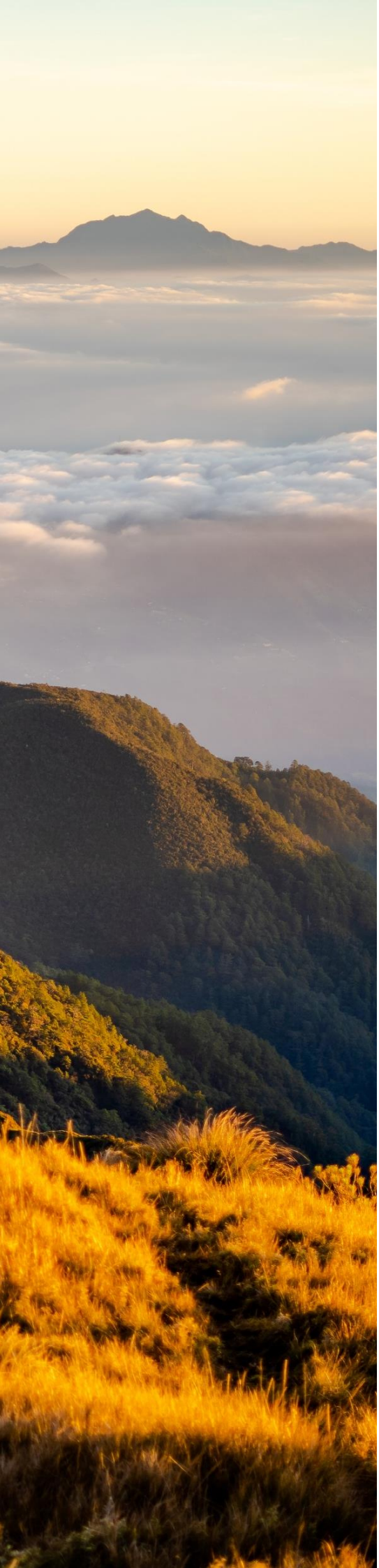
Monthly Tax Update

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

2 March 2026



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Corporate tax update

Reportable Tax Position 2026 instructions

The Australian Taxation Office (ATO) has released the instructions for completing a Reportable Tax Position (RTP) Schedule for 2026. The RTP Schedule is a schedule that must be completed with the annual income tax return for companies with either:

- total business income of $250m or more in the current year, or
- total business income of $25m or more in the current year and part of an economic group with total business income of $250m or more in the current year.

The schedule requires disclosure of certain positions across 3 categories—Category A covering positions adopted in the company tax return that are about as likely to be correct as incorrect or less likely to be correct than incorrect, Category B covering uncertain tax positions recognised in financial statements, and Category C covering certain reportable arrangements.

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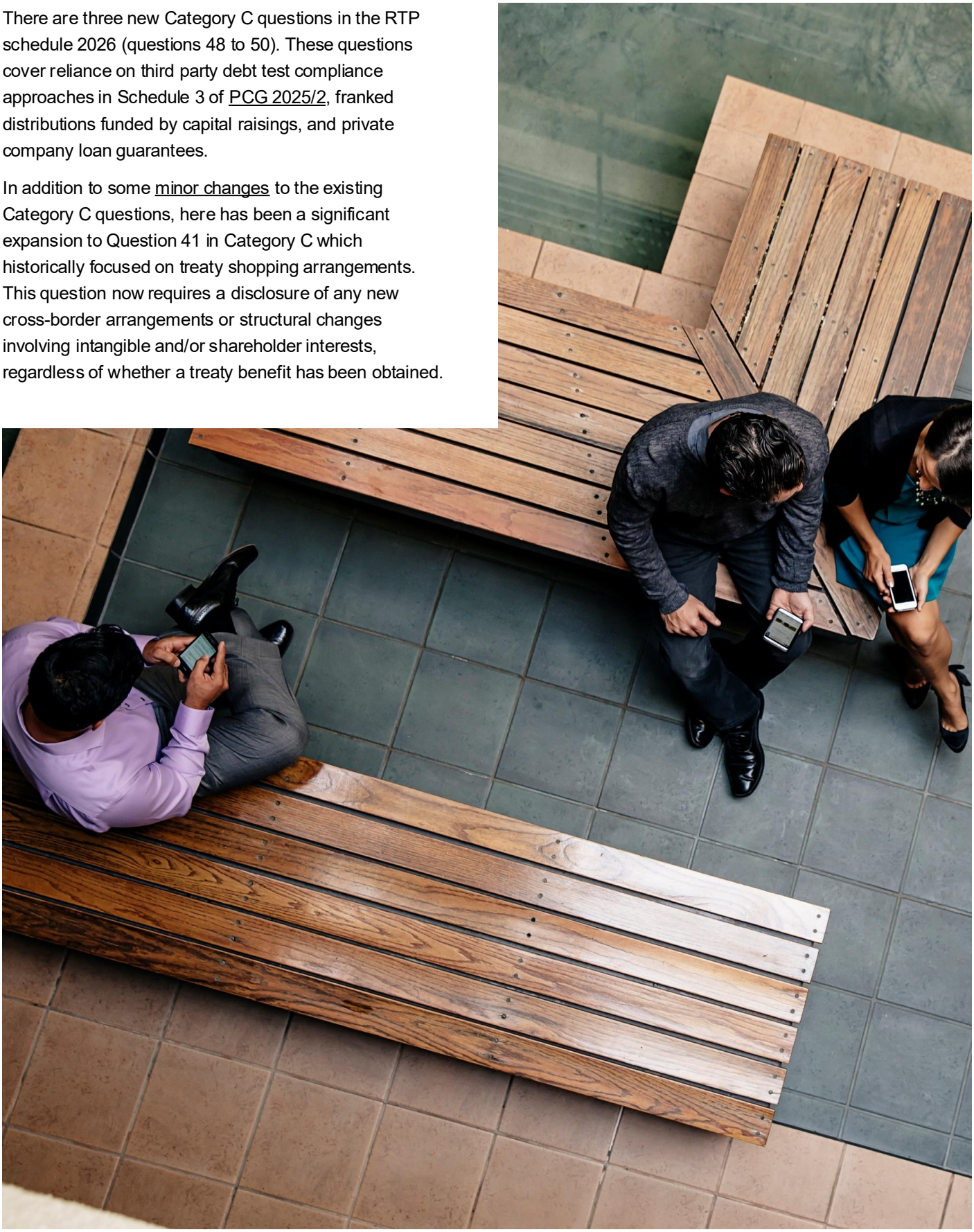
There are three new Category C questions in the RTP schedule 2026 (questions 48 to 50). These questions cover reliance on third party debt test compliance approaches in Schedule 3 of PCG 2025/2, franked distributions funded by capital raisings, and private company loan guarantees.

In addition to some minor changes to the existing Category C questions, here has been a significant expansion to Question 41 in Category C which historically focused on treaty shopping arrangements. This question now requires a disclosure of any new cross-border arrangements or structural changes involving intangible and/or shareholder interests, regardless of whether a treaty benefit has been obtained.



Employment taxes update

Payday Super — first year ATO compliance approach

The Australian Taxation Office (ATO) has finalised its practical compliance guideline which sets out its first year compliance approach for Payday Super PCG 2026/1.

This PCG outlines how the Commissioner will allocate compliance resources for the purpose of investigating Superannuation Guarantee (SG) shortfalls for a Qualifying Earnings (QE) day that occurs from 1 July 2026 to 30 June 2027 inclusive, being the first year of the new regime. Under PCG 2026/1, the ATO's compliance approach will revolves around three risk categories:

- Low risk: Employers who pay contributions on time, act transparently, and demonstrate strong controls and remediation as soon as 'reasonably practicable'.
- Medium risk: Employers who continue their obligations under the pre-Payday Super regime but are not compliant with the Payday Super regime and have not made timely efforts to remediate non-compliance.
- High risk: Employers with consistent late payments even under the pre-Payday Super regime obligations.

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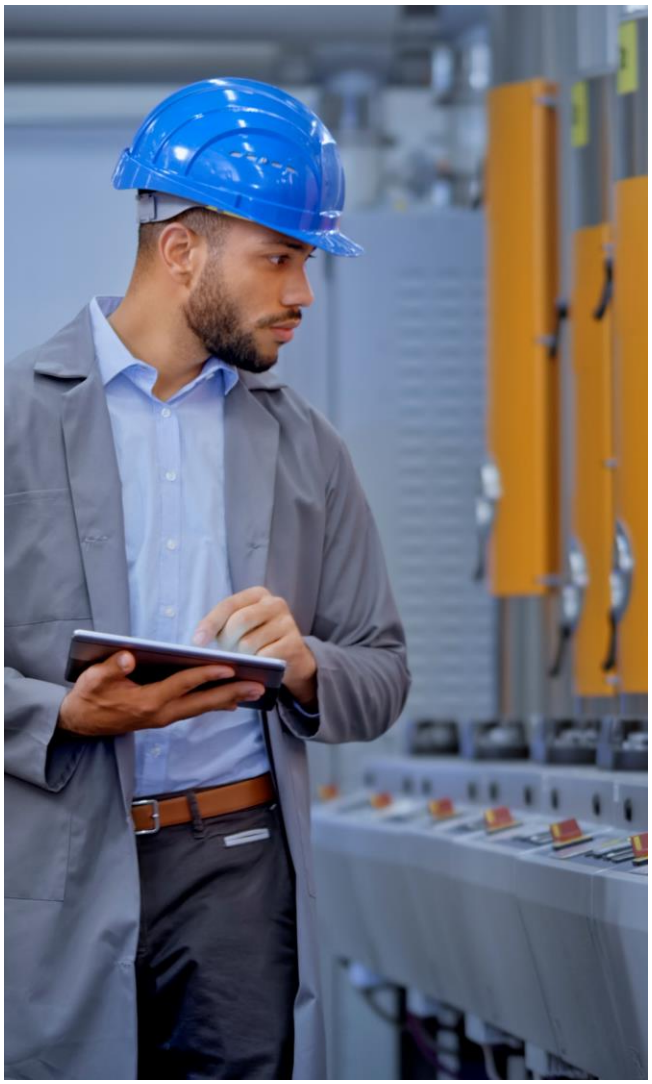
The ATO's focus will be on employers falling within the Medium and High risk categories and clarification has been provided that employers may move between different risk categories on each QE day and that notwithstanding the risk category for an employer, the ATO has no discretion to disregard an SG shortfall where definitive information is obtained.

Separately, the ATO has also released the compendium to the Guideline PCG 2026/1EC, which addresses some of the key concerns raised as part of the consultation phase on its predecessor draft. The ATO states in the compendium to the Guideline that it remains focused on employer behaviour, regardless of the size of the employer, and confirmed that it would continue to monitor Payday Super implementation systems' readiness with a view to updating guidance where appropriate.



ATO's Payday Super resources

Ahead of the 1 July 2026 Payday Super go-live date, the ATO has released its Payday Super resources page, which includes a number of factsheets and checklists to empower employees for the transition. These resources include:

- Key changes to super guarantee: A high-level overview into key changes as part of the Payday Super regime, including Super and STP reporting obligations, penalties, Small Business Superannuation Clearing House and payment processing.
- Qualifying earnings: Clarifies key aspects of Qualifying Earnings (QE), which is a new concept included as part of the Payday Super transition and replaces the existing concept of Ordinary Time Earnings (OTE).
- SuperStream: Provides a high-level overview on the key SuperStream changes, and providing a list of actions employers should complete prior to the go-live date.
- Checklists for employers in regards to:
  - Payday Super transitioning, and
  - Small Business Superannuation Clearing House.

If you would like to know more information around Payday Super and what it means for you and your business, please speak to your PwC representative or visit the PwC Payday Super website.

ATO update: Work vehicle FBT misreporting that may attract scrutiny

As part of the ATO's small business focus areas for FY26, the ATO has outlined fringe benefits tax (FBT) reporting practices related to work vehicles that may attract its attention.

According to the ATO, employers who make a vehicle available to their employees (or their associates) for private use, may be required to register, lodge and pay FBT.

Failing to report, or incorrectly reporting fringe benefits may create compliance issues for employees, these may include:

- failing to lodge an FBT return when required
- assuming private use of a dual-cab ute is automatically exempt
- incorrectly claiming vehicle exemptions
- failing to apportion private and business use, and
- not keeping adequate records, such as valid logbooks.

The ATO warns that it is using 'sophisticated data and analytics' to identify businesses that aren't meeting their obligations, and that these practices can lead to audits, penalties, and interest charges. The ATO also indicates it has a compliance team that is actively contacting employers who fail to comply or deliberately avoid FBT.

FBT case: Ferrari held not exempt as a non-passenger vehicle

In MXSN and Commissioner of Taxation (Taxation) [2026] ARTA 186, the Administrative Review Tribunal upheld FBT assessments against a professional services company relating to the 2014 to 2022 FBT in years. In this case, the taxpayer had purchased a second-hand 2010 Ferrari California, allegedly for its sole director to use for commuting and client visits. The taxpayer argued that the Ferrari was exempt under section 8(2) of the Fringe Benefits Tax Assessment Act 1986 (Cth) (FBTAA) as it was not 'designed for the principal purpose of carrying passengers' (being designed principally for racing), that the FBT cost base incorrectly included on-road costs, and that the sole director became beneficial owner of the vehicle via a resulting trust when he personally funded the balloon payment in 2018.

The Tribunal largely rejected these arguments, holding that section 8(2)(a)(ii) applies only to commercial vehicles—not luxury sports cars—and that the Ferrari was in any event designed for carrying passengers given its four seats, luxurious interior, and classification under the Australian Design Rules. Further, the Tribunal found that the director's logbooks were not reliable and they could not be satisfied that private use of the vehicle was 'minor, infrequent and irregular' as is required by section 8(2)(b)(ii) of the FBTAA.

In addition, the Tribunal found that the hire purchase balloon payment for the car was not made from the director's personal funds, and that the objective evidence—including the choice to register the car in the taxpayer's name for asset protection purposes and the taxpayer continuing to pay vehicle operating expenses after the October 2018 balloon payment - was inconsistent with a resulting trust.

As the parties reached an agreement that certain on-road costs were to be excluded from the cost base of the vehicle, the Tribunal was not required to express a view on this issue.

Workers' compensation: Roofer was an employee despite ABN and sole trader arrangement

In Pascoe v Roof Crew Pty Ltd [2026] NSWPIC 25, the Personal Injury Commission determined that a roofer who sustained a knee injury at work was an employee entitled to workers compensation. The applicant was required to obtain an ABN as a condition of engagement, though he worked exclusively for the respondent, wore branded uniforms, received directions from the sole proprietor, and did not seek independent work. The respondent contended the applicant was an independent contractor who used his own skill, judgement, tools, and transportation.

The Commission rejected these contentions, finding that any contractor arrangement was a 'sham' entered into to avoid statutory entitlements including workers compensation insurance and payroll tax. The Commission emphasised the 'industrial reality' that workers in industries such as construction are frequently obliged to obtain an ABN to find paid work, meaning the holding of an ABN may "mean nothing at all" in indicating contractor status. Factors including direction and control, branded uniforms, compliance with WHS requirements, and working where and how directed all supported the existence of an employment relationship.

The Commission found in favour of the applicant, ordering the respondent to refund the cost of self-funded knee surgery and to pay weekly compensation.

Personal tax update

Right to occupy under deceased's will for main residence exemption

The Australian Taxation Office (ATO) has released draft Taxation Determination TD 2026/D1, which outlines the Commissioner's preliminary view on when an individual has a right to occupy a dwelling under a deceased's will for the purposes of the capital gains tax (CGT) main residence exemption.

A capital gain or capital loss will be disregarded under the main residence exemption if, from the date of the deceased's death until the end of the ownership interest, the dwelling was the main residence of an individual who had a right to occupy it under the deceased's will. An individual will only have a right to occupy a dwelling under the deceased's will if this right was granted in accordance with the terms of the will itself. A right to occupy granted to an individual by a trustee pursuant to a broad discretion, given to the executor or trustee of the deceased estate under the deceased's will, is not 'a right to occupy the dwelling under the deceased's will' for these purposes.

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Similarly, the draft determination indicates that the Commissioner does not accept that a testamentary trust established under a deceased's will is equivalent to a deceased estate. The draft determination explains that the deceased's will is separate and distinct from a testamentary trust which arises only after the deceased estate has been administered and as such rights granted under a testamentary trust deed are not rights granted under the deceased's will for the purposes of the main residence exemption.

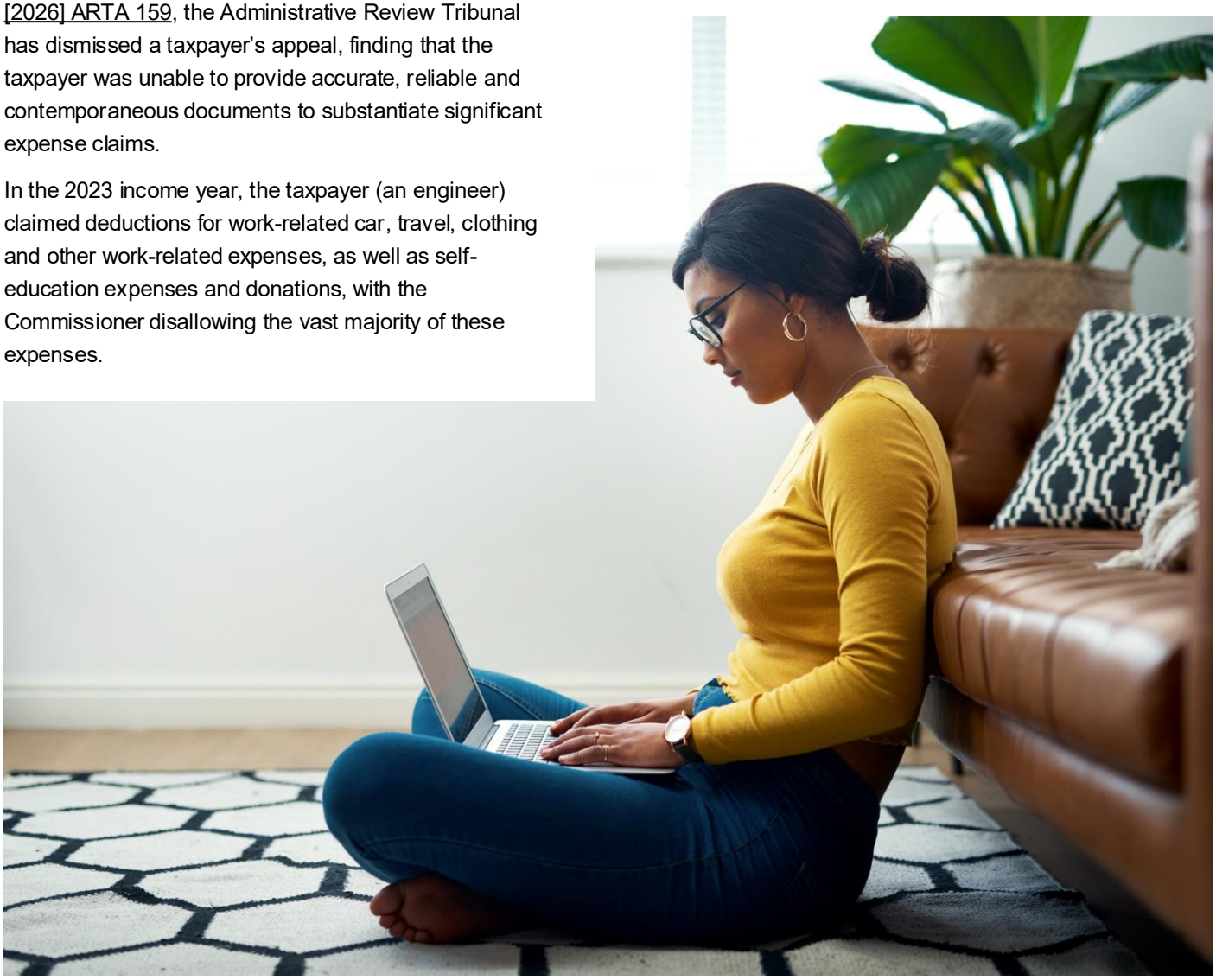
When the final Determination is issued, it is proposed to apply to years of income commencing both before and after its date of issue.

Deductions denied due to inability to substantiate

In Afshari and Commissioner of Taxation (Taxation) [2026] ARTA 159, the Administrative Review Tribunal has dismissed a taxpayer's appeal, finding that the taxpayer was unable to provide accurate, reliable and contemporaneous documents to substantiate significant expense claims.

In the 2023 income year, the taxpayer (an engineer) claimed deductions for work-related car, travel, clothing and other work-related expenses, as well as self-education expenses and donations, with the Commissioner disallowing the vast majority of these expenses.

The Tribunal could not be satisfied that the logbooks were accurate, complete or contemporaneous. Rather, they were found to be reconstructed, inconsistent with objective records and did not comply with legislative requirements. Similarly, the Tribunal found that the taxpayer gave no explanation to their work-related travel expenses, outside the broad assertion that they were incurred for work purposes, and no evidence was given to demonstrate how the self-education expenses (which included an Iranian language class) maintained or improved skills required for the taxpayer's role, or was otherwise sufficiently connected to the taxpayer's income-producing activities. While some deduction was allowed for working from home costs, the amount initially claimed by the taxpayer was rejected, with the apportionment methodology adopted considered to be neither fair nor reasonable.



Indirect tax update

WET determination for New Zealand producer rebate finalised

Treasury has finalised A New Tax System (Wine Equalisation Tax) (New Zealand Producer Rebate Claim Lodgment) Determination 2026, which allows a New Zealand participant to make a claim for a wine tax credit for a producer rebate for a rebatable wine at any time within four years after the time when the credit arises, provided the participant was entitled to a producer rebate for the wine under subsection 19-5(2) of the A New Tax System (Wine Equalisation Tax) Act 1999.

The instrument provides eligible New Zealand wine producers with flexibility in relation to the time at which they choose to lodge a claim for the producer rebate, including because the claim does not need to be aligned with Australian GST lodgment cycles.

The instrument repeals and replaces Wine Equalisation Tax New Zealand Producer Rebate Claim Lodgment Determination (No. 34) 2016, which would otherwise sunset on 1 April 2026. The instrument has the same substantive effect as the one it is replacing.

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Federal Court upholds no ITC entitlement on late BAS lodgment

In Barth Family Trust (Trustee) v Commissioner of Taxation [2025] FCA 1693, the Federal Court has dismissed the taxpayer's appeal from the Administrative Review Tribunal, upholding the Tribunal's decision that the taxpayer was not entitled to GST input tax credits first claimed in Business Activity Statements (BAS) lodged more than four years after their due dates.

The Federal Court observed that the position in the present case is that there was neither assessment nor objection within any of the prevailing four-year periods and the taxpayer's claimed for an input tax credit was outside that period. All that the Commissioner did in amending the taxpayer's assessment so as to disallow the input tax credit concerned was to give effect to the language of section 93-5 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act). The time having expired, the right to the input tax credit ceased. In turn, all that the Commissioner's objection decision did in affirming it was to recognise that position.

Further, the Tribunal's role in reviewing the objection decision did not entail any revival of the right to the input tax credit. Instead, all that the Tribunal did was to recognise in reviewing the objection decision that the input tax credits concerned had not been taken into account in any assessment within a prevailing four-year period, with the Court noting that the Tribunal had been correct to decide the case in that way.

Sale of units subject to GST

In RRKC and Commissioner of Taxation (Taxation and business) [2026] ARTA 95, the Administrative Review Tribunal found, on balance, that the sale of three residential units was in furtherance of a taxpayer's enterprise and so subject to GST.

The taxpayer was engaged in renovating and constructing residential property and described his residential property activities as 'renovation projects'. In total, the Commissioner identified approximately 33 properties that had been owned or part-owned by the taxpayer. In 2016-17, the taxpayer sold three residential units. The Tribunal was to decide whether those sales proceeds were assessable income, and whether the sale of the properties was a taxable supply under section 9-5 of the GST Act.

The Tribunal acknowledged that the case was not clear cut, and that there were good arguments in favour of the taxpayer. This included clear evidence that the taxpayer did rent out properties including, sometimes, for long periods of time, and including renting properties that were later sold, occasionally after a long period of time in rental. However, on balance, the Tribunal was not persuaded by the taxpayer's case.

Firstly, the Tribunal found that the profits from the sale of the properties were ordinary income that was assessable. On balance, the weight of the evidence supported the conclusion that the taxpayer carried on a business, and that the sale of properties was in the course of that business. The properties were also found to comprise trading stock.

In respect of the application of the GST, the sale of the properties was also in furtherance of the taxpayer's enterprise and were subject to GST. While the sale of one unit was found to have been appropriately assessed for GST, the Tribunal did note that:

- The Commissioner's GST assessment was excessive regarding the sale of one of the other units, as it was not appropriately assessed in the relevant BAS period (the Commissioner accepted that it was time-barred from assessing that transaction).
- The Commissioner is, by way of the issue being remitted, to determine the date of settlement of the sale of another of the units, as the information before the Tribunal was insufficient to determine if the unit's sale was appropriately assessed in the relevant BAS period.

Market price beaten by connected party transfer

In Robinson and Commissioner of Taxation (Taxation and business) [2026] ARTA 50, the Administrative Review Tribunal has varied the Commissioner's objection decision, determining the value of a taxable supply of the transfer of a property to be lower than its market value sale.

This appeal concerned an individual and their company, of which the taxpayer was the sole shareholder and director. Broadly, the case concerned the income tax and GST treatment from the taxpayers' participation in transactions relating to the purchase, subdivision and sale of certain land in a coastal region of Victoria.

Following subdivision of a property, one particular property (the subject of this appeal) was sold under a contract entered in July 2018 between the individual and a third party for a purchase price of $4.128m. Before settlement, title to the property was transferred from the corporate taxpayer to the individual for a stated consideration of $2.25m.

Ultimately, in respect of the corporate taxpayer, the Tribunal found that the company was the legal and beneficial owner of the property prior to the transfer, that it was registered for GST purposes, and that the transfer was made in the course or furtherance of an enterprise it carried on, such that the transfer was subject to income tax and was a 'taxable supply' for the purposes of section 9-5 of the GST Act. However, the Tribunal did not agree with the Commissioner's assessment of how much GST was payable. The Commissioner had calculated GST using a market value of $4.128m, being the price subsequently paid by the third-party purchaser, however the Tribunal found that section 72-70 of the GST Act regarding the value of taxable supplies to associates for inadequate consideration did not apply and that the value of the taxable supply was to be determined under section 9-75 by reference to the $2.25m price as was determined by an independent valuation.

International tax and trade update

Exposure draft amendments to global and domestic minimum tax rules

Treasury has released for comment an exposure draft of proposed amendments to be made to the Taxation (Multinational-Global and Domestic Minimum Tax) Rules 2024, which aim to ensure that administrative guidance released by the Organisation for Economic Cooperation and Development (OECD) is incorporated appropriately to ensure the effective operation of pillar two top-up taxes in Australia. The changes:

- Clarify the operation of Australia's domestic minimum tax (DMT) in relation to stateless entities with an Australian nexus
- Refine the interaction between Australia's DMT and tax consolidation rules to ensure it operates appropriately to allocate domestic top-up tax amounts from subsidiary members (including those that are JV subsidiary of a Joint Venture) of the tax consolidated group to the head company, and ensure that the top-up tax amount is not allocated to a head company that is an Excluded Entity or Securitisation Entity

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- Ensure covered taxes are appropriately allocated consistent with the allocation of GloBE income for a reverse hybrid entity or hybrid entity, i.e. taxes imposed by Australia, as the jurisdiction of location or creation of the reverse hybrid or hybrid entity will be pushed down to that entity if the taxes are recorded in the accounts of the constituent entity-owner
- Ensure that Australia's DMT will function properly, i.e. since Australia is specified as having a Qualified DMT, amendments are made to the Rules to ensure that domestic top-up tax can apply to Australia, and
- Add a foreign currency translation rule for the conversion of amounts of top-up tax calculated in a foreign currency to Australian dollars.

The Amending Rules, once registered, will apply retrospectively from 1 January 2024. Comments close 13 March 2026.

Global Information Returns can now be shared between Australia and other jurisdictions

The GloBE Information Return Multilateral Competent Authority Agreement (GIR-MCAA) is a multilateral agreement designed to facilitate the automatic exchange of GloBE Information Returns (GIR) between tax authorities as an administrative tool supporting the implementation of Pillar Two.

For the GIR-MCAA to be effective between two jurisdictions, both must sign the agreement and notify the OECD Co-ordinating Body Secretariat of their intention to send and/or receive GIR information, confirming they have the necessary legal and operational frameworks in place.

Australia signed the GIR-MCAA on 28 January 2026 (refer to the current list of countries which have currently signed up to the GIR-MCAA). With the first GIR lodgments due by 30 June 2026, this means that Australia is now able to share domestic filings of GIRs and receive international exchanges of GIR information with those other participating countries.

Board of Taxation to review thin capitalisation reforms

The Government has asked the Board of Taxation to undertake an independent review of the recent thin capitalisation reforms.

In conducting the review, the Board will evaluate whether the amendments are functioning in alignment with their intended policy objectives. It has been specifically requested to consider:

- The overall performance of the amendments in strengthening Australia's thin capitalisation regime to address risks arising from the use of excessive debt deductions.
- Any minor and technical drafting changes which are necessary for the practical administration of the laws, with a particular focus on the third-party debt test provisions and related undefined legislative terms.
- If the $2m exemption threshold should operate as a net debt deduction concept.
- Whether the default tax EBITDA calculation operates to appropriately reflect an entity's economic activity in the income year and across multiple income years, as intended.
- The practical impact on the cost of complying with the debt deduction creation rules after restructures, including whether the rules have effectively discouraged debt creation schemes.

The Board will engage in public consultation to inform its final report, which is scheduled for delivery to the Government by 1 February 2027.

OECD webcast on new Side by Side Pillar Two package

The OECD has hosted a webinar on the Pillar Two Side by Side package that charts a way forward for the co-ordinated operation of the global minimum tax. In this webcast, the key elements of the agreed 'Side by Side' arrangement, including simplification measures, as well as new and expanded safe harbours for multinational enterprises subject to a minimum level of taxation or benefitting from substance-based tax incentives are discussed.

Other OECD developments

In other news from the OECD:

- A revised version of the Manual on Effective Mutual Agreement Procedures (MEMAP), which aims to improve tax certainty by helping tax administrations and taxpayers resolve cross-border tax treaty disputes in an efficient, effective and timely manner, has been released. This revised edition features 59 best practices targeted at both competent authorities and taxpayers. The Manual also addresses organisational considerations and also outlines steps that jurisdictions can take to proactively prevent disputes.
- Latest Peer Review Results on Harmful Tax Practices.

Global crypto tax developments

The global digital assets ecosystem has reached a pivotal stage in its development. Increasing regulation is reshaping business models and driving greater convergence between crypto-focused businesses and traditional financial institutions. Tax transparency has become a key priority, with authorities raising expectations around reporting, controls, and oversight of crypto-related activity. Now in its fifth year, PwC's 2026 Global Crypto Tax Report highlights recent updates in direct and indirect tax treatment across 58 jurisdictions, with information updated as of 1 October 2025.

New alcohol customs and excise rates released

New rates for customs and excise duties relating to alcohol products apply from 2 February 2026:

- Notice of Substituted Rates of Excise Duty Notice No. 1 (2026)
- Notice of substituted rates of customs duty for excise-equivalent goods Notice (No. 1) 2026.

India Budget 2026: Impact on foreign investors and multinationals

India's Finance Minister presented the Union Budget for 2026-27 on 1 February 2026. The budget continues the government's development agenda, with an emphasis on manufacturing, the 'Make in India' initiative, employment-led development, human capital investment, energy security, export promotion, and innovation.

On the tax front, the Indian Finance Minister announced a commitment that the new Indian income tax law will take effect on 1 April 2026. The implementing tax rules and prescribed forms are to be notified shortly. These tax proposals aim to attract global business and investment, strengthen the information technology (IT) sector as India's growth engine, and simplify and rationalise tax provisions coupled with measures to reduce tax litigation and enhance certainty. Read more in this Tax Insight.

State tax update

Latest Australian stamp duty and tax maps

Following recent changes to the Duties landscape, PwC's Stamp Duty and Land Tax Maps have been updated. These maps provide an overview of the current stamp duty and land tax rates, thresholds or taxing dates for each State and Territory as at 1 February 2026.

VIC: Supreme Court refuses leave to appeal in landholder duty case

In Tao v Commissioner of State Revenue [2025] VSC 831, the Supreme Court of Victoria has refused leave to appeal against the decision of the Victorian Civil and Administrative Tribunal in Tao v Commissioner of State Revenue (Review and Regulation) [2024] VCAT 637, which considered whether an individual taxpayer obtained control of a landholder unit trust when he acquired all of the shares in, and became the sole director of, the corporate trustee of the trust which was a relevant landholder for purposes of applying landholder duty.

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In its decision, the Tribunal found that the taxpayer had made a relevant acquisition in the unit trust, under section 82 (acquisition of control) of the Duties Act 2000 (Vic), as he acquired the capacity to determine or influence the outcome of decisions about the financial and operating policies of the unit trust, and therefore obtained control of the unit trust for section 82 purposes. However, the Tribunal did find that the relevant acquisition deemed to have occurred under section 82 should be reduced to reflect the pre-existing economic interest held by the taxpayer, from 100% to 85%.

Among other comments, the Court also noted that the relevant test under section 82 concerns 'the capacity to determine or influence the outcome of decisions about the private landholder's financial and operating polices...' and is not one concerned with strict legal ownership or beneficial interests. As the Tribunal found, it was not necessary that the taxpayer also obtained an interest equivalent to a beneficial interest in the corporate trustee for section 82 to be engaged.

QLD: Replacement contract upheld as not a resale agreement

In Commissioner of State Revenue v FKG01 Pty Ltd [2026] QCA 12, the Queensland Court of Appeal has found for the taxpayer regarding the proper construction of section 115(1)(d) and (2) of the Duties Act 2001 (Qld), which concern when an exemption from paying transfer duty arises in relation to a cancelled agreement.

In the first instance decision, in FKG01 Pty Ltd v Commissioner of State Revenue [2025] QSC 105, the Supreme Court of Queensland held that a replacement contract that was entered into, after a cancelled agreement, between the same seller and a new buyer (who was a related company to the taxpayer), was not a resale agreement under section 115 (2) of the Duties Act meaning that section 115(1)(d) therefore applied to the cancelled contract to exempt it from transfer duty.

The Commissioner provided eight grounds of appeal to the Court of Appeal, which unanimously dismissed each one. Ultimately, the original contract was ended with the consent of the parties to it and the replacement contract was not a 'resale agreement'. Therefore, transfer duty was not payable on the transaction the subject of the original contract.

WA: Bill to expand build to rent land tax exemption

On 19 February 2026, the Land Tax Assessment Amendment (Build-to-Rent) Bill 2026 (WA) was introduced into the Western Australia (WA) Legislative Assembly, delivering and expanding on the WA Government's election commitment to increase the exemption for eligible build-to-rent (BTR) developments.

The Bill amends the Land Tax Assessment Act 2002 (WA) to increase the exemption from 50% to 75% for eligible BTR developments completed on or after 1 July 2025 and before 1 July 2030. The exemption will apply to eligible BTR developments from the 2025-26 assessment year.

The amendments will apply the increased 75% exemption for the first ten years if all the dwellings in the development become able to be lawfully occupied between 1 July 2025 and 30 June 2030. After the first ten years, the exemption will revert to 50% for the subsequent ten years of the BTR exemption, with usual land tax rates to apply thereafter.

If an existing BTR development receiving the general exemption completes an expansion development within the eligibility period, the expansion can qualify for the increased exemption, with the expansion to receive a separate exemption to the original development.

Superannuation update

New law for new Division 296 tax on high superannuation balances

On 11 February 2026, the Government introduced into Federal Parliament the law (Treasury Laws Amendment (Building a Stronger and Fairer Super System) Bill 2026 and the Superannuation (Building a Stronger and Fairer Super System) Imposition Bill 2026) which will reduce the tax concessions available to individuals with total superannuation balances (TSBs) exceeding $3m.

Under the changes, from the 2026-27 income year onwards, the new tax (Division 296) will be imposed directly on the individual though it can be paid from superannuation. The tax rates applying to superannuation earnings will be:

- For total superannuation balances that do not exceed the $3m large superannuation balance threshold—there is no Division 296 tax
- For total superannuation balances above the $3m large superannuation balance threshold—an additional 15% on a percentage of earnings attributable to the individual's TSB above $3m, and
- For total superannuation balances above the $10m very large superannuation balance threshold—an additional 10% on a percentage of earnings attributed to the individual's TSB above $10m.

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After the 2026-27 income year, the thresholds will be indexed to the Consumer Price Index each year.

Note that for all superannuation balances, the super fund will continue to pay headline taxes at 15% on taxable income of the fund, i.e. this is unchanged from current tax arrangements.

Superannuation funds will work out the amount of the attributed 'earnings' in accordance with prescribed methodology, and report this to the Australian Taxation Office (ATO). The earnings will be based on the fund's relevant taxable income or loss, but with various adjustments for assessable contributions, exempt pension income and with potential transitional adjustments to capital gains or losses so as to exclude any earnings accrued on CGT assets before 1 July 2026. Note that a small superannuation fund will need to make an irrevocable election in the approved form by the due day for lodging the income tax return for the 2026-27 income year if it is to benefit from the CGT transitional rule for all CGT assets held by the small superannuation fund at the end of 30 June 2026.

Balances in Australian superannuation accounts will be included for the purposes of calculating an individual's TSB and earnings. This includes APRA-regulated funds, self-managed super funds (SMSFs) and exempt public sector schemes. There are special rules for foreign superannuation funds, constitutionally protected State higher level office holders, certain justices of the Commonwealth, the Australian Capital Territory and the Northern Territory, non-complying superannuation plans and temporary residents who depart Australia.

Changes to the LISTO

Law has also been introduced to Federal Parliament (Treasury Laws Amendment (Building a Stronger and Fairer Super System) Bill 2026) to amend the low income superannuation tax offset (LISTO) from 1 July 2027 to align the offset with broader income tax and superannuation settings.

Namely, from 1 July 2027, the current eligibility threshold will be amended to remove the specific reference to $37,000 and instead refer to the lowest income tax threshold (after the tax-free threshold) for the relevant income year. This means that from 1 July 2027 the LISTO eligibility threshold will be $45,000.

The amendments also remove the maximum LISTO amount of $500, instead replacing it with a calculation for the maximum LISTO amount that refers to the LISTO eligibility threshold amount, charge percentage, and standard 15% rate for concessional contributions. In 2027-28, the maximum LISTO amount will be $810.

General transfer balance cap to increase

The ATO has reported that with effect from 1 July 2026, the superannuation general transfer balance cap will increase from $2m to $2.1m as a result of indexation. The defined benefit income cap will also increase to $131,250 (from $125,000) for the 2026-27 income year.

Draft legislation for access to super for victims of child sexual abuse

Treasury has released for public consultation exposure draft legislation that intends to prevent convicted child sexual abusers from hiding their assets in superannuation to avoid paying compensation to their victims.

The draft legislation would let victims and survivors apply to the Australian Taxation Office (ATO) for information about a perpetrator's super, and enable victims and survivors of child sexual abuse to seek access, via a court order, to additional personal or salary sacrifice superannuation contributions made by the offender where a related court order for compensation remains unpaid after 12 months.

Consultation closed 20 February 2026.

ATO speech to SMSF Association National Conference

ATO Deputy Commissioner Ben Kelly delivered a speech at the SMSF Association's National Conference, in which the Deputy Commissioner shared some current areas of focus from a compliance perspective, as well as some observations about upcoming changes in the self-managed super fund (SMSF) ecosystem.

The level of assets held in SMSFs was noted to exceed $1tn at the end of the last financial year—nearly a quarter of the assets held in Australia's superannuation system.

In terms of key areas of compliance focus, illegal early access and prohibited loans was highlighted. For the 2022-23 financial year, the ATO estimated that $252m was accessed early from SMSFs without a condition of release being met. In addition, the level of prohibited loans has significantly increased: in the 2022-23 financial year, the ATO's prohibited loan estimate increased to $398m. Some part of this increase—around $50m—is attributable to the ATO for the first time making an estimate of the level of prohibited loans in SMSFs that have not lodged a return.

Generally, intelligence from the ATO's compliance work pointed to there being three main drivers for illegal early access and prohibited loans: financial stress, lack of knowledge, and personal issues, such as relationship breakdowns. To help address these issues, the ATO has released several education products in recent years, including the SMSF lifecycle publications, trustee education courses, and a fact sheet on illegal early access.

Another area of compliance focus is the timely lodgment of SMSF annual returns. As at 31 December 2025, approximately 93,000 funds have one or more outstanding lodgment obligations. This population includes 20,000 that have never lodged a return since they were registered as a SMSF.

Separately, frauds and scams were also noted to be another focus area for the ATO.

In terms of upcoming changes in the superannuation ecosystem, the new Division 296 tax (legislation for which has been recently introduced into Federal Parliament—see above) was briefly discussed, as well as Payday Super, which comes into effect from 1 July 2026. To make Payday Super a success for SMSF members, the Deputy Commissioner noted that it was important for trustees to start preparing now for the upcoming changes.

SMSF non-compliance actions

The ATO has updated its guidance on the actions it can take if SMSF trustees don't comply with super laws.

Where a trustee has breached certain superannuation laws, the SMSF's auditor will report certain breaches (contraventions) to the trustee and the ATO. Contraventions should be rectified as soon as possible. The SMSF early engagement and voluntary disclosure service can be used to voluntarily disclose any regulatory contraventions that remain unrectified. Winding up an SMSF following a contravention won't stop compliance action.

The compliance measures the ATO will apply depend on the actions of the trustees and the type of contravention. Actions the ATO may take include an enforceable undertaking, a rectification direction, education direction, administrative penalties, raising income tax assessments, issuing a notice of non-compliance, disqualifying a trustee, freezing SMSF assets or even pursuing civil and criminal penalties.

Legislative update

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

- The Treasury Laws Amendment (Building a Stronger and Fairer Super System) Bill 2026 and the Superannuation (Building a Stronger and Fairer Super System) Imposition Bill 2026, which were both introduced in the House of Representatives on 11 February 2026, propose to implement the new Division 296 tax to reduce the tax concessions available to those with large superannuation balances, as well as make amendments to the low income superannuation tax offset. For further information, see Superannuation update.

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

- The Administrative Review Tribunal and Other Legislation Amendment Bill 2025, which passed with amendments, amends the Administrative Review Tribunal Act 2024 and Migration Act 1958 to expand the Administrative Review Tribunal's ability to determine matters without holding an oral hearing of the proceeding.

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

- The Customs Tariff (Geelong Treaty-Entry into Force) Notice 2026, reports that the Nuclear-Powered Submarine Partnership and Collaboration Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland, done at Geelong, Australia on 26 July 2025, entered into force for Australia on 19 December 2025. This provides a free rate of customs duty for goods that are for use under the treaty.
- The A New Tax System (Wine Equalisation Tax) (New Zealand Producer Rebate Claim Lodgment) Determination 2026, effective 31 January 2026, allows eligible New Zealand wine producers that export wine to Australia to claim a producer rebate, in the form of a wine tax credit, at any time within four years after the wine tax credit arises.
- The Customs Amendment (AFC Women's Asian Cup 2026) By-Law 2026, effective 17 February 2026, which amends the Customs By-Laws 2023 to prescribe certain goods imported between 1 July 2025 and 31 December 2028 for use in connection with the Asian Football Confederation Women's Asian Cup 2026 as eligible for the concessional customs duty rate of 'free'.

Other news update

Proposed income tax return lodgment requirements for 2026

The Australian Taxation Office (ATO) has issued two draft legislative instruments in respect of lodging income tax returns for the 2026 year:

- Draft Taxation Laws (Requirement to Lodge a Return for the 2026 Year) Instrument 2026, which specifies which persons are required to lodge an income tax return for the 2026 year. This also sets out the requirements for franking returns, venture capital deficit returns, ancillary fund returns, returns and statements for self-managed superannuation funds and community charity returns.
- Draft Income Tax Assessment (Requirement for Parents Liable for or Entitled to Child Support to Lodge a Return for the 2026 Year) Instrument 2026, which requires certain parents liable for or entitled to child support to lodge an income tax return for the 2026 year.

Comments on both draft instruments close 13 March 2026.

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Reporting SGE status for large private groups — ATO expectations

The ATO has released guidance for large private groups on how to assess and report significant global entity (SGE) status, including self-assessment expectations, record-keeping, and low-risk scenarios.

The SGE definition requires consideration of accounting principles used to prepare consolidated financial statements. The ATO expects that when self-assessing SGE status, a private group and its controlling minds should prepare and retain all relevant records supporting the assessment, including records relevant to assessing whether an entity controls one or more entities according to accounting principles.

The ATO guidance indicates that certain private group scenarios are considered to be a lower risk of incorrectly self-assessing and reporting SGE status. Private groups which have annual global income across all its members approaching $1bn and are in the following low-risk scenarios may be subject to limited forms of verification and are unlikely to raise compliance concerns regarding the SGE classification of entities for that income year:

- Category 1: wholly domestic private groups.
- Category 2: groups (including those with offshore elements) that maintain contemporaneous records showing total annual income across all group members is under AUD 1bn.

A private group will not be considered low risk if it falls within a list of specified exclusions.

Final report from the Australian Carbon Leakage Review

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) has completed its review into whether additional policies are needed to address carbon leakage in Australia. The review concludes that while current Safeguard Mechanism settings are effective in the short to medium term, additional targeted measures are likely to be required for specific commodities as leakage risks from imports evolve. In particular, the report identifies a border carbon adjustment (BCA) as the preferred instrument for a select set of high-risk commodities to ensure a level playing field for Australian producers subject to domestic carbon constraints.

The report concludes that any proposed BCA mechanism should mirror the Safeguard Mechanism's scope (i.e. scope 1 emissions), avoid export rebates, remove Trade Exposed Baseline Adjustment (TEBA) provisions for covered commodities, and be staged, starting with cement and clinker, and later expanding to cover lime, steel, glass, and ammonia and derivatives.

Importers, exporters, producers and end-users of commodities potentially in-scope for any future BCA mechanism should review the report in detail and consider recommended actions. For further information, refer to our Tax Alert.

Cost base inclusions denied for pre-21 August 1991 land

In Halse and Commissioner of Taxation (Taxation) [2026] ARTA 156, the Administrative Review Tribunal has dismissed a taxpayer's appeal, finding that third element costs could not be included in the cost base of a property that had been subdivided.

In October 1989, the taxpayer purchased a block of land in South Australia, which was subdivided into two equal parcels in early 2019. The first parcel was sold in 2021 and the second in 2024. The taxpayer argued that certain expenditure (the rates and land taxes) incurred in respect of the property since August 1991 should be included in the third element of the cost base in calculating the costs of owning the CGT asset under subsection 110-25(4) of the Income Tax Assessment Act 1997.

The Tribunal commented that the text of subsection 110-25(4) explicitly states that the third element of the cost base is '...the costs of owning the CGT asset you incurred (but only if you acquired the asset after 20 August 1991)...'. The Tribunal found that statutory construction must begin with the text itself. The language employed in the text of the legislation was the surest guide to legislative intention. The natural and ordinary meaning of the provision was clear and unambiguous: the costs of owning the CGT asset will only form part of the cost base if the CGT asset was acquired after 20 August 1991.

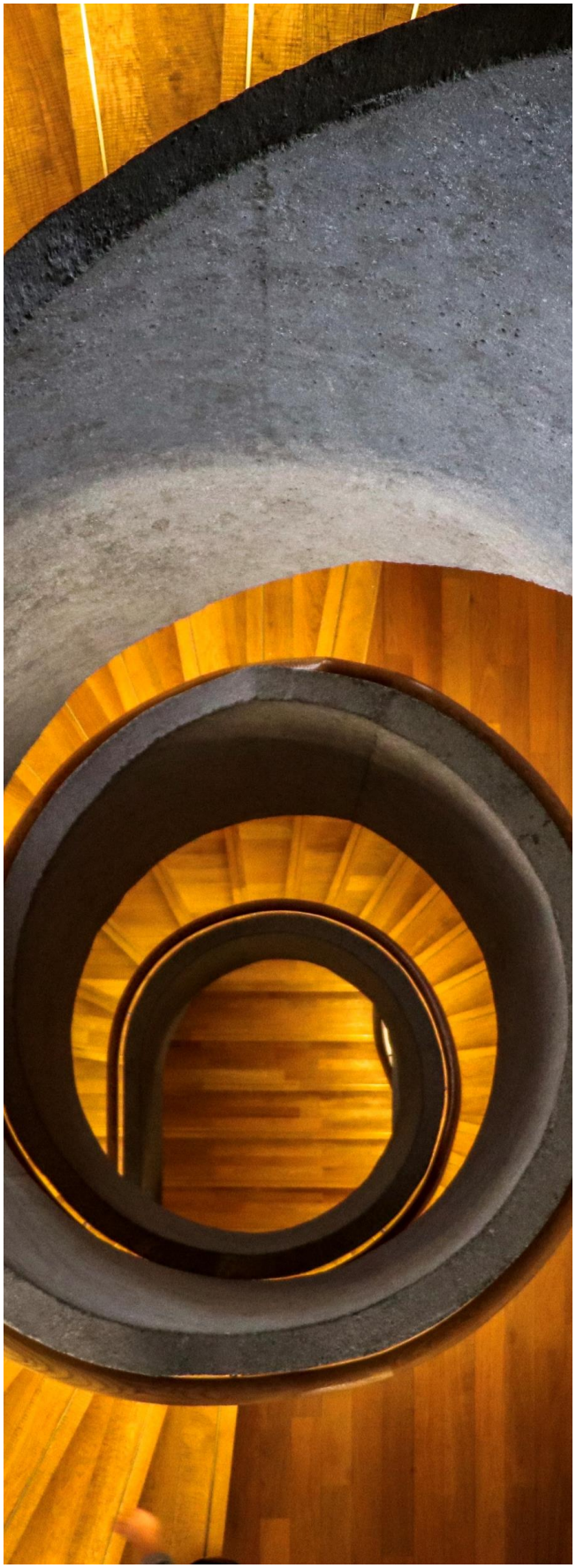
It was not in dispute that the taxpayer acquired the property on 20 October 1989, and the subsequent subdivision did not vary or change this. As the date of acquisition of the relevant CGT asset was before 21 August 1991, the taxpayer was unable to include the costs in the third element of cost base.

Temporary display model homes a marketing expense

In Masterton Corporation Holding Company Pty Ltd and Commissioner of Taxation (Taxation) [2026] ARTA 160, the Administrative Review Tribunal has determined that expenditure incurred in the construction of temporary display model homes was of a revenue nature, as the expense was a marketing expense which was not of a capital nature.

The taxpayer was a custom home building company where he dispute with the Commissioner arose over the income tax treatment of the taxpayer's temporary display model homes, and whether the costs of constructing the temporary display model homes were a revenue or operating expense under section 8-1 of the *Income Tax Assessment Act 1997*.

The Commissioner's position was that the taxpayer's expenditure was on capital account and that paragraph 8-1(2)(a) applied to disallow a revenue deduction on the construction costs. The Tribunal disagreed, finding that the purpose or object of the taxpayer's expenditure in constructing the temporary display model homes was to advertise and market the taxpayer's long-standing business of building and selling residential homes. The taxpayer was incurring the expenses related to the construction of the display model homes at the display village to show the homes it built for sale, and to increase its sales. Accordingly, the marketing expense, even if large and even if one off, was on revenue account.



Service fees found to be non-deductible by Full Federal Court

In Commissioner of Taxation v S.N.A Group Pty Ltd [2026] FCAFC 10, the Full Federal Court has allowed the Commissioner's appeal against the decision in S.N.A Group Pty Ltd v Commissioner of Taxation [2025] FCA 240, finding there was insufficient evidence to show that the taxpayers agreed to, and were bound by contractual terms, to pay a fair and reasonable fee for use of the trust assets.

In the first instance appeal, the Federal Court allowed the taxpayer's appeal, finding that payments made by way of service fees to related entities were deductible for tax purposes, despite there being no formal contract in place for the provision of services (see our May 2025 edition of Monthly Tax Update for further details).

The Full Federal Court considered whether the primary judge had been correct to conclude that the taxpayers had entered into inferred contracts with the trustees of the trusts for use of trust assets upon payment of a fair and reasonable fee in each relevant year.

The Full Court found there was no evidence of any communication between the directors from which to identify even a request by the taxpayers to the trustees to provide trust assets or other services from which it could be inferred that there was an agreement to pay a fair and reasonable fee for the use of trust asset or provision of other services. In the absence of any outward manifestations or communications the taxpayers conduct in making periodic payments and assigning codes (labels) to these payments in the taxpayers' and trustees' books and records was not sufficient evidence from which to infer a request for the provision of services or assets or agreement to pay a fair and reasonable fee.

OECD Economic Survey of Australia 2026

In its latest Economic Survey of Australia, the Organisation for Economic Cooperation and Development (OECD) has noted that while Australia enjoys high living standards, it has experienced weak growth in recent years. Real disposable incomes have declined markedly as the post-pandemic inflation surge eroded real wages and entailed bracket creep and rising mortgage payments. While the economy is normalising, the report comments that long-standing challenges of slow productivity growth, strained housing affordability and high carbon emissions should be addressed. Further, with economic growth returning to potential and inflation expected to stabilise within the target range, fiscal policy should focus on steadily reducing the budget deficit while improving the efficiency of the tax system.

From a tax perspective, the report noted that Australia's tax mix is unusual compared to many OECD countries, with much less reliance on goods and services taxes and more direct taxation, especially corporate income taxation. One direction of reform, the report notes, would be to raise the GST rate from the current level of 10% and/or broaden its base by reducing exemptions. Other potential tax reforms mentioned in the report include enhanced taxation of resource rents, replacing state-based transaction taxes on real estate (stamp duty) with recurrent land taxes, indexing tax brackets to reduce or eliminate bracket creep, and reducing the tax concessions for superannuation.

The Government has released its response to the report.

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