill 2023 (NT) was also introduced to implement this proposal.

Relevantly, if this Bill is passed in its current form, the following will no longer be considered dutiable property in NT: goodwill, a right to use a NT business name or trademark, a right to use intellectual property, a patent, or a statutory licence or permission granted under a Commonwealth or NT law. In addition, the Bill introduces an exemption from stamp duty on the conveyance of chattels where they are conveyed as part of a transaction that includes a conveyance (or grant of) a lease for nil or nominal value and no other dutiable property is transferred.

The new Petroleum Royalty Act 2023 (NT) will commence 1 July 2023, introducing a new onshore petroleum royalty regime which will continue to impose an ad valorem royalty at 10 per cent on the value of production at the wellhead. The Act also recognises post wellhead allowable costs, capped at 75 per cent of the sales value of petroleum, to ensure the NT always receives a return for the removal of its nonrenewable resources. It also provides for a statutory review mechanism to review the effectiveness and efficiency of the regime within five years of its commencement. The Petroleum Royalty Act 2023 (NT).

NSW duty and land tax amendments

The Revenue Legislation Amendment Bill 2023, which was introduced to the NSW Parliament on 11 May 2023, proposes to:

- remove the concessional stamp duty rate of 10 per cent provided to public landholders for acquisition of land holdings, and
- amend the *Land Tax Management Act 1956 (NSW)* to extend the time from four to six years during which unoccupied land may be treated as a principal place of residence with respect to the payment of land tax in certain cases when the owner cannot use and occupy the land because of a delay in the completion of building or other work.

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Western Australian Budget

The Western Australian (WA) Budget for 2023–24 was handed down on 11 May 2023. This Budget outlines a sixth consecutive year of operating surplus for WA ($3.3 billion for the 2023-24 financial year) off the back of continued strength in the mining sector.

From a revenue perspective, the following tax measures were announced:

- An extension to the off-the-plan transfer duty rebate to 30 June 2025, with an increase to existing thresholds as follows:
  - A 100 per cent duty concession for properties valued up to $650,000 (formerly $500,000)
  - A phased duty concession down to 50 per cent for propertied valued up to $750,000 (formerly $650,000) (capped at $50,000)

  The rebate will also be legislated as a concession to remove the need for purchasers to pay the full amount of duty and subsequently claim back the rebate.
- Confirmation of the cessation of the temporary payroll tax for large employers from 1 July 2023 onwards. The previous temporary surcharge applied at the additional marginal tax rate of 0.5 per cent for employers with an Australian-wide annual taxable payroll from $100 million to $1.5 billion, and an additional 1 per cent marginal rate for employers with an Australian-wide annual taxable payroll greater than $1.5 billion. These large employers will revert to the previous top marginal tax rate of 5.5 per cent.

NSW housing tax changes

The First Home Buyer Legislation Amendment Bill 2023 was introduced into the New South Wales (NSW) Parliament on 23 May 2023 and proposes a range of measures in relation to State taxation relevant to residential homes. Specifically, the Bill proposes the following amendments to the Duties Act 1997 (NSW) to:

- require a person to reside in a home as the person's principal place of residence for a continuous period of at least 12 months to be eligible for a duty exemption or concession, and
- revise values for property to be eligible for the purposes of the First Home Buyers Assistance Scheme, and
- amend the Property Tax (First Home Buyer Choice) Act 2022 to prevent a person making an election to pay property tax rather than stamp duty on a transfer of land occurring on or after 1 July 2023.

The Bill also requires first home buyers to reside in the home as their principal place of residence for a continuous period of at least 12 months to be eligible for a First Home Owner Grant.

Development rights agreement did not effect a declaration of trust (NSW)

In Leppington Pastoral Co Pty Ltd v Chief Commissioner of State Revenue (NSW) [2023] NSWSC 463 the Supreme Court of New South Wales has found that an agreement between a landowner and developer preserving call options previously granted to the developer to acquire land in stages, but granting rights to the developer to obtain exclusive possession of the parcels of land without exercising the call options, did not effect or evidence a declaration of trust in respect of land and thus was not dutiable.

The NSW Commissioner of State Revenue considered that the arrangements effected or evidenced a dutiable transaction in the form of a "declaration of trust over dutiable property". The Supreme Court concluded that a reasonable business person would not have interpreted the words "beneficial and equitable interest in the Project Land" as used in the associated documents to mean that there was an interest in the project land as the beneficiary under a trust. The documents did not manifest an intention to create an express trust in respect of the project land for the benefit of the developer, and nor did they effect or evidence a declaration of trust in respect of the project land within the meaning of s 8(3) of the *Duties Act 1997 (NSW)*.

QLD duties and acquisition of company interest

The Supreme Court of QLD considered in the matter of Eshchenko v Commissioner of State Revenue [2023] QSC 100 the taxpayer's appeal against the decision of the Commissioner of State Revenue (QLD) to disallow his objection to the assessment of duty under the landholder provisions in the Duties Act 2001 (Qld) in respect of the acquisition of an interest in a company The appellant argues that the assessment should have been reduced to nil because the interest acquired was, for the purposes of the Act, an "excluded interest" within the meaning of section 179(6) of the Act. That argument proceeded on the basis that the interest the appellant acquired in the company was an interest which was held by his father, a related person within the meaning of the Act, for more than three years, and which had been acquired by his father at a time when the company did not hold land in Qld. The Court was unable to accept that submission. The Court rejected the submission that, by excluding intra-group acquisitions, a literal construction better achieved the legislative policy, given the presumption against double taxation and the adoption of aggregation of the interests of related persons as a criterion of liability to pay duty.

The Court found that adopting a literal interpretation of the words in section 179(6) to describe an "excluded interest" as being an interest "of a person who makes a relevant acquisition in a private landholder" would limit the application of the definition to an interest held or acquired by the person who makes the relevant acquisition - in this case, the taxpayer - which would not be correct.

Superannuation Update

Draft regulations for taxation of military superannuation benefits

Treasury has released draft regulations to complement the taxation of military superannuation benefits measure that was introduced into Parliament in Treasury Laws Amendment (2022 Measures No. 4) Bill 2022 that are related to the Full Federal Court decision in Commissioner of Taxation v Douglass [2020] FCAFC 220.

The draft regulations will address the following matters to ensure the Bill operates as intended so as to:

- ensure that the current approach to calculating tax-free and taxable components of affected invalidity benefits paid under the Defence Force Retirement and Death Benefits (DFRDB) and Military Superannuation Benefits (MSB) schemes will continue,
- ensure that benefits (other than those affected by the court's decision in the Douglas case) that are reverting to income stream treatment due to the amendments to be made by the Bill, continue to receive Capped Defined Benefit Income Stream treatment if they lost this status due to the Douglas decision, and
- seek to ensure that death benefits relating to DFRDB and MSB reversionary pensions affected by the Douglas decision retain their status as non-assessable, non-exempt for income tax purposes.

Year end reminders for superannuation

A number of key superannuation reminders with the end of the financial year approaching:

- ensure that all superannuation contributions are received by the relevant superannuation fund on or before 30 June 2023 to be counted towards an individual's current financials year's contributions cap
- Ensure all minimum income stream drawdown requirements are met for the year, and
- The minimum superannuation guarantee rate is increasing from 10.5 per cent to 11 per cent from 1 July 2023.

Further superannuation year end reminders and planning opportunities can be found here.

Superannuation and 2023-24 Federal Budget

In the 2023-24 Federal Budget handed down on 9 May 2023, the following superannuation changes were announced:

- Better targeted superannuation concessions from 1 July 2025 to individually tax a fund member which has total superannuation balances in excess of $3,000,000 with an additional 15 per cent tax on the proportional increase in their total superannuation balance.
- Amendments to the former Government's proposed measure relating to non-arm's length income (NALI) provisions which apply to expenditure incurred by superannuation funds by:
  - limiting income of self-managed superannuation funds and small Australian Prudential Regulation Authority (APRA) regulated funds that are taxable as NALI to twice the level of a general expense and ensuring that fund income taxable as NALI will exclude contributions
  - exempting large APRA regulated funds from the NALI provisions for both general and specific expenses of the fund, and
  - exempting expenditure that occurred prior to the 2018-19 income year.

For further insight into the Budget measures related to personal tax and superannuation in our in-depth analysis can be found here.

In his Budget in Reply speech, the Leader of the Opposition indicated that if it wins government it will reverse the government's policy to impose an additional 15 per cent tax on earnings on the component of total superannuation balances of funds above $3 million.

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Legislative Update

Federal Parliament commenced its Winter sittings on 9 May 2023, which was also the date of the 2023–24 Federal Budget. Refer to PwC's comprehensive Budget analysis for our analysis of all tax measures reported in the Budget.

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

- Treasury Laws Amendment (2023 Measures No. 2) Bill 2023, which was introduced into the House of Representatives on 10 May 2023, proposes a rang of amendments, some of which were announced in the 2023-24 Federal Budget, including:
    - amend the Medicare levy and Medicare levy surcharge income thresholds to apply to the 2022-23 income year
    - allow eligible primary producers to treat certain carbon abatement income as primary production income; and
    - reduce the GDP adjustment factor to work out certain pay as you go (PAYG) and goods and services tax (GST) instalments for small businesses and eligible individuals.

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

- Taxation Administration (Remedial Power – Work Test for Personal Superannuation Contributions) Determination 2023 which modifies the operation of the work test for individuals aged 67 to 75 years in relation to superannuation contributions to allow deductions for voluntary superannuation contributions under the new definition applicable to personal superannuation contributions made on or after 1 July 2022.
- Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2023
- Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2023
- Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Saudi Arabia) Determination 2023 and Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Saudi Arabia) Determination 2023, which creates a new Indirect Tax Concession Scheme (ITCS) package for Saudi Arabia by providing indirect tax concessions to its diplomatic mission and consular posts in Australia and accredited staff.

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Other News

Build-to-rent housing concessions

In an announcement by the Government on 28 April 2023 and subsequently confirmed in the 2023-24 Federal Budget, a range of housing measures were announced which includes the following tax incentives for build-to-rent projects where construction commenced after 9 May 2023:

- From 1 July 2024, reduced withholding rates for eligible fund payments from Managed Investments Trusts (MITs) to foreign residents from 30 per cent to 15 per cent.
- Increasing the capital works depreciation rate from 2.5 per cent to 4 per cent per year.

These measures are subject to further consultation on eligibility criteria. Refer to our 2023-24 Budget summary on these measures for further information.

Bonus deductions for investments into energy efficiency

On 30 April 2023 the Treasurer announced that small and medium businesses with an annual aggregated turnover of up to $50 million to be able to access an additional 20 per cent deduction for expenditure that supports electrification and more efficient use of energy. This was also confirmed in the 2023-24 Federal Budget.

Up to $100,000 of total expenditure will be eligible for this new tax incentive, with a maximum of additional tax deduction of $20,000 per eligible entity. Eligible assets or upgrades will need to be first used or installed ready for use between 1 July 2023 and 30 June 2024. This start date corresponds with the ending of an existing temporary full expensing measure. Full details of eligibility criteria will be finalised in consultation with stakeholders.

For more information, please refer to PwC Federal Budget energy incentive analysis.

Other Federal Budget announcements

The following income tax measures, that have not been separately reported elsewhere in this edition of the Monthly Tax Update, were also announced in the 2023-24 Federal Budget:

- While there was no extension to Temporary Full Expensing, which provides businesses with aggregated turnover of up to $5 billion with the ability to deduct the full cost of eligible assets and which will finish on 30 June 2023, small businesses with aggregated turnover of less than $10 million will be eligible for a temporary increase in the instant asset write-off threshold to $20,000 for eligible assets that are first used or installed ready for use between 1 July 2023 and 30 June 2024.
- Fund payments made from 1 July 2025 relating to income from data centres and warehouses where construction commenced after 7:30pm (AEST) on 9 May 2023 and the building meets the relevant energy efficiency standard (6-star rating from the Green Building Council Australia or a 6-star NABERS rating) can qualify for a reduced withholding rate (of 10 per cent). The higher minimum energy efficiency ratings will also apply to construction of new buildings to which the existing clean building MIT regime applies (being offices, hotels and/or shopping centres), and the Government will consult on transitional arrangements for existing buildings.
- A lodgment penalty amnesty program will be provided for small businesses with aggregated turnover of less than $10 million. The amnesty means the Australian Taxation Office (ATO) will remit failure-to-lodge penalties for outstanding tax statements lodged in the period from 1 June 2023 to 31 December 2023, and that were originally due during the period from 1 December 2019 to 29 February 2022. See further details below.

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- The ATO will be given additional funding to lower the tax-related administrative burden for small businesses and additional reforms will be implemented to cut paperwork and reduce the time small businesses spend doing taxes. This will include:
  - a trial expansion to 31 December 2025 of the ATO independent review process to small businesses (with aggregated turnover between $10 million and $50 million) who are subject to an ATO audit
  - five new tax clinics from 1 January 2025 to improve access to tax advice and assistance for million small businesses
  - from 1 July 2024, small businesses will be permitted to authorise their tax agent to lodge multiple Single Touch Payroll forms on their behalf
  - from 1 July 2024, small businesses will benefit from faster income tax refunds by reducing the use of cheques, and
  - from 1 July 2025, small businesses will be permitted up to four years to amend their income tax returns.
- Additional funding will be provided to relevant agencies to:
  - facilitate ATO engagement with taxpayers who have high-value debts over $100,000 and aged debts older than two years where those taxpayers are either public and multinational groups with an aggregated turnover of greater than $10 million, or privately owned groups or individuals controlling over $5 million of net wealth, and
  - establish a public registry of beneficial ownership of companies and other legal vehicles, including trusts.

For further insight into the Budget measures, our in depth analysis can be found here.

ATO process for the small business amnesty

To support and action the Federal Budget announcement, the ATO has announced its processes for the small business amnesty program which allows small businesses to bring their outstanding tax and business activity statements (BASs) up-to-date.

- To be eligible for the amnesty the taxpayer must meet the following criteria:
- had an annual [aggregated] turnover of under $10 million at the time the original lodgment was due
- have outstanding tax returns or BAS that were due between 1 December 2019 and 28 February 2022, and
- lodge between 1 June and 31 December 2023.

The amnesty does not apply to privately owned groups, or individuals controlling over $5 million of net wealth. If the taxpayer is eligible for the amnesty, any failure to lodge penalty that applies to the late lodgment will be automatically remitted. However, general interest charge will continue to apply.

ATO's decision impact statement following the Guardian case

Following the Full Federal Court's decision in the *FC of T v Guardian AIT Pty Ltd ATF Australian Investment Trust [2023] FCAFC 3*, the ATO has released a decision impact statement in response to this case, which concerns the application of the anti-avoidance provisions in section 100A (present entitlement arising from reimbursement agreement) and Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936)

In broad terms, the Court found that section 100A did not apply where a corporate beneficiary had been created to receive the benefit of a trust as there was no reimbursement agreement in place prior to the present entitlement to trust income arising, but that Part IVA did apply with respect to the year following the one in which the arrangements were first put in place, as the dominant purpose of the scheme was to obtain a tax benefit.

The ATO plans to make minor updates to be made to TR 2022/4 to consider the Court's observations on the adoption of plans or recommendations from advisers with respect to section 100A and also to note that, ordinarily, a beneficiary will need to be a party to the reimbursement agreement where the payment of moneys is proposed to be made to the trustee by a beneficiary. In addition, it indicates that Law administration practice statement PS LA 2005/24 *Application of General Anti-Avoidance Rules* will also be updated to reflect the views of the Court.

Who is required to lodge a 2023 income tax return?

The following legislative instruments set out which persons and entities might be required to lodge an income tax return for the year ending 30 June 2023:

- General Notice of Requirement to Lodge a Return, and
- Notice of Requirement for Parents with a Child Support Assessment.

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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