



# PwC's Monthly Tax Update

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

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# Corporate Tax Update

## Amounts not subject to PRRT

In [Esso Australia Resources Pty Ltd v FC of T \[2024\] FCA 87](#) the Federal Court has allowed the taxpayer's appeal against petroleum resource rent tax (PRRT) assessments issued to it by the Commissioner. The Court found that "monthly reservation fees" and a settlement sum receivable pursuant to a Deed of Amendment, Restatement and Release under a gas processing agreement were neither assessable tolling receipts nor assessable property receipts under the *Petroleum Resource Rent Tax Assessment Act 1987 (Cth)*.

## Ruling on credits from corporate limited partnerships to partners

The Australian Taxation Office (ATO) has released Taxation Ruling [TR 2024/2](#) which sets out the Commissioner's view on when a corporate limited partnership 'credits' an amount to one of its partners within the meaning of section 94M of the *Income Tax Assessment Act 1936*.

The Ruling states that a corporate limited partnership credits an amount to one of its partners within the meaning of section 94M if, in substance, it applies or appropriates its resources to confer a benefit on the partner that:

- is not subject to a condition precedent and is legally enforceable by the partner, and
- is separate and distinct from the partner's existing interest in the corporate limited partnership and its assets.

For more details, refer to the Superannuation Update section.

## Practice Statement on Commissioner's discretion updated

The ATO's Practice Statement Law Administration [PS LA 2011/29](#) which deals with the exercise of the Commissioner's discretion under section 109RB of Division 7A of Part III of the *Income Tax Assessment Act 1936* to either disregard a deemed dividend or to permit a deemed dividend to be franked, has been updated.

The update reflects various changes to the ATO's administrative process when considering who is authorised to exercise the discretion on behalf of the Commissioner

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# Employment Taxes Update

## Fair work closing loopholes: Contractors

The [Fair Work Legislation Amendment \(Closing Loopholes No. 2\) Bill 2024](#) passed both Houses of Parliament on 12 February 2024. The Bill included into the *Fair Work Act 2009 (Cth)* new section 15AA *Determining the ordinary meanings of employee and employer*, which reinstates the 'totality' of relationship test (also known as the 'multi-factorial' test) to determine if an individual is an employee under the ordinary meaning.

Broadly, to determine if an employment relationship exists, the new law requires that the real substance, practical reality and true nature of the relationship between the individual and the person must be considered. This amendment (which is amongst many others within the Bill) is in response to the two recent High Court decisions dealing with contractor relationships (see our [Deep Dive](#) on these cases) which placed emphasis on the 'primacy' of the contract, rather than how the contract is performed in practice.

The definition is introduced into the *Fair Work Act 2009*, and as such, prima facie, would not apply in a tax and/or superannuation context. That is, for tax and superannuation purposes, the common law principles will continue to apply, requiring a contractual focus.

## Electric vehicle home charging rate "shortcut" methodology

On 1 February 2024, the Australian Taxation Office (ATO) finalised *Practical Compliance Guidance – PCG 2024/2 – Electric vehicle home charging rate – calculating electricity costs when a vehicle is charged at an employee's or individual's home*.

The PCG 2024/2 provides a "shortcut" 4.2 cents-per-kilometre rate for valuing the cost of electricity when an electric vehicle is charged at an employee's or individual's home. The guidance is aimed at addressing the compliance challenges for employers and individuals given the proportion of the electricity bill attributed to the electric vehicle is often unknown.

The finalised guidance remains largely unchanged from its predecessor draft. The main change is to allow the apportionment of home charging and commercial charging costs (where relevant records are kept) to establish the total electricity costs, where the proportion of home charging compared to commercial charging can be accurately determined.

However, where the apportionment cannot be accurately determined, the cost of electricity must be calculated from either the commercial charging station costs or by using the "shortcut" home charging rate.

It is important to note the PCG 2024/2 is applicable from 1 April 2022. The "shortcut" rate is also not available for plug-in hybrids.

## New social security agreement with Serbia

Australia's new [social security agreement with Serbia](#) has commenced effective 1 February 2024. Although this agreement contains provisions relating to pensions, it also provides support in relation to 'double coverage' of superannuation such that employers of workers temporarily seconded between Australia and Serbia will no longer have to pay both compulsory superannuation guarantee contributions in Australia and insurance contributions in Serbia, removing the onus of double payments.

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# Global Tax and Trade Update

## Consultation on public country-by-country reporting

On 12 February 2024, Treasury released [updated draft legislation](#) that seeks to give effect to the Australian Government's proposal to require large multinationals to publicly disclose certain tax information on a country-by-country (CBC) basis and a statement on their approach to taxation.

The draft legislation clarifies that, unless otherwise exempt, the reporting obligation will apply to CBC reporting parents that are certain types of constitutional corporations, partnerships or trusts, and that are members of a CBC reporting group. However, the CBC reporting parent will only be subject to the reporting obligation if \$10 million or more of its aggregated turnover for the income year is Australian-sourced. Penalties will apply for non-compliance.

This latest draft legislation responds to domestic and international stakeholder feedback and reflects the Government's previous announcement to refine the measure to more closely align with the European Union's public CBC regime, including policy changes on the reporting threshold and approach to disaggregated reporting.

These amendments are proposed to apply to reporting periods commencing on or after 1 July 2024.

For further information, refer to our [Tax Alert](#).

Comments close 5 March 2024.

## Transfer pricing miscellaneous amendments proposed

Treasury has released [draft miscellaneous technical correction amendments](#) to various Treasury portfolio legislation. Among these are proposals to ensure that Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guideline references in the *Income Tax Assessment Act 1997* are to the most recent version adopted by the OECD's Committee of Fiscal Affairs and published on 20 January 2022. The consultation period closed 12 February 2024.

## MLI – Synthesised text for South Africa

The ATO has prepared the [synthesised text](#) for the application of the *Agreement between the Government of Australia and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, and Protocol, as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) signed by Australia and South Africa on 7 June 2017. The MLI entered into force for Australia on 1 January 2019.

## Amount B of Pillar One

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) has released the [report](#) on Amount B of Pillar One, which provides a simplified and streamlined approach to the application of the arm's length principle to baseline marketing and distribution activities, with a particular [focus](#) on the needs of low-capacity countries. Refer to PwC's initial observations in our [Alert](#).

The report, which introduces two options for implementation for jurisdictions that opt into the simplified and streamlined approach from January 2025, describes the circumstances under which a distributor is within scope of Amount B, including cases where it also performs certain non-distribution activities, such as manufacturing. It also sets out activities that may exclude a distributor, such as the distribution of commodities or digital goods.

Further work on the interdependence of Amount B and Amount A under Pillar One is to be undertaken prior to the signing and entry into force of the Multilateral Convention.

The inclusion of the Amount B guidance into the OECD Transfer Pricing Guidelines is also accompanied by conforming changes to the Commentary on Article 25 of the OECD Model Tax Convention.

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## Update on International Compliance Assurance Program

The International Compliance Assurance Program (ICAP) is a voluntary program for a multilateral coordinated risk assessment of a multinational group's key international tax risks. The OECD has released [aggregated statistics](#) from the ICAP for all cases completed by October 2023. The report provides, among other things, an overview of the jurisdictions and topics covered by the completed risk assessments, aggregated data on risk assessment outcomes and the relationship between ICAP and other routes to tax certainty such as advance pricing arrangements (APAs) and mutual agreement procedures (MAPs).

### Other OECD updates

In other OECD news:

- The OECD has [published](#) the public comments received following [consultation](#) on the proposed changes to the Commentary on Article 5 of the OECD Model Tax Convention and its application to extractible natural resources.
- At its October 2023 meeting, the Forum on Harmful Tax Practices (FHTP) reached [new conclusions](#) on four regimes as part of the implementation of BEPS Action 5 minimum standard on harmful tax practices. The regimes in Hong Kong (China) and the United Arab Emirates were found to be not harmful and two regimes in Albania and Armenia have now been abolished. The total number of regimes reviewed by the FHTP is now 322, with over 40 per cent of those regimes being (or in the process of being) abolished.

### Bermuda enacts a corporate income tax

A 15 per cent corporate income tax will apply to Bermuda businesses that are part of multinational enterprise groups with annual revenue of €750 million or more. The tax is effective beginning in 2025. For further information, refer to our [Tax Alert](#).



# Indirect Tax Update

## Draft taxation ruling on input tax or fuel tax credit time limits

The Australian Taxation Office (ATO) has released Draft Miscellaneous Tax Ruling MT [2024/D1](#) which sets out the Commissioner of Taxation's preliminary view on the time limits applying to an entitlement to an input tax or fuel tax credit as provided by the goods and services tax (GST) and fuel tax law. Those limiting provisions (s93-5(1) of *the A New Tax System (Goods and Services Tax) Act 1999* and s47-5(1) of the Fuel Tax Act 2006) provide that a taxpayer's entitlement to a tax credit ceases (unless an exception applies) to the extent that the tax credit has not been taken into account in an assessment during the four-year entitlement period.

The draft Ruling explains when and the extent to which a tax credit has been "taken into account" in an assessment, when the four-year entitlement period ends, and the exceptions to the limiting provisions. The draft Ruling also explains when an objection to an assessment may preserve an entitlement to a tax credit, and the interaction between the limiting provisions and private ruling and amendment requests.

The draft Ruling also sets out an alternative view of the meaning of "taken into account" that a tax credit forms part of the process of assessment if the acquisition or credit is identified and its inclusion in the assessment considered. The Commissioner does not consider this to be the better view of the law or of what was said by the Courts.

When the final Ruling is issued, it is proposed to apply both before and after its date of issue. Comments are invited by 22 March 2024.

## Audit report into ATO oversight of GST fraud control arrangements

The Auditor-General of the Australian National Audit Office (ANAO) has published a [report](#) into the ATO's management and oversight of fraud control arrangements for the GST.

Key findings from the report include that the ATO's management and oversight of fraud control arrangements for GST is partly effective. Although the ATO has implemented partly effective strategies to prevent GST fraud, the framework for assessing and managing GST fraud risk was found not fit for purpose. The report also found that the ATO has implemented largely effective strategies to detect and deal with GST fraud, but does not have a strategy to deal with large-scale fraud events, and that the ATO's oversight, monitoring and reporting of GST fraud is partly effective, as roles and responsibilities are not clear. In addition, it was found that the ATO has partly effective governance arrangements for GST fraud control with a lack of clarity regarding ownership of GST risks and artefacts to support risk assessment, monitoring and treatment are incomplete or in draft.

The ATO has agreed to all five of the report's recommendations. In [response](#), the ATO has stated that it will continue to enhance its GST fraud framework, focusing on:

- prioritising the finalisation of existing work on the roles and responsibilities for fraud prevention, detection and treatment
- documenting assessments of GST fraud risks regularly
- ensuring the ATO's fraud and corruption control plans are based on identified and documented fraud risks
- continue to focus on developing a response for large-scale fraud events encompassing relevant elements as identified in the ANAO report, and
- consider benchmarks for ATO fraud indicators, and the removal of the 'Attorney-General's Department fraud benchmark.'

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## Compliance approach extended for reduced input tax credits and adviser services fees

In December 2023, the ATO issued guidance around the eligibility of super funds and investor-directed portfolio services investment platforms to claim reduced input tax credits (RITCs) on adviser services fees.

The guidance has since been [updated](#) to extend the ATO's compliance approach. Namely, the ATO will not devote compliance resources to review RITC claims for adviser services fees paid under arrangements of the kind described in the guidance for tax periods that end before 1 July 2024. Previously, the compliance approach applied to tax periods ending before 1 April 2024.

For further information, refer to the [February 2024](#) edition of Monthly Tax Update.



# Personal Tax Update

## Stage 3 income tax cuts adjusted

In light of rising household costs and cost-of-living pressures, the Government has [announced](#) amendments to stage 3 of the personal income tax plan. To give effect to this announcement, the [Treasury Laws Amendment \(Cost of Living Tax Cuts\) Bill 2024](#) (at the time of writing, waiting royal assent) will amend the *Income Tax Rates Act 1986* to modify income tax rate thresholds and tax rates for individuals for the 2024–25 and later income years, such that:

- The 19 per cent tax rate is reduced to 16 per cent for taxable income between \$18,200 and \$45,000

| 2023–24           |                  | 2024–25           |                  |
|-------------------|------------------|-------------------|------------------|
| Thresholds (\$)   | Rates (per cent) | Thresholds (\$)   | Rates (per cent) |
| 0 – 18,200        | Nil              | 0 – 18,200        | Nil              |
| 18,201 – 45,000   | 19               | 18,201 – 45,000   | 16               |
| 45,001 – 120,000  | 32.5             | 45,001 – 135,000  | 30               |
| 120,001 – 180,000 | 37               | 135,001 – 190,000 | 37               |
| Over 180,000      | 45               | Over 190,000      | 45               |

The applicable tax rates and thresholds for non-resident individuals and working holiday makers is also changed with effect from 1 July 2024.

## Medicare levy low-income thresholds to increase

In addition to the abovementioned individual tax rate changes, [the Treasury Laws Amendment \(Cost of Living – Medicare Levy\) Bill 2024](#) (awaiting royal assent) will increase:

- the Medicare levy low-income thresholds for individuals and families (along with the dependent child/student component of the family threshold), in line with movements in the consumer price index (CPI),

- The threshold for the new 30 per cent tax rate is revised to apply to taxable incomes between \$45,000 and \$135,000
- The 37 per cent tax rate is retained and is to apply to taxable incomes between 135,000 and \$190,000
- The 45 per cent tax rate will apply to taxable incomes above \$190,000.

A summary of the new tax rates to apply to a resident individual is provided in the below table.

- the Medicare levy low-income thresholds for individuals and families eligible for the Seniors and Pensioners Tax Offset (SAPTO) (along with the dependent child/student component of the family threshold), in line with movements in the CPI, and
- the surcharge low-income threshold, in line with movements in the CPI.

These measures will apply retrospectively to the 2023–24 income year and later income years.

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## Self-education expenses ruling finalized

The Australian Taxation Office (ATO) has released Taxation Ruling [TR 2024/3](#) which sets out the principles on the deductibility of self-education expenses under section 8-1 of the *Income Tax Assessment Act 1997* for an individual and discusses the types of expenditure that can be deductible as a self-education expense, and those that cannot. For purposes of the ruling, self-education includes:

- courses undertaken at an educational institution (whether leading to a formal qualification or not)
- courses provided by a professional or industry organisation
- attendance at work-related conferences or seminars
- self-paced learning and study tours (whether within Australia or overseas).

In summary, the Ruling indicates that self-education expenses are incurred in gaining or producing your assessable income (and hence potentially deductible) if either or both of the following apply:

- income-earning activities are based on the exercise of a skill or some specific knowledge and the self-education enables the individual to maintain or improve that skill or knowledge
- the self-education objectively leads to, or is likely to lead to, an increase in income from current income-earning activities in the future.

On the other hand, the Ruling indicates that self-education expenses are not incurred in gaining or producing assessable income if either of the following apply:

- the self-education will enable employment, help obtain new employment or to open up a new income-earning activity (whether in business or in your current employment)
- no income-earning activities to derive assessable income are undertaken at the time the expense is incurred.

The views expressed in the ruling will also be relevant to determine whether any item of expenditure that is reimbursed by an employer is subject to fringe benefits tax under the “otherwise deductible rule”.

TR 2024/3 applies to arrangements both before and after its date of issue.



# State Tax Update

## State taxes and double tax agreements

The [Treasury Laws Amendment \(Foreign Investment\) Bill 2024](#) has been introduced to Federal Parliament and includes a range of measures including amendments to give effect to the Mid-Year Economic and Fiscal Outlook (MYEFO) announcement to ensure that certain taxes, such as foreign investment fees and similar state and territory property taxes, prevail in the event of any inconsistency with any double tax agreement.

Eight double tax treaties that Australia has entered into (Finland, Germany, India, Japan, New Zealand, Norway, South Africa and Switzerland) contain a non-discrimination article which applies to 'taxes of every kind and description'. It has been argued that this would extend to taxes that are not covered taxes under the treaty, such as foreign investment fees and state and territory property taxes such as foreign purchaser surcharge duty or surcharge land tax (see [approach](#) of Revenue New South Wales (NSW)).

The amendment proposed by the Bill seeks to clarify that where a provision of a tax treaty that is given the force of law under the *International Tax Agreements Act 1953 (Cth)* is inconsistent with a Commonwealth, state or territory law that imposes tax (other than Australian tax), that provision of the tax treaty will not operate to the extent of that inconsistency, with the aim that the Commonwealth, state or territory tax continues to apply.

Once the Bill is enacted, the amendment will apply to relevant taxes payable on or after 1 January 2018. The retrospective period broadly aligns with the six-year statute of limitation periods generally provided under state and territory legislation.

At the time of writing, the States are yet to respond to the Bill and indicate their approach in relation to past liabilities.

## NSW: New resources for recent duty amendments

Revenue NSW has published new resources in respect of the provisions of the *Treasury and Revenue Legislation Amendment Act 2023 (NSW)* which came into force on 1 February 2024. Namely, new [guidance](#) is available in respect of corporate reconstruction and consolidation, acquisitions of interests in landholders, and fixed and nominal duty amounts.

## NSW: Revenue Rulings updated for fixed duty amounts

Revenue NSW has updated the following Revenue Rulings in light of the increases to fixed or nominal duty amounts effective from 1 February 2024, as implemented by the *Treasury and Revenue Legislation Amendment Act 2023 (NSW)*:

- [DUT 010v2](#) *When a transfer is liable for fixed duty: Transfers pursuant to an agreement for the sale or transfer of dutiable property* (which clarifies the fixed duty amount of \$10 is increased to \$50)
- [DUT 037](#) *Change in trustees: Section 54(3) Duties Act 1997* (which clarifies the fixed duty amount of \$50 is increased to \$100)
- [DUT 017v2](#) *Variations of Trust v2* (which clarifies the fixed duty amount of \$10 is increased to \$50 and the fixed duty amount of \$50 is increased to \$100)
- [DUT 035v2](#) *Partitions of land* (which clarifies the fixed duty amount of \$50 is increased to \$100)
- [DUT 046](#) *Deceased estates* (which clarifies the fixed duty amount of \$50 is increased to \$100)

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## NSW: No concessional transfer duty available on SMSF property transfer

In [Imbree v Chief Commissioner of State Revenue \[2024\] NSWCATAD 22](#), the New South Wales Civil and Administrative Tribunal has dismissed the taxpayer's appeal, finding that he had failed to establish that the concessional rate of duty in section 55 of the *Duties Act 1997 (NSW)* or the exemption in section 65(10) applied to a deed of transfer.

The deed for the transfer of property was entered into by the taxpayer and his son, as trustees for a self-managed super fund (SMSF) as transferors, with the taxpayer (who was the sole member of the fund) as transferee.

The Tribunal agreed with the Chief Commissioner of State Revenue's assessment of full ad valorem duty, finding that the deed was an 'agreement to transfer dutiable property' and was not a 'transfer of dutiable property' within the meaning of section 8 of the *Duties Act 1997 (NSW)*. The Tribunal also commented that the reference in section 55(1)(a) to a transfer of dutiable property must mean a transfer of dutiable property only and not any other transactions within the meaning of section 8(1)(b), noting that Parliament 'has clearly sought to provide certain concessions for transfer of dutiable property which are not available to agreements for the transfer of dutiable property.'

The deed for transfer was found not to fall within the scope of section 55 and the concession was not available. Similarly, section 65(10) was found not to apply as the dutiable transaction was not effected or caused by the fund's trust deed.

## NSW: Surcharge land tax applied despite trust deed amendment

In [Khalil & Associates Pty Ltd ATF The George Khalil Family Trust v Chief Commissioner of State Revenue \[2024\] NSWCATAD 23](#), the New South Wales Civil and Administrative Tribunal confirmed the assessment to surcharge land tax to the taxpayer, a trustee of a discretionary trust.

Under the trust deed, the beneficiaries were named and defined to include 'any other eligible beneficiaries nominated by the nominator to the trustee.' An amending deed in June 2021 amended the trust deed by inserting a clause entitled 'exclusion of foreign beneficiary' which stated that 'Any foreign beneficiary that may exist in this trust is irrevocably excluded from receiving any current, or future trust distributions.'

The issue for the Tribunal to determine was whether the amending deed satisfied the requirements of section 5D of the *Land Tax Act 1956 (NSW)* for the 2022 tax year in that it irrevocably prevented foreign persons from being beneficiaries of the trust. Under the relevant law, if a discretionary trust prevents a foreign person from being a beneficiary of the trust, the trustee is not in that capacity a foreign person for the purposes of section 5A which imposes foreign surcharge land tax.

The Tribunal found, on a plain reading of the amendment deed, that the reference to 'irrevocably excluded' referred to a foreign beneficiary receiving trust distributions. The amendment deed did not preclude the taxpayer from amending the trust deed in the future to make a foreign person a potential beneficiary of the trust. Overall, the Tribunal was not satisfied that the amending deed complied with subsection 5D(3)(a) nor 5D(3)(b) of the Land Tax Act.

## NSW: Surcharge purchaser duty confirmed

In [Lei v Chief Commissioner of State Revenue \[2024\] NSWCATAD 28](#), the New South Wales Civil and Administrative Tribunal dismissed the taxpayer's appeal, concluding that his assessments to surcharge purchaser duty, alongside assessments to penalty tax and interest, on the purchase of a home were correct.

Surcharge purchaser duty is chargeable on a transfer or an agreement for sale or transfer of residential-related property to a foreign person under section 104L of the *Duties Act 1997 (NSW)*. However, it is not chargeable if the transferee is an exempt permanent resident which requires that the person must intend to use and occupy the residential land as a principal place of residence and must actually satisfy the residence requirement (ie use and occupy the land as a principal place of residence for a continuous period of at least 200 days within the first 12 months of the liability date).

While the taxpayer (a citizen of China) could satisfy the Chief Commissioner that he intended to use and occupy the apartment as a principal place of residence, he failed the requirement to actually use and occupy the apartment, as he was not physically in Australia during the relevant time.

The Tribunal noted that the fact the taxpayer was outside Australia owing to COVID-19 travel restrictions did not alter the fact that he did not meet the residence requirement, as there are no exceptions for unforeseen occurrences or exceptional circumstances within the exemption provision.

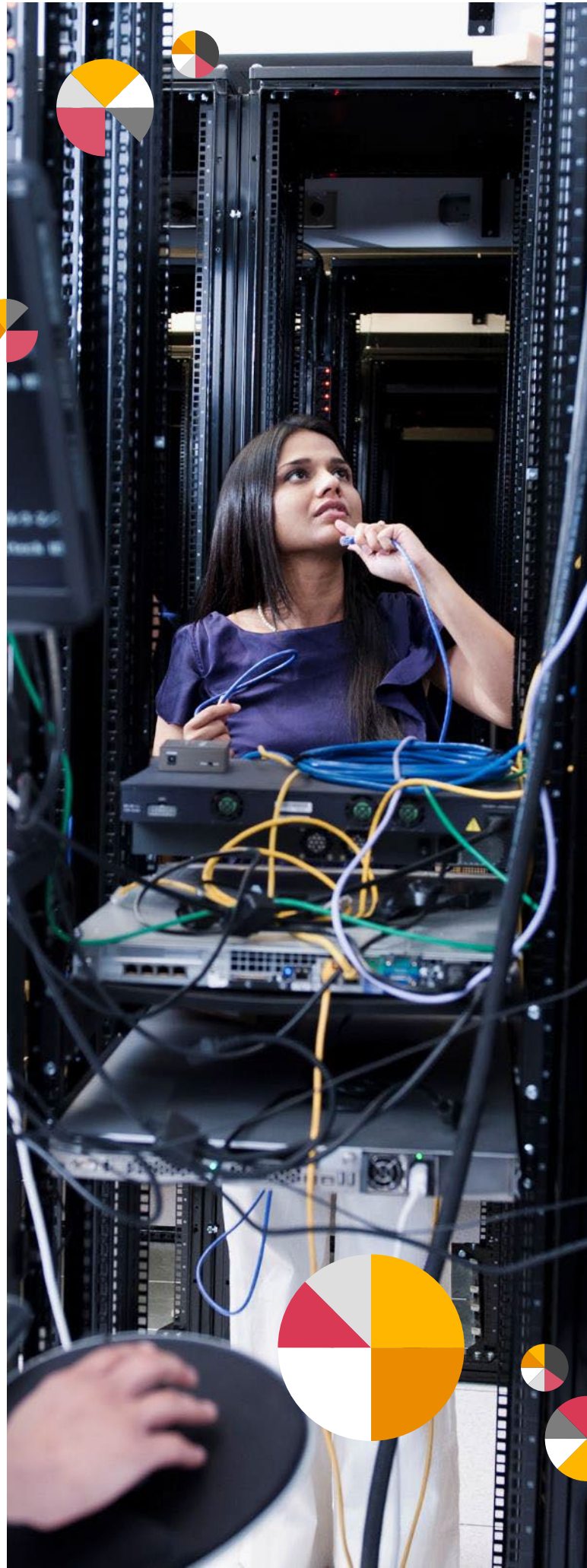
## Tasmania: Proposed property tax reforms

The 2024 Tasmanian state election will be held on 23 March 2024. The current Tasmanian Government has announced a number of State tax reforms as part of its '2030 Strong Plan for Tasmania's Future' announced during the 2024 Election Campaign. This includes:

- amendments to the stamp duty thresholds for first home buyers such that eligible taxpayers will not pay stamp duty for any home valued up to \$750,000 (a doubling of the current 50 per cent discount and an increase in the value threshold) under its '[Stamping Out Stamp Duty](#)' policy. This is proposed to apply to existing houses, units, and apartments and commence immediately and will be open for two years until 30 June 2026, at which point it will be reviewed.
- a [proposed](#) new 5 per cent short stay levy, which is planned to be introduced on short stay rental properties, It will not apply to traditional accommodation operators such as hotels and pubs, and will be paid by those that use short stay accommodation rather than the property owners.

### Upcoming State and Territory Budgets

Further to our list of scheduled State and Territory 2024–25 Budgets reported in our last [Monthly Tax Update](#), the Victorian Budget date has now been set at 7 May 2024.



# Superannuation Update

## Family law super payments instrument finalised

Ahead of the sunset of *Taxation Administration (Meaning of End Benefit) Instrument 2013* that was due on 1 April 2024, the [Taxation Administration \(Meaning of End Benefit\) Instrument 2024](#) has now been finalised. The instrument ensures that family law superannuation payments are not end benefits under section 133-130 in Schedule 1 of the *Taxation Administration Act 1953*, and therefore do not trigger an individual's liability to pay Division 293 tax that has been deferred to a debt account.

Division 293 tax applies to certain superannuation contributions for individuals whose income broadly exceeds \$300,000. The instrument is effective 2 February 2024.

## Transitional arrangements extended for certain defined benefit fund pensions

Section 301-100 of the *Income Tax (Transitional Provisions) Act 1997* prevents the Commissioner of Taxation from amending certain income tax assessments on the basis that a superannuation benefit paid to a person is a superannuation income stream benefit because of amendments made by Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*. Those amendments sought to reverse the effect of the Federal Court's decision in *Commissioner of Taxation v Douglas* [2020] FCAFC 220 by clarifying that all defined benefit pensions paid from most defined benefit funds (including permanent incapacity benefits) are superannuation income stream benefits and not superannuation lump sums for the purpose of the *Income Tax Assessment Act 1997*.

The newly made [Income Tax \(Transitional Provisions\) \(Permanent Incapacity Benefits\) Rules 2024](#) continues transitional arrangements made by section 301-100 for an additional 12 months to include the 2022–23 income year. The instrument is effective 1 February 2024.

## SMSF compliance and illegal early access to super

In a [speech](#) delivered by Deputy Commissioner of the Australian Taxation Office (ATO), Emma Rosenzweig, to the SMSFA conference on 21 February 2024, it was indicated that the ATO will continue to focus on regulatory breaches and tax planning arrangements that inappropriately reduce the tax payable of individuals and entities associated with the fund. The ATO's greatest concern is illegal early access, where members access some or all their retirement savings before meeting a condition of release, where it has estimated in the 2021 year over \$255 million of super has been illegally accessed.

The ATO indicates that it provides support and guidance products, undertakes new registrant reviews, and removes funds from superfund lookup where they fail to comply. It has also scaled up its compliance actions.

## Ruling on credits from corporate limited partnerships to partners

The ATO has released Taxation Ruling [TR 2024/2](#) which sets out the Commissioner's view on when a corporate limited partnership 'credits' an amount to one of its partners within the meaning of section 94M of the *Income Tax Assessment Act 1936*. This ruling is of particular interest to many funds which often invest in such corporate limited partnerships.

Sections 94L and 94M deem certain distributions, payments and credits made by a corporate limited partnership to a partner to be dividends, included in the partner's assessable income. The term 'credits' is not defined for these purposes, nor is there any case law that has considered its meaning in that context.

The Ruling states that a corporate limited partnership credits an amount to one of its partners within the meaning of section 94M if, in substance, it applies or appropriates its resources to confer a benefit on the partner that:

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- is not subject to a condition precedent and is legally enforceable by the partner, and
- is separate and distinct from the partner's existing interest in the corporate limited partnership and its assets.

If these two requirements are satisfied, a partner of the corporate limited partnership is credited with that amount, even if a future event may occur which requires the benefit to be relinquished or returned to the partnership.

According to the Ruling, a mere credit entry in a corporate limited partnership's accounts is not a crediting within the meaning of section 94M, unless it records an underlying act or transaction that meets the above requirements. Furthermore, a corporate limited partnership does not need to make a distribution or pay an amount to a partner in order for it to credit an amount to that partner.

TR 2024/2 applies to years of income commencing both before and after its date of issue.



# Legislative Update

Federal Parliament commenced sitting for the 2024 calendar year on 6 February 2024.

The following tax or superannuation related Bills have been introduced to Federal Parliament since our last edition of the Monthly Tax Update:

- The [Treasury Laws Amendment \(Foreign Investment\) Bill 2024](#), which was introduced into the House of Representatives on 7 February 2024, amends the *International Tax Agreements Act 1953* to clarify uncertainty associated with the interaction between certain taxes, such as foreign investment fees and similar state and territory property taxes, and double tax agreements implemented domestically. The amendment ensures that such taxes prevail in the event of any inconsistency with the Act. It applies retrospectively to taxes (other than income taxes and fringe benefits tax) payable on or after 1 January 2018. Also see State Tax Update.
  - The [Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2024](#), which was introduced into the House of Representatives on 7 February 2024, amends the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* to update the maximum fee cap imposed by the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020* and relevant indexation provisions. The amendments enable the tripling of fees for acquiring established residential dwellings and the doubling of vacancy fees in the foreign investment framework. The Bill also amends the Regulations to triple the fees for giving notice in relation to the acquisition of established dwellings, and double the vacancy fees for established and new residential dwellings acquired on or after 7.30pm on 9 May 2017. The Bill commences on either 1 April 2024 or the day after it receives royal assent, whichever occurs later.
  - The [Administrative Review Tribunal \(Consequential and Transitional Provisions No. 2\) Bill 2024](#), which was introduced into the House of Representatives on 7 February 2024, is the third in a package of Bills that would abolish the Administrative Appeals Tribunal (AAT) and establish the Administrative Review Tribunal. The Bill makes consequential amendments to the remaining 110 Commonwealth Acts that interact with the *Administrative Appeals Tribunal Act 1975*, including Acts that have required consultation with states and territories under cooperative schemes or intergovernmental agreements. The other two Bills in this package (the Administrative Review Tribunal Bill 2023 and the Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023 were introduced into Parliament in December 2023 – see our [February 2024](#) Monthly Tax Update for further information.
- The following tax and superannuation related Bills have now completed their passage through Parliament:
- The [Treasury Laws Amendment \(Cost of Living Tax Cuts\) Bill 2024](#), which was introduced into the House of Representatives on 6 February 2024 and since completed its passage through both Houses on 27 February 2024, amends stage 3 of the former Government's personal income tax plan to change the income tax rates and thresholds for residents, non-residents and working holiday makers to deliver higher tax cuts to low and middle-income taxpayers. The amendments will apply for the 2024–25 and later income years. For further information, see Personal Tax Update.

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- The [Treasury Laws Amendment \(Cost of Living – Medicare Levy\) Bill 2024](#), which was introduced into the House of Representatives on 6 February 2024 and since completed its passage through both Houses on 27 February 2024, increases the Medicare levy low-income thresholds and the Medicare levy surcharge low-income threshold in line with movements in the consumer price index. Once enacted, these measures will apply retrospectively to the 2023–24 income year and later income years. For further information, see Personal Tax Update.
- The [Income Tax Assessment Amendment \(Junior Minerals Exploration Incentive\) Regulations 2024](#), which prescribe the amount of unused exploration credits that were allocated to junior explorers in the 2021–22 and 2022–23 income years that can be made available for allocation in the 2024–25 income year, with an additional \$4.77 million added to form part of the annual exploration cap for 2024–25. The Junior Minerals Exploration Incentive provides an incentive for investment in junior explorers undertaking greenfield minerals exploration in Australia, with the amount of exploration credits under the incentive each income year capped.

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

- The [Taxation Administration \(Meaning of End Benefit\) Instrument 2024](#), which remakes the *Taxation Administration (Meaning of End Benefit) Instrument 2013* ahead of its sunset. The instrument is effective 2 February 2024. Also see Superannuation Update.
- The [Charities \(State or Territory Government Entity\) Instrument 2024](#), which prescribes kinds of entities established under a law by a state or territory as government entities, which by virtue of their status as government entities will be excluded from the definition of charity for the purposes of all Commonwealth law. The instrument replaces the *Charities (Definition of Government Entity) Instrument 2013*, which was to sunset on 1 April 2024. The instrument provides that an entity established under a law by a state or territory is a government entity if it is a local governing body, it has all the privileges and immunities of the Crown (in any of its capacities), or in pursuing its objectives, the entity is not independent of the Crown, having regards to the degree of control by government and the functions and responsibilities that it was set up to carry out. The instrument is effective 5 February 2024.
- The [Taxation Administration \(Additional Method for Working Out the Amount of Monthly Instalment Liabilities\) Determination 2024](#), which updates a 2013 instrument before it sunsets, outlines an additional method for working out pay as you go (PAYG) instalments for monthly payers, and the circumstances in which monthly payers can choose to use the additional method. The instrument is effective 13 February 2024.
- The [Taxation Administration \(Withholding Variation for Occasional Payroll Donations to Deductible Gift Recipients\) Legislative Instrument 2024](#), which varies the amount a payer is required to withhold under the PAYG system for payees who make payroll donations to a deductible gift recipient under an occasional giving arrangement. The instrument is effective 5 February 2024.
- The [Income Tax \(Transitional Provisions\) \(Permanent Incapacity Benefits\) Rules 2024](#), which continues transitional arrangements made by section 301-100 of the *Income Tax (Transitional Provisions) Act 1997* for an additional 12 months to include the 2022–23 income year. See Superannuation Update for further information.



# Other News Update

## Changes to location and producer tax offsets

Following the 2023–24 Mid-Year Economic and Fiscal Outlook (MYEFO) announcement, Treasury has released [exposure draft legislation](#) to amend the location and producer tax offsets.

The amendments would, among other things, increase the rate of the location tax offset to 30 per cent, while the minimum qualifying Australian production expenditure threshold would rise to \$20 million, with the per hour threshold to also rise to \$1.5 million. The proposed amendments also include a minimum training expenditure test or alternatively a requirement to establish or upgrade certain permanent Australian film infrastructure or satisfy certain training program requirement for individuals working on the film and require some post, digital and visual effects for productions to be provided by Australian providers or through an Australian permanent establishment.

For the producer tax offset, the amendments would allow a film production company to also qualify for the producer tax offset by spending a minimum of \$35 million for a season of a drama series, over a maximum period of 12 months of production (36 months for an animated image film series).

Comments closed 16 February 2024.

## Miscellaneous amendments proposed

Treasury released [draft miscellaneous technical correction amendments](#) to various Treasury portfolio legislation. Among these are proposals are amendments to the exclusion from the indirect value shift rules to extend the existing condition relating to 'exempt' income arising from a distribution of income or capital so that it also applies to non-assessable non-exempt (NANE) income.

The consultation period closed 12 February 2024.

## Tax depreciation and composite assets – ruling finalised

The Australian Taxation Office (ATO) has finalised its ruling on the treatment of composite items for tax depreciation purposes in Taxation Ruling [TR 2024/1](#).

A 'composite item' is an item that is made up of a number of components that are each capable of separate existence. Subsection 40-30(4) *Income Tax Assessment Act 1997* directs an objective consideration of whether a particular composite item is itself a depreciating asset, or whether one or more of its components are separate depreciating assets – it is a question of fact and degree to be determined in the circumstances of the particular case.

Taxation Ruling TR 2024/1 provides guiding principles and examples to help taxpayers apply a 'functionality test' to determine whether a composite item is itself a depreciating asset or whether its components are separate depreciating assets. For further information, refer to our [Tax Alert](#).

## Tax expenditures and insights statement

The Treasury [2023–24 Tax Expenditures and Insights Statement](#) (TEIS) provides estimates of the revenue forgone from Federal tax expenditures (eg through concessional tax rates, exemptions, deferrals, allowances or offsets), along with distributional analysis on large tax expenditures and commonly utilised features of the tax system such as deductions, trust distributions and franking credits. As expected, superannuation concessions and capital gains tax exemptions and discounts made up a substantial proportion of total tax expenditure.

The TEIS is not a statement of policy intent. Rather, the information and analysis presented is intended to increase transparency about the impacts of tax expenditures and other features of the tax system.

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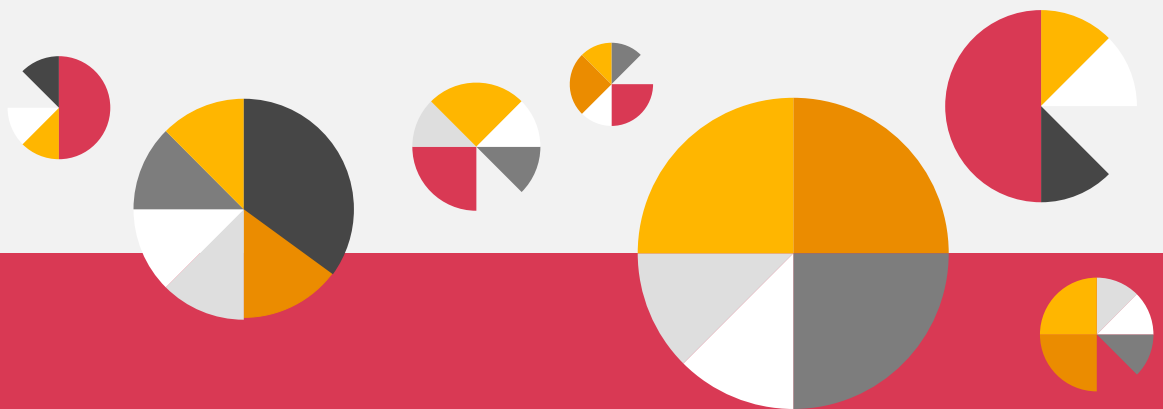
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