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PwC's Monthly Tax Update

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

May 2022



Corporate Tax Update

Board of Taxation to review taxation of digital assets and transactions

The Government has asked the Board of Taxation to conduct a [review](#) into the appropriate policy framework for the taxation of digital assets and transactions (such as cryptocurrencies) in Australia, and has released the Terms of Reference for this review. Among other things, the review will consider the current taxation settings of these assets, emerging policy issues and whether changes to Australia's tax settings are required including an analysis of the taxation of digital assets and transactions in comparative jurisdictions.

The Board will undertake consultation with stakeholders to deliver a report to the Government by the end of 2022.

ATO determinations on aggregated turnover and 'connected with' concept

The Australian Taxation Office (ATO) has released a number of Taxation Determinations on the meaning of 'connected with another entity' in relation to determining the aggregated turnover of a taxpayer. From a company perspective, the new determinations are:

- [TD 2022/5](#) that states that as a corporate limited partnership is treated as a company for Australian income tax purposes, the rules for working out whether a company is connected with another entity equally apply to corporate limited partnerships. Accordingly, for the purposes of determining whether an entity is 'connected with' a corporate limited partnership by virtue of directly controlling the corporate limited partnership an entity is capable of directly controlling a corporate limited partnership by operation of either the 'general control tests' or the 'voting control test'. Furthermore, the specific test for determining whether an entity directly controls a partnership does not apply to determining whether an entity directly controls a corporate limited partnership.
- [TD 2022/6](#) that states that the public entity exception applies where an entity indirectly controls another entity with an interposed public entity, that is, the first entity will not control the third entity merely because of its interest in an interposed public entity. The determination notes that the public entity exception applies only to

indirect control and if a public entity is interposed in an ownership structure, the first entity may still control the third entity through direct control.

The ATO also issued [TD 2022/7](#) that considers the 'connected with another entity' concept in relation to a partnership (see Other News section for more detail).

Guidance on software and R&D Tax Incentive

AusIndustry has released new [software specific guidance](#) for the research and development (R&D) tax incentive. The new guidance outlines the requirements for core and supporting R&D activities, the evidence that is required to support an R&D application and includes specific extended software case studies.

The guidance reinforces the requirement for core R&D activities to be focussed on scientific or technological unknowns assessed by a competent professional in the field. The scientific or technological unknowns must then lead to a systematic progression of work which has the purpose of generating new knowledge. While not explicitly stated in the guidance, it is implied that challenges relating to commercial concerns, such as end user engagement or usability, would not satisfy scientific or technological unknowns for a core R&D activity. Read more in PwC's [Tax Alert](#).

R&D regulations on clinical trials and decision making

Industry, Innovation and Science Australia (IISA) has made the [Industry Research and Development \(clinical trials, phase 0, I, II, III, pre-market pilot stage, pre-market pivotal stage, for an unapproved therapeutic good\) Determination 2022](#) that provides for certain pre-market pilot and pre-market pivotal stage clinical trials to be eligible activities for the purposes of the R&D tax incentive from 1 April 2022.

IISA has also enacted the [Industry Research and Development Decision-making Principles 2022](#) that set out parameters for IISA when making decisions in relation to the R&D tax incentive. The new principles substantially remake existing principles that were due to expire on 1 April 2022 and commenced from 31 March 2022.

Board of Taxation's review of dual agency administration of R&D

The Board of Taxation has released its report following its [review into the dual agency administration model of the R&DTI](#). The Board concluded that the dual agency model should be maintained as both the ATO and IISA have the relevant technical expertise, it would be complex to unwind the model and the preference from stakeholders is for a period of stability following reforms to the R&D tax incentive.

The key recommendations of the report focused on increasing transparency and certainty of the application process and more clearly defining the roles and responsibilities of IISA and the ATO. Read more in PwC's [Tax Alert](#).

State contribution found to be share capital

The Federal Court has held in [Aurizon Holdings Ltd v Commissioner of Taxation \[2022\] FCA 368](#) that an amount contributed by the Queensland State Government as sole shareholder of the company was properly characterised as an amount of share capital. The contribution was paid on direction of the

Queensland State Treasurer and expressed to be for nil consideration as a contribution to be adjusted against the company's contributed equity. The amount was then recorded in a 'Capital Distribution' account separate to its 'Authorised Capital' account. The taxpayer contended that the contribution was made by the State in its capacity as shareholder and was not a loan or gift or alternatively, it was sufficiently connected to an earlier issue of shares in the taxpayer company to the State Government. The Commissioner argued that the amount was not made in exchange for shares, was recorded separate from the account involving the allotment of shares in the company and was expressed to be provided for nil consideration so that it was properly an asset of the company in excess of share capital.

The Federal Court found that the contribution was properly regarded as an amount of share capital as it was a contribution made by the sole shareholder and intended to form part of the share capital of the taxpayer. This was consistent with the accounting treatment adopted by the taxpayer in recording the amount in a Capital Distribution account. Assessed objectively, the evidence demonstrated that the amount was intended to be made by the State as an equity contribution adjusting share capital.

Let's talk

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

Chris Morris, Sydney
Australian Tax Leader
+61 (2) 8266 3040
chris.morris@pwc.com

Sarah Hickey, Sydney
Sydney Tax Market Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

James O'Reilly, Brisbane
Brisbane Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Rob Bentley, Perth
Perth Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Amy Etherton, Newcastle
Partner
+61 (2) 4925 1175
amy.etherton@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Jason Karametos, Melbourne
Industries Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Sophia Varelas, Melbourne
National Leader, R&D and Government Incentives
+61 (4) 1720 8230
sophia.varelas@pwc.com

Employment Taxes Update

FBT rates and thresholds for 2022-23

The Australian Taxation Office (ATO) has released the following tax determinations which provide the FBT rates and thresholds for the 2022-23 FBT year commencing on 1 April 2022:

- [TD 2022/2](#) which sets out the amounts the Commissioner of Taxation considers reasonable for food and drink expenses incurred by employees receiving a living-away-from-home allowance (LAFHA) fringe benefit, and
- [TD 2022/3](#) which provides the rates to be applied on a cents per kilometre basis for calculating the

taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car.

Other relevant FBT rates and thresholds applicable from 1 April 2022 (for the 2022-23 FBT year) can be found on the [ATO's website](#), including:

- the FBT record keeping exemption threshold which is AUD 9,181
- the state and territory indexation factors for valuing non-remote housing benefits, and
- the benchmark interest rate relevant to valuing a loan or a car fringe benefit remains unchanged at 4.54 per cent.

COVID-19 tests not subject to FBT

Following the 2022-23 Federal Budget, the [Treasury Laws Amendment \(Cost of Living Support and Other Measures\) Act 2022](#) now allows an income tax deduction for COVID-19 tests undertaken by employees before attending their place of work. This facilitates the removal of FBT for employers providing COVID-19 tests to employees through the 'otherwise deductible' rule provided conditions are met, and documentation requirements are satisfied. The new measures will apply with effect from 1 July 2021. Read more in PwC's [Tax Alert](#) about the implications of this measure, particularly for the current FBT compliance season for the FBT year ended 31 March 2022.

Consultation on FBT car parking

The Government [announced](#) that it will conduct consultation in relation to FBT and car parking benefits, with the intention of restoring a previous understanding that car parks charging penalty rates are not genuine alternative parking arrangements for commuters. The consultation will identify amendments required to the law following recent court decisions reflected in Taxation Ruling [TR 2021/2](#), with an intention for those changes to take effect from 1 April 2022.

ESS updates

There have been quite a few developments in relation to the tax and regulatory framework affecting employee share schemes (ESS) since our last update, including expanded access under a new regulatory framework for unlisted companies and a number of tax determinations from the ATO.

Firstly, the [Treasury Laws Amendment \(Cost of Living Support and Other Measures\) Act 2022](#) gives effect to the 2022-23 Federal Budget to introduce a new regulatory framework for unlisted companies. Minimal regulation of employee equity applies where the employee is not required to pay for the equity incentive and where an employee is required to pay, streamlined disclosure requirements will apply provided the outlay is equal or less than

AUD 30,000 per year. This threshold may also be increased by 70 per cent of dividends or cash bonuses payable to the employee in the relevant year. If an employee is not required to make a payment until a liquidity event occurs (such as an initial public offering) there is no limit on the amount of equity that can be offered.

Taxation Determination [TD 2022/8](#) considers the deductibility of expenses incurred to establish and administer an ESS. According to the determination, ESS establishment expenses are considered capital in nature and should be deductible over five years under the blackhole expenditure provisions. The ATO considers that ongoing expenses for the administration of an employee share scheme should be deductible. The determination applies both before and after the date of issue.

Taxation Determination [TD 2022/4](#) considers the meaning of genuine disposal restrictions in the context of an ESS, relevant to determining the deferred taxing point. In order to be a genuine disposal restriction, the ATO states that:

- the disposal restriction must be sufficiently certain, identifiable and legally enforceable
- a requirement to make an application to the company for approval to dispose of the interest may not constitute a genuine restriction, particularly where these applications are routinely approved
- however where clear, objective criteria are required to be satisfied as part of the application, there is more likely to be a genuine disposal restriction
- allowing a restriction to be lifted in exceptional circumstances, such as severe financial hardship, does not mean that a genuine disposal restriction does not exist, and
- a scheme's genuine disposal restrictions must prevent the present disposal of the ESS interest, rather than imposing a restriction at a future time.

TD 2022/4 also discusses how genuine disposal restrictions may be documented and restrictions relating to price sensitive information and applies to dates before and after its issue.

Statement on High Court employment decision

The ATO has issued a [decision impact statement](#) on the decision of the High Court in [Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd \[2022\] HCA 1](#) considering whether the applicant was an employee for the purposes of the *Fair Work Act 2009 (Cth)*. While the Commissioner was not a party to this litigation, it is the ATO's view that the High Court is continuing the practice of examining the totality of

the relationship, however has clarified that the primary consideration is the terms of the contract between the parties provided the contract is an accurate and accepted record of the agreement.

The Commissioner's view is that the long-established employment indicia are still relevant when characterising the contractual relationship between the parties, however, they are to be considered through the focusing question or prism of whether the putative employee is working in the business of the employer. This reflects the Commissioner's understanding and application of the business integration test. In addition, the High Court has continued the emphasis on the examination of control as a complementary focus to the business integration test.

The Commissioner also notes that the High Court's commentary that the use of labels in a contract should not be determinative of the nature of a relationship is consistent with existing views articulated by the Commissioner in several public advice and guidance products.

As a result of the decision, the ATO is reviewing a number of public guidance products.

WA payroll tax relief extended

The Western Australian (WA) Government has [extended](#) the payroll tax waiver for eligible

hospitality businesses affected by COVID-19 to 30 June 2022. The extended waiver will be available to eligible hospitality businesses from 1 April 2022 to 30 June 2022 with total Australian taxable wages greater than AUD 4 million and less than AUD 20 million that experience a 50 per cent decline in turnover over a consecutive four week period between 1 January 2022 to 30 April 2022 compared to the same period last year and that are not eligible to receive a Small Business Hardship Grant.

NSW payroll tax: Employment agency contracts

The New South Wales (NSW) Supreme Court has held in [Bonner & Anor v Chief Commissioner of State Revenue \[2022\] NSWSC 441](#) that the taxpayers were liable to payroll tax as operators of a model agency business. The taxpayers entered into contracts with clients to supply the services of advertising models and acted as agents for the models. The Supreme Court agreed with the Chief Commissioner, that the arrangements were employment agency contracts for payroll tax purposes whereby the taxpayers were procuring the services of another person 'in and for the conduct of the business' of the client.

Let's talk

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

Norah Seddon, Sydney
Partner
+61 (2) 8266 5864
norah.seddon@pwc.com

Adam Nicholas, Sydney
Partner
+61 (2) 8266 8172
adam.nicholas@pwc.com

Greg Kent, Melbourne
Partner
+61 (3) 8603 3149
greg.kent@pwc.com

Anne Bailey, Melbourne
Partner
+61 (3) 8603 6818
anne.m.bailey@pwc.com

Paula Shannon, Brisbane
Partner
+61 (7) 3257 5751
paula.shannon@pwc.com

Global Tax and Trade Update

Offshore income of Indian technical services to be exempt

As part of the [Economic Cooperation Trade Agreement](#) with India to reduce tariffs on trade in goods between Australia and India (see further below), Australia has [agreed](#) to amend its domestic tax laws to prevent the taxation of offshore income of Indian businesses that provide technical services to Australia. The measure was no doubt agreed in response to the outcomes which arose under the Australia-India double tax agreement in the Satyam Computer Services Ltd (Tech Mahindra) case in

which the Courts agreed that Australia had the right to tax technical services income which were royalties under the treaty.

The measure is expected to apply at the same time as the Trade Agreement takes effect which cannot be until at least each country has given effect to it in its domestic law.

Federal Court decision on loss utilisation and transfer pricing

The Federal Court has held in [Singapore Telecom Australia Investments Pty Ltd v Commissioner of](#)

[Taxation \[2022\] FCA 260](#) that the taxpayer was unable to utilise a carried forward loss in calculating the amended assessment pursuant to the [previous decision](#) of the Federal Court that disallowed interest expenses under Australia's transfer pricing rules for other income years.

The Court rejected the taxpayer's contention that the effect of the Commissioner's transfer pricing determinations made under Division 13 of the *Income Tax Assessment Act 1936* is that "for all purposes of the application of this Act in relation to the taxpayer, consideration equal to the arm's length consideration in respect of the acquisition shall be deemed to be the consideration given or agreed to be given by the taxpayer in respect of the acquisition" and specifically that in working out the "transfer pricing benefit" for the year ending 31 March 2011, the amount of profits for each year during the life of the cross-border intra-group loan note issuance agreement (LNIA) up to and including the year ending 31 March 2011 should be taken into account.

The Court found in favour of the Commissioner of Taxation on the basis that the transfer pricing provisions required the amount of profit and its effect on the taxable income of the entity to be ascertained with reference to a particular income year without having regard to earlier income years. The Commissioner did not make determinations for every year of the LNIA. For some years of the LNIA, the Commissioner did not make determinations because no interest was actually paid in those years, and thus the actual interest paid was less than any amount the Commissioner considered to be the arm's length consideration.

OECD consultations and Pillar One reforms

The Organisation for Economic Cooperation and Development (OECD) has released a number of items for public consultation in relation to the Pillar one proposal to Address the Tax Challenges Arising from the Digitalisation of the Economy. The Pillar one rules will introduce a new taxing right over a portion of the profit of large and highly profitable enterprises for jurisdictions in which goods or services are supplied or consumers are located. The latest consultation documents include:

- [Draft Model Rules for Domestic Legislation on Scope](#) under Amount A of Pillar One. Comments on the draft rules were due by 20 April 2022. Read more in PwC's [Tax Policy Alert](#).
- A consultation paper on [the Extractives Exclusion](#) which is proposed to exclude from the scope of Amount A under the Pillar One Model Rules the profits from extractive activities. The exclusion applies where a group derives revenue

from the exploitation of extractive products and the group has carried out the relevant exploration, development or extraction. This approach reflects the policy goal of excluding the economic rents generated from location-specific extractive resources that should only be taxed in the source jurisdiction. Comments on the consultation document were due by 29 April 2022.

Read more in PwC's [Tax Policy Alert](#).

OECD and crypto-assets reporting

The OECD has released a consultation paper on a new [global tax transparency framework](#) providing for the reporting and exchange of information relating to crypto-assets and amendments to the Common Reporting Standard (CRS) providing for the automatic exchange of financial account information. The proposed framework on crypto-assets would cover assets that can be held in a decentralised manner and future asset classes that may rely on similar technology with businesses required to apply due diligence to their customers and report annually on the value of exchanges and transfers.

The paper proposes extending the CRS to cover electronic money products such as digital currencies issued by Central Banks, indirect investments in crypto-assets and derivatives. Changes are also proposed to due diligence requirements and reporting requirements to improve the usability of information for tax authorities.

Comments on the consultation paper were due by 29 April 2022.

OECD and digital platform reporting

The OECD has also released its [standardised IT format](#) to support the automatic exchange of information collected under the Model Reporting Rules for Digital Platforms. The rules were developed to provide a global reporting framework for digital platforms facilitating accommodation, transport and personal services as well as selling goods. The [Bill](#) implementing the sharing economy reporting regime in Australia, which was due to commence on 1 July 2022, has lapsed as a result of the upcoming Federal Election.

Thailand ratifies MLI

Thailand has [deposited its instrument of ratification](#) for the OECD's *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI). The MLI will enter into force on 1 July 2022.

Other OECD updates

In other OECD developments:

- The OECD Forum on Tax Administration has launched its [Inventory of Tax Technology Initiatives](#) containing information on technology tools used by tax administrations around the world designed to help tax administrations reduce both tax gaps and administrative burdens through the use of technology.
- New [stage 2 peer review monitoring reports](#) on Base Erosion and Profit Shifting (BEPS) Action 14 on the Mutual Agreement Procedure have been published for Andorra, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Faroe Islands, Macau, Morocco and Tunisia. The final batch of monitoring reports is expected to be released in the coming months.
- New [peer review reports](#) on transparency and exchange of information on request relating to El Salvador and Gabon have also been published by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Australia-India Economic Cooperation Agreement

Australia has [entered](#) into an [Economic Cooperation Trade Agreement](#) with India to reduce tariffs on trade in goods between Australia and India. Under the agreement, tariffs on (among other items):

- sheep meat and wool will be eliminated immediately
- coal, alumina, metallic ores, including manganese, copper, nickel and critical minerals will be eliminated on entry into force
- avocados, onions, broad, kidney and adzuki beans, cherries, shelled pistachios, macadamias, cashews in-shell, blueberries, raspberries, blackberries, currants will be eliminated over seven years, and
- pharmaceutical products and certain medical devices will be eliminated over five and seven years.

The agreement is intended to be an interim agreement with a full Comprehensive Economic Cooperation Agreement to be entered into in future.

Canadian Federal Budget

The Deputy Prime Minister and Minister of Finance of Canada has presented the Canadian Government's [Federal Budget](#). While there are no changes to corporate tax rates, the budget included a range of corporate and international proposals including a Canada Recovery Dividend (a one-time 15 per cent tax on banks and life insurers), measures to address tax planning that is viewed as manipulating Canadian-controlled private

corporation status, and announced a public consultation on the Canadian implementation of the global minimum tax (Pillar Two) for large multinational enterprises. Read more in PwC's [Insight](#).

President Biden's fiscal year 2023 budget

The White House released its [Fiscal Year 2023 Budget](#) and the United States Treasury released the accompanying '[Green Book](#)', which explains the revenue proposals in the President's budget. The budget contains a proposal to increase the corporate tax rate to 28 per cent with incentives for job creation and investment in the United States. The budget also reiterates the President's support for a global minimum tax rate, contains a new minimum tax rate proposal for taxpayers with a net wealth greater than USD 100 million and increased funding for the Internal Revenue Service. Read more in PwC's [Insight](#).

Drawback of customs duty not available

The Administrative Appeals Tribunal (AAT) has held in [Philip Morris Ltd and Comptroller-General of Customs \[2022\] AATA 548](#) that the applicant was not entitled to a drawback payment in respect of import duty on tobacco products that were re-exported from Australia. Pursuant to new customs laws that entered into force on 1 July 2019, the applicant was required to pay import duties on all tobacco products imported into Australia and request a drawback of duty on products that were delivered to duty free suppliers or re-exported. This required a notice in writing to be provided by the applicant to the Collector of Customs setting out the intention to claim a drawback in advance of re-export. The applicant had provided written declarations of goods being exported, no express notice prior to these shipments was given and accordingly the AAT held that the notice requirements were not satisfied. As a result, the applicant was not entitled to a drawback of import duty and there was no discretion in the legislation to allow for a drawback in the event of non-compliance.

Solar panel components not subject to dumping notice

The AAT held in the decision of [Solar Juice Pty Ltd and Comptroller-General of Customs \[2022\] AATA 550](#) that aluminium rails, various clamps and other boxed components used to attach solar panels to a roof were composite goods designed to form a framework for the mounting of solar panels. As a result, the applicant was entitled to a refund of duty that was imposed pursuant to a Dumping Notice

issued on 21 October 2010 applying to aluminium extrusions imported from China. The Tribunal also found that the imported goods come within the exception to the Dumping Notice being 'unassembled products containing aluminium extrusions'.

New regulations for excise and customs

The excise and excise equivalent customs duty for petrol, diesel and fuel products (excluding aviation fuel) has been halved from 30 March 2022 to 28 September 2022 from 44.2 cents to 22.1 cents per litre as part of the 2022-23 Federal Budget. The reduction was contained in the following Bills which have been enacted:

- [Treasury Laws Amendment \(Cost of Living Support and Other Measures\) Bill 2022](#)
- [Customs Tariff Amendment \(Cost of Living Support\) Bill 2022](#)
- [Excise Tariff Amendment \(Cost of Living Support\) Bill 2022](#)

The government has [given notice](#) that it will impose additional tariffs of 35 per cent on all imports from

Russia and Belarus applicable from 25 April 2022. The government has also prohibited imports of oil and other energy products from 25 April 2022.

The [Excise Tariff Regulations 2022](#) prescribe two additional condensate reservoirs (the Greater Western Flank-2 and Persephone reservoirs) as part of the 'Rankin Trend' as defined under the *Excise Tariff Act 1921 (Cth)*. The new regulations apply from the first date of production of each of the two reservoirs with any excise duty liability that has accrued from previous years will be payable from the financial year commencing 1 July 2022.

The [Customs Amendment \(Unentered and Abandoned Goods\) Regulations 2022](#), which apply from 1 July 2022, reduce and align retention periods for:

- goods requiring a declaration for home consumption or warehousing, where the owner of the goods has failed to make an entry for the goods (unentered goods); and
- goods not requiring or unable to be entered for home consumption, where the goods are found at a customs place and no person claims ownership (abandoned goods).

Let's talk

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

Chris Morris, Sydney
Australian Tax Leader
+61 (2) 8266 3040
chris.j.morris@pwc.com

Michael Taylor, Melbourne
Partner
+61 (3) 8603 4091
michael.taylor@pwc.com

Angela Danieletto, Sydney
Partner
+61 (2) 8266 0973
angela.danieletto@pwc.com

Gary Dutton
Partner, Australian Trade Leader
+61 (4) 3418 2652
gary.dutton@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

Greg Weickhardt, Melbourne
Partner
+61 (3) 8603 2547
greg.weickhardt@pwc.com

Jayde Thompson, Sydney
Partner
+61 (4) 0367 8059
jayde.thompson@pwc.com

Peter Collins, Melbourne
International Tax Leader
+61 (3) 8603 6247
peter.collins@pwc.com

Nick Houseman, Sydney
Australian Transfer Pricing Leader
+61 (2) 8266 4647
nick.p.houseman@pwc.com

Jonathan Malone, Sydney
Partner
+61 (2) 8266 4770
jonathan.r.malone@pwc.com

Indirect Tax Update

Health goods GST exemption

The [A New Tax System \(Goods and Services Tax\) \(GST-free Health Goods\) Determination 2022](#) applies from 31 March 2022 to ensure that certain health goods continue to be exempt from the goods and services tax (GST) following the sunset of the previous Determination which expired on 1 April 2022. The listed goods include condoms,

barrier dams, femidoms, harness devices, lubricants, sunscreen and nicotine products.

Board of Taxation review into low value imported goods

The Board of Taxation has released its [report](#) on its post implementation [review into GST on low-value imported goods](#). By way of background, from

1 July 2018, GST is applied to low value goods using a vendor registration model under which suppliers, online platforms and re-deliverers with an Australian GST turnover of AUD 75,000 or more register, collect and remit GST on the applicable sales to the ATO.

The report concludes that no legislative change is required in relation to the current regime as the primary issues identified can be resolved through administrative measures, would raise integrity concerns or would introduce complexity disproportionate to the issue being addressed. Ultimately, the Board concluded that the regime is working well and that the Government should consider in future whether e-commerce platforms not currently subject to the measure should play a role in the collection of GST or information as their use expands.

Vehicles subject to LCT adjustment

The Federal Court has held in [Automotive Invest Pty Ltd v Commissioner of Taxation \(Gosford Classic Car Museum\) \[2022\] FCA 281](#) that vehicles exhibited in a car museum were not used solely as trading stock and so were subject to increasing luxury car tax (LCT) adjustments. Many of the cars exhibited in the museum were also for sale and the taxpayer received more revenue from sales than from museum admission fees. The taxpayer had quoted its Australian Business Number at the time of importation of the cars on the basis that the cars were to be held as trading stock and for "no other purpose".

The Court rejected the taxpayer's contention that the museum was intended to be a unique way of selling cars and that the word 'other' in the legislative requirement of "no other purpose" was intended to be read as an alternative purpose rather than additional purpose. The Federal Court however did allow the appeal of the taxpayer with respect to a point in relation to input tax credits.

Land sales subject to GST

The Administrative Appeals Tribunal (AAT) has held in [Collins & Anor ATF The Collins Retirement Fund v Commissioner of Taxation \[2022\] AATA 628](#) that the taxpayer was liable to GST on sales of subdivided land. The taxpayer was a superannuation fund registered for GST, that leased two plots of land and subsequently subdivided the land into rural residential lots for sale. Prior to the registration of the subdivision plan and sale of the individual lots, the taxpayer had cancelled its GST registration.

The ATO asserted that the sale of the lots were subject to the GST margin scheme and that the taxpayer should have been registered for GST at

the time of the sale. The taxpayer contended that the sales were the mere realisation of a capital asset and should therefore be disregarded for the purposes of calculating the GST registration turnover threshold.

The AAT found in favour of the Commissioner stating that the character of an asset is determined at the time that a supply is made and that the substantial works and activities of the taxpayer were properly characterised as a commercial venture with the purpose of realising a gain on the sale of the lots.

The Tribunal also rejected the taxpayer's argument that the sales were made as a consequence of the taxpayer ceasing to carry on an enterprise or substantially and permanently reducing the size of an enterprise. The land development venture broadly comprised the subdivision and sale of the subdivided lots and that enterprise did not change until, at the earliest, the sale of the final lot. All sales were made in the course of and as a consequence of carrying on the enterprise, not as a consequence of a reduction in its size or scale.

Guidance on disputes of notional GST

The Australian Taxation Office (ATO) has published [guidance](#) for government entities to dispute a notional GST matter where legal objection and review rights are not available. The document sets out the process which the ATO will follow in the event of a dispute relating to an amount of notional GST, the circumstances where the ATO will refer the matter for external review and an outline of previous external review decisions.

Indirect tax concession scheme extended

The Government has made the following Determinations which upgrade the Indirect Tax Concession Scheme (ITCS) packages which apply to the relevant overseas country consular posts in Australia and staff accredited to those posts:

- [Diplomatic Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(India, Malaysia and the United Kingdom\) Determination 2022](#)
- [Consular Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(India, Indonesia, Malaysia and the United Kingdom\) Determination 2022](#)
- [Diplomatic Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Fiji, Latvia, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga and Vanuatu\) Determination 2022](#)

Let's talk

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

Matt Strauch, Melbourne
Indirect Tax Leader
+61 (3) 8603 6952
matthew.strauch@pwc.com

Jeff Pfaff, Brisbane
Partner
+61 (7) 3257 8729
jeff.pfaff@pwc.com

Suzanne Kneen, Melbourne
Partner
+61 (3) 8603 0165
suzanne.kneen@pwc.com

Michelle Tremain, Perth
Partner
+61 (8) 9238 3403
michelle.tremain@pwc.com

Brady Dever, Sydney
Partner
+61 (2) 8266 3467
brady.dever@pwc.com

Shagun Thakur, Perth
Partner
+61 (8) 9238 3059
shagun.thakur@pwc.com

Adrian Abbott, Sydney
Partner
+61 (2) 8266 5140
adrian.abbott@pwc.com

Mark Simpson, Sydney
Partner
+61 (2) 8266 2654
mark.simpson@pwc.com

Personal Tax Update

Federal Budget cost of living measures enacted

The Government's [2022-23 Federal Budget](#) announcement to increase the low and middle income tax offset (LMITO) by AUD 420 for the 2021-22 income year up to a maximum offset of AUD 1,500 (increased from AUD 1,080) has since been enacted into [law](#).

The increase in the LMITO will apply to individuals who are Australian residents at any time during the 2021-22 income year and whose taxable income for the 2021-22 income year is less than AUD 126,000 (trustees who are liable to be assessed in respect of a share of the net income of a trust to which a resident individual beneficiary is presently entitled and where that share is less than AUD 126,000 are also eligible).

The same amending legislation also allowed for a one-off payment of AUD 250 to be made to eligible pensioners, welfare recipients, veterans and concession card holders.

The legislation also increased the Medicare levy low-income threshold amounts for singles, families, seniors and pensioners has also been increased for the 2021-22 income year as follows:

- individuals AUD 23,365 (increased from AUD 23,226)
- families AUD 39,402 (increased from AUD 39,167) with an additional AUD 3,619 for each dependent child or student (increased from AUD 3,597)
- single seniors and pensioners AUD 36,925 (increased from AUD 36,705), and
- the family threshold for seniors and pensioners to AUD 51,401 (increased from AUD 51,094) plus AUD 3,619 for each dependent child or student (increased from AUD 3,597).

The costs of taking a COVID-19 test for attending a place of work are also made deductible under this amending law applicable from 1 July 2021.

ATO's views on backpacker tax updated

The Australian Taxation Office (ATO) has updated its [decision impact statement](#) on [Addy v Commissioner of Taxation \[2021\] HCA 34](#) concerning the 'backpacker tax'. By way of reminder, the High Court considered that the tax rates applicable to working holiday makers, known as the 'backpacker tax', contravened the non-discrimination article in the double tax agreement between Australia and the United Kingdom (UK).

The decision impact statement confirms that an individual must be a national of a country with which Australia has a double tax agreement containing a non-discrimination clause and a resident of Australia to be entitled to treaty protection.

The update to the decision impact statement provides more detail around the application of the non-discrimination clause. The Commissioner's view of the effect of the decision is that, if on a comparison the tax payable by a resident working holiday visa holder is greater than the tax payable by an Australian national resident deriving the same amount of income from the same sources and in the same circumstances, the working holiday visa holder will instead be taxed on the same basis as an Australian national – this means excluding the provisions of domestic law that apply on the basis of nationality. Accordingly, where the resident working holiday visa holder derives working holiday maker taxable income as well as other income, this may mean that they include in their assessable income any foreign income that an Australian resident national in the same circumstances would include (such income may have otherwise been non-assessable non-exempt income for a temporary

resident). However, if the tax payable by the resident working holiday maker is less than the tax paid by the comparable Australian national, the non-discrimination clause does not apply and the 'backpacker tax' rates will continue to apply.

The ATO's view is that most people in Australia on a working holiday visa will not be a resident of Australia for tax purposes and the ATO will expect an explanation where an individual contends they are an Australian resident.

New [website guidance](#) on working holiday makers has been published following the decision of the High Court.

Partial deductions for work related expenses

There have been a number of recent decisions by the Administrative Appeals Tribunal (AAT) which considered the deductibility of certain alleged work-related expenses.

In [XGPH v Commissioner of Taxation \[2022\] AATA 567](#) the AAT held that expenses claimed by a therapeutic care worker and aspiring actor were only partially allowable as deductions. The expenses consisted of:

- work-related car expenses for which the taxpayer had failed to maintain documentation required under the log book method and was therefore limited to the maximum allowable deduction of AUD 3,400 under the cents per kilometre method
- rental expenses for an office space for which the AAT found was used equally for both work and non-work related purposes such that the taxpayer can reasonably deduct 50 percent of the rental expense of the office space that he incurred in gaining or producing his assessable income
- phone expenses and internet expenses for which the AAT accepted the amount allowed as a deduction by the ATO in the absence of evidence from the taxpayer, and
- an audio book and physical training expenses to prepare for a paid ballet role which the AAT accepted was an allowable deduction.

In [London v Commissioner of Taxation \[2022\] AATA 644](#) the AAT found that a taxpayer employed as a dog handler in the South Australian Department of Correctional Services was entitled to a number of deductions as work related expenses. The taxpayer was responsible for training, feeding and exercising two dogs as well as supervising the dogs when deployed in the prison system. The job required the taxpayer to be available to assist in emergencies as well as to maintain a high degree of fitness to control and move with the large dogs. The Tribunal found as follows:

- work-related car expenses were not deductible as the taxpayer was provided with a vehicle by his employer for travel between work and his home, and travel between the taxpayer's home and gyms was not deductible on the basis it was not related to the earning of income.
- certain items of work-related clothing were found to be deductible including a uniform belt, waterproof jacket and waterproof boots while no deduction was allowed for a light jacket, jumper and sunglasses.
- expenses relating to the training and care of the dogs were found to be deductible, including a stopwatch, dog treats, a dog training video and a work vehicle car wash.
- deductions were allowed for multiple gym memberships on the basis they were taken out with a view to maintaining the high level of fitness required for the taxpayer's employment, consistent with the reasoning in Taxation Ruling TR 95/13 concerning fitness expenses for police officers.
- the taxpayer's home office, gym clothing, gym equipment and dietary supplements were found to be non-deductible.

Exemption for IMF and World Bank employees

The [Specialized Agencies \(Privileges and Immunities\) Amendment Regulations 2022](#) provide an income tax exemption for Australian residents that receive salaries or emoluments from the International Monetary Fund (IMF) or an agency of the World Bank Group where the resident is performing a temporary mission. The regulations apply to salaries or emoluments received after 1 July 2017 and [guidance](#) provided by the ATO states that affected taxpayers should amend any income tax return previously lodged that showed these amounts as assessable income.

Government monitoring outcomes of consultation on trust reimbursement arrangements

The Government has [announced](#) that it is monitoring the ongoing consultation process in relation to the ATO's current work on [guidance](#) on section 100A trust reimbursement agreements. The government notes that it will consider if legislative change is required if adverse retrospective outcomes arise. The government is also considering the Carter decision of the High Court (see the other news section) in relation to the tax outcomes for a beneficiary 'disclaiming' their trust entitlement and if any inequitable outcomes requiring legislative change may arise.

Let's talk

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

Martina Crowley, Perth

Partner

+61 (3) 8603 1450

martina.crowley@pwc.com

Samantha Vidler, Brisbane

Partner

+61 (7) 3257 8813

samantha.vidler@pwc.com

Glen Frost, Sydney

Partner

+61 (2) 8266 2266

glen.frost@pwc.com

Matt Gurner, Perth

Partner

+61 (8) 9238 3458

matthew.gurner@pwc.com

Amy Etherton, Newcastle

Partner

+61 (2) 4925 1175

amy.etherton@pwc.com

Alistair Hutson, Adelaide

Partner

+61 (8) 8218 7467

alistair.hutson@pwc.com

State Taxes Update

Tasmanian housing affordability measures now law

The following Bills relating to housing affordability and duty and land taxes in Tasmania have passed the Tasmanian Parliament and are now law:

- [Treasury Miscellaneous \(Affordable Housing and Youth Employment Support\) Bill 2022](#) that increases the threshold for the 50 per cent stamp duty concession for first home buyers and pensioners seeking to downsize to AUD 600,000 (up from AUD 500,000). The new threshold applies from 1 January 2022 until 30 June 2023. In addition, the First Home Owner Grant scheme has been extended for the 2022-23 financial year, and
- [Land Tax Rating Amendment Bill 2022](#) that lifts the tax free threshold for land tax to AUD 100,000, lifts the upper tax threshold to AUD 500,000 and lower the tax rate for land valued between AUD 100,000 and AUD 500,000 to 0.45 per cent with effect from 1 July 2022.

Amendments to WA duty legislation

The Western Australian (WA) Government has introduced the [Duties Amendment Bill 2002](#) into the WA Parliament, implementing its [announcement](#) of measures to be included in its 2022-23 State Budget. The Bill contains a number of amendments relating to duty, including:

- lowering the general rate of duty applicable to non-residential property to align with the rate applicable to residential property so that a single rate of duty will apply to all dutiable transactions
- adjusting the transfer duty concession for residential land or business property valued less than AUD 200,000, aligning the treatment of residential and business property transactions following the introduction of the new general rate

- introducing an exemption from duty for new service demonstrator motor vehicles (i.e. those that are loaned to customers while having their vehicle serviced) as well as an exemption from duty where a vehicle is returned to the seller for a full refund
- abolishing duty on prospecting licences unless other dutiable property is included in the transaction, and
- amending the treatment of family law court orders to make them exempt from duty where there is a marriage or de facto relationship breakdown with nominal duty applying to transfers of property made under court orders.

NSW duty measures yet to be enacted

The [State Revenue and Fines Legislation Amendment \(Miscellaneous\) Bill 2022](#), which was discussed in [last month's tax update](#), remains before the New South Wales (NSW) Parliament. This Bill proposes to amend the *Duties Act 1997 (NSW)*, *Land Tax Act 1956 (NSW)* and *Taxation Administration Act 1996 (NSW)*. The amendments (if enacted) may significantly broaden the types of transactions subject to stamp duty. The Bill cannot be considered next until Tuesday, 10 May 2022.

NSW land tax relief and discounts

Revenue New South Wales has [published](#) guidance clarifying that a landowner that had applied for COVID-19 land tax relief must amend the application where circumstances change as a result of rent negotiations after the application has been submitted. The amended application was required to be submitted by 30 April 2022.

Revenue NSW has also published [information](#) on the 50 per cent land tax discount available for new build-to-rent housing projects. The concession applies to build-to-rent developments that commence construction after 1 July 2020 and is available from the 2021 land tax year until 2040. The

guidance page also includes guidance and links on applying for the concession.

ACT off-the-plan duty threshold increased

In the Australian Capital Territory the [Taxation Administration \(Off the Plan Unit Duty Exemption Scheme\) Determination 2022](#) provides an exemption from duty for off-the-plan residential unit purchases valued at AUD 600,000 or less (increased from the previous threshold of AUD 500,000). The determination sets out eligibility requirements and commences on 1 April 2022.

Victoria land tax: VCAT finds trust not eligible for primary production land tax exemption

The Victorian Civil and Administrative Tribunal has held in [Sharlin Pty Ltd v Commissioner of State Revenue, \[2022\] VCAT 378](#) that land was owned by the trustee of a discretionary trust but it did not meet the relevant requirements to be exempt primary production land. The case concerned a unit trust that held land within an urban zone of the greater Melbourne area and which had a family trust as its sole unitholder. Two separate companies were appointed as trustees, with a common sole director

and unitholder. The trust deed of the landowner trust did not identify a specific beneficiary other than any person or persons who owned the issued units or a director or shareholder of a company that held issued units. The trust deed contained a discretion for the trustee to distribute income to one or more members of each class of beneficiary, with a provision for a distribution if the discretion was not exercised as well as a discretion to pay or set aside income for charitable purposes with the consent of the unitholders.

The Tribunal found that the landowner trust was a discretionary trust within the meaning of the *Land Tax Act 2005* as the trustee had a discretion to identify beneficiaries and the amount distributed and it was only in cases where this discretion was not exercised would the sole unitholder be entitled to the income of the trust. The ability to set aside funds for charitable purposes also meant that the trust should be classified as a discretionary trust. However, the primary production exemption could not apply as the Tribunal found that the legislative requirement in regard to a specific beneficiary that the beneficiary be "specifically named" rather than be a member of a class to which distributions could be made and accordingly the trust did not meet the beneficiary requirements required under s67(2) of the *Land Tax Act 2005* (Vic).

Let's talk

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

Rachael Cullen, Sydney
Partner
+61 (4) 0947 0495
rachael.cullen@pwc.com

Cherie Mulyono, Sydney
Partner
+61 (2) 8266 1055
cherie.mulyono@pwc.com

Rachael Munro, Perth
Partner
+61 (8) 9238 3001
rachael.munro@pwc.com

Barry Diamond, Melbourne
Partner
+61 (3) 8603 1118
barry.diamond@pwc.com

Matthew Sealey
Partner
+61 (4) 0068 4803
matthew.sealey@pwc.com

Stefan DeBellis, Brisbane
Partner
+61 (7) 3257 8781
stefan.debellis@pwc.com

Jess Fantin, Brisbane
Partner
+61 (7) 3257 5501
jess.fantin@pwc.com

Superannuation Update

Reduction to minimum super drawdown extended

The [Superannuation Legislation Amendment \(Superannuation Drawdown\) Regulations 2022](#) extend the 50 per cent reduction to minimum drawdown requirements for superannuation account-based pensions, allocated pensions and market linked pensions until 30 June 2023, to give effect to the 2022-23 Federal Budget

announcement. The measure is designed to continue to assist pension and annuity account balances to recover from capital losses, by allowing retirees to adjust their drawdowns and avoid being forced to sell assets in a loss position to fund income stream payments.

By way of reminder, where the minimum drawdown requirement is not met, the member and the fund will lose access to certain concessions – refer also to the ATO's [handy information](#).

Consultation on NALE rules

As part of the 2022-23 Federal Budget, the Government has [announced](#) that it will consult with industry on the operation of the non-arm's length income and expense (NALE) provisions in relation to Australian Prudential Regulation Authority (APRA) regulated superannuation funds. These provisions are designed to ensure that superannuation funds do not inflate fund earnings through non-arm's length transactions. However, industry has raised concerns in relation to recent amendments, confirmed by the Australian Taxation Office (ATO) in law companion ruling [LCR 2021/2](#) that could result in an immaterial non-arm's length transaction leading to all income of the fund being taxed at the top marginal rate. The changes proposed are intended to apply from 1 July 2022.

SMSFs and limited recourse borrowing – ATO's PCG amended

The ATO has amended practical compliance guideline [PCG 2016/5](#) in relation to safe harbours for limited recourse borrowing arrangements entered into by self-managed superannuation funds (SMSFs). The amendments clarify that the ATO will not allocate compliance resources to review limited recourse borrowing arrangement (LRBA) arrangements established before 30 June 2016 which could be captured by the retrospective nature of the recent changes to the non-arm's length income provisions in relation to income derived by the SMSF for the 2018-19 and later income years from an asset that is subject to a LRBA. The concession will be limited to arrangements entered into prior to the 2014-15 income year that were previously not on arm's length terms which were amended to comply with safe harbour guidelines by 31 January 2017.

Third party data tax controls guidance released

The ATO has released [guidance](#) on third-party data tax controls for large superannuation funds, managed funds and insurance companies and how it will apply the justified trust methodology to these controls. Entities that rely on third-party data from

outsourced service providers such as custodians and administrators should document how they assess the integrity of the underlying data that feeds into their reporting obligations. Third-party data tax controls provide a framework so that an entity does not need to examine every single transaction but will have comfort that there are controls in place to manage and mitigate tax risk, error and/or misstatement. Under the guidance, entities are expected to have an understanding of the following:

- knowledge of the different sources of tax data
- where calculation engines are used to calculate amounts required for the tax reporting, knowledge of how the calculations are performed, and
- how this tax data is used to complete the relevant lodgments to the ATO.

The trustees or boards (or the relevant sub-committee) have a responsibility to develop systems and processes in accordance with their tax risk management framework to manage and mitigate the risk of inaccuracies over third-party data that feed into their income tax reporting obligations.

The guide also contains guidance for entities seeking to self-review their governance framework.

The guidance is intended to supplement the ATO's [Tax Risk Management and Governance Review Guide](#). In the guidance, the ATO outlines how it will review objective evidence to determine how third party data income tax controls are designed and operate effectively.

Regulations correct unintended outcomes on commutation of income streams

The [Treasury Laws Amendment \(Allowing Commutation of Certain Income Streams\) Regulations 2022](#) remove unintended outcomes relating to rules permitting commutation of superannuation income streams. The amendments ensure that recipients of non-capped defined benefit income streams (that were commenced on or after 1 July 2017) can rectify excess transfer balance amounts as intended.

Let's talk

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

Naree Brooks, Melbourne
Partner
+ 61 (3) 8603 1200
naree.brooks@pwc.com

Marco Feltrin, Melbourne
Partner
+ 61 (3) 8603 6796
marco.feltrin@pwc.com

Abhi Aggarwal, Brisbane
Partner
+ 61 (7) 3257 5193
abhi.aggarwal@pwc.com

Let's talk

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

Alice Kase, Sydney

Partner

+ 61 (2) 8266 5506

alice.kase@pwc.com

Ken Woo, Sydney

Partner

+ 61 (2) 8266 2948

ken.woo@pwc.com

Allister Sime, Melbourne

Director

+61 (3) 8603 1195

allister.sime@pwc.com

Sharyn Frawley

Director

+61 (3) 8603 1217

sharyn.frawley@pwc.com

Legislative Update

Federal Parliament resumed sittings on 29 March 2022, when the 2022-23 Federal Budget was handed down. Refer to our [in-depth analysis](#) of the key tax measures announced in the Budget.

Since our last update, the following Bills were introduced and passed through Parliament and are now law:

- the [Treasury Laws Amendment \(Cost of Living Support and Other Measures\) Bill 2022](#) which was introduced into the House of Representatives on 30 March 2022, implements a number of announcements contained in the 2022-23 Federal Budget including:
 - deductibility of COVID-19 tests for the purpose of determining whether the individual can attend or remain at their place of work
 - regulatory amendments relating to employee share schemes
 - reducing the Gross Domestic Product uplift factor for pay-as-you-go (PAYG) and goods and services tax (GST) instalments to two per cent
 - increasing the low and middle income tax offset by an amount of AUD 420 for the 2021-22 income year
 - prescribing new deductible gift recipients
 - indexing the Medicare low-income thresholds, and
 - providing for the temporary reduction of fuel excise by 50 per cent for a period of six months.
- the [Customs Tariff Amendment \(Cost of Living Support\) Bill 2022](#) and [Excise Tariff Amendment \(Cost of Living Support\) Bill 2022](#), which were introduced into the House of Representatives on 30 March 2022, implements the temporary 50 per cent reduction in fuel excise for a period of six months.

Since our last update, the following legislation has completed its passage through Parliament and is now law:

- the [Offshore Petroleum \(Laminaria and Corallina Decommissioning Cost Recovery Levy\) Bill 2021](#) and [Treasury Laws Amendment \(Laminaria and Corallina Decommissioning Cost Recovery Levy\) Bill 2021](#) which apply a new levy on registered holders of petroleum production licenses for the 2021-22 to 2029-30 income years at a rate of 48 cents per barrel of oil equivalent and payable to the Commissioner of Taxation annually.

The Federal Election has now been called and will be held on 21 May 2022. As a result, Federal Parliament has been prorogued and the House of Representatives has been dissolved from 11 April 2022. The next sitting day for Parliament will be determined after the outcome of the Federal election.

All legislation before Parliament has lapsed, including the following tax and superannuation measures:

- [Treasury Laws Amendment \(Tax Concession for Australian Medical Innovations\) Bill 2022](#) which proposes to introduce the patent box regime for medical and biotechnology patents (as announced in the 2021-22 Federal Budget)
- [Treasury Laws Amendment \(Enhancing Tax Integrity and Supporting Business Investment\) Bill 2022](#) which contains the amendments to allow taxpayers to self-assess the effective life of intangible depreciating assets
- [Treasury Laws Amendment \(2021 Measures No. 7\) Bill 2021](#), which includes the proposed sharing economy reporting regime and removal of the \$250 non-deductible threshold for work-related self-education expenses
- [Income Tax Amendment \(Labour Mobility Program\) Bill 2022](#) which contains amendments to the tax treatment of labour mobility programs, and

- [Treasury Laws Amendment \(Streamlining and Improving Economic Outcomes for Australians\) Bill 2022](#) which contains amendments relating to reporting and auditing of registrable superannuation entities and increased powers for the Administrative Appeals Tribunal to pause or modify debt recovery action.

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

- the [Superannuation Legislation Amendment \(Superannuation Drawdown\) Regulations 2022](#) extending the 50 per cent reduction to minimum drawdown requirements until 30 June 2023
- the [Treasury Laws Amendment \(Allowing Commutation of Certain Income Streams\) Regulations 2022](#) that remove unintended outcomes relating to rules permitting commutation of superannuation income streams
- the [A New Tax System \(Goods and Services Tax\) \(GST-free Health Goods\) Determination 2022](#) that exempts certain health goods from GST
- the [Diplomatic Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(India, Malaysia and the United Kingdom\) Determination 2022](#) and [Consular Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(India, Indonesia, Malaysia and the United Kingdom\) Determination 2022](#) to upgrade the Indirect Tax Concession Scheme (ITCS) packages for India, Indonesia, Malaysia and the United Kingdom to provide indirect tax concessions to their consular posts in Australia and staff accredited to those posts
- the [Diplomatic Privileges and Immunities \(Indirect Tax Concession Scheme\) Amendment \(Fiji, Latvia, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga and Vanuatu\) Determination 2022](#) to upgrade the ITCS packages for Fiji, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, and Tonga and create new ITCS packages for Latvia,

Nauru and Vanuatu for the benefit of diplomatic missions and accredited staff

- the [Income Tax Assessment \(Eligible State and Territory COVID-19 Economic Recovery Grant Programs\) Amendment Declaration \(No 3\) 2022](#) that enables income from COVID-19 support programs to be considered non-assessable non-exempt income
- [Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2022](#), and [Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2022](#) that set out which persons and entities might be required to lodge an income tax return for the year ending 30 June 2022
- the [Specialized Agencies \(Privileges and Immunities\) Amendment Regulations 2022](#) that provide an income tax exemption for Australian residents that receive salaries or emoluments from the International Monetary Fund or an agency of the World Bank Group
- the [Industry Research and Development \(clinical trials, phase 0, I, II, III, pre-market pilot stage, pre-market pivotal stage, for an unapproved therapeutic good\) Determination 2022](#) that provides for certain pre-market pilot and pre-market pivotal stage clinical trials to be eligible activities for the purposes of the research and development (R&D) tax incentive.
- the [Industry Research and Development Decision-making Principles 2022](#) that set out parameters for IISA when making decisions in relation to the R&D tax incentive
- [Notice of Intention to Propose Customs Tariff Alterations \(No.4\) 2022](#) providing notice that additional tariffs of 35 per cent may be imposed on imports from Russia and Belarus
- the [Excise Tariff Regulations 2022](#) that prescribe two additional condensate reservoirs as part of the 'Rankin Trend' under the *Excise Tariff Act 1921*.

Let's talk

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

Chris Morris, Sydney
Australian Tax Leader
+61 (2) 8266 3040
chris.morris@pwc.com

Sarah Hickey, Sydney
Sydney Tax Market Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

James O'Reilly, Brisbane
Brisbane Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Jason Karametos, Melbourne
Industries Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Let's talk

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

Kirsten Arblaster, Melbourne
Melbourne Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Rob Bentley, Perth
Perth Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Other News

2022-23 Budget measures

A number of tax-related measures were announced in the [2022-23 Federal Budget](#) which was handed down on 29 March 2022. Refer to [PwC's Federal Budget tax analysis](#) for details. The following key measures which were announced in the Budget are still to be implemented:

- a temporary technology investment boost which will allow for an additional 20 per cent deduction on business expenditure and purchases of depreciable assets that support digital adoption
- a temporary skills and training boost which will allow an additional 20 per cent deduction for expenditure on external training courses provided to employees.
- expand access to the Patent Box regime to include eligible patents for technology focused innovations in the agricultural sector and low emissions technologies
- new measures to leverage technology to automate tax reporting requirements and align tax instalment payments with financial performance
- sharing of single touch payroll data with State and Territory governments to allow for the pre-filling of payroll tax returns
- providing eligible business the option to report taxable payments reporting data via software at the same time as activity statements instead of lodging an annual Taxable Payments Annual Report
- ensuring that all trusts have the option to lodge income tax returns electronically, and
- allow small and medium manufacturers, importers and distributors in the alcohol and fuel sectors to lodge and pay excise quarterly instead of monthly or weekly.

In addition to the enactment of the Budget measure to increase the low and middle income earners tax offset (as noted in the Personal Taxes section), [amendments](#) were also enacted to give effect to the

measure to adjust the Gross Domestic Product (GDP) uplift rate which is used by some taxpayers for pay-as-you-go (PAYG) instalments and Goods and Services Tax (GST) instalments to two per cent (instead of ten per cent) for the 2022-23 income year.

Partnerships and 'connected with' concept

The Australian Taxation Office has issued Taxation Determination [TD 2022/7](#) that considers the 'connected with another entity' concept in relation to a partnership. This concept is relevant to working out the aggregated turnover of a taxpayer. The Determination states that a partnership should be treated as a separate entity from its partners for the purposes of determining control as applied under the relevant provisions. A partner is capable of directly controlling a partnership based on the 'general control tests' or the specific test for determining whether an entity directly controls a partnership (the 'partnership control test'). When determining whether a partnership directly controls another entity, the partnership is the relevant entity, rather than the individual partners in their capacity as partners.

In addition, foreign hybrid limited partnerships and foreign hybrid companies are to be treated as partnerships for the purposes of these tests. A non-entity joint venture is not considered a separate entity so that the rules are to be applied to each entity that makes up the joint venture separately.

Legal professional privilege

The Federal Court has partially upheld legal professional privilege claims in [Commissioner of Taxation v PricewaterhouseCoopers \[2022\] FCA 278](#) in the context of services provided by a multidisciplinary partnership. The Court rejected the Commissioner's broad claims that a relevant lawyer/client relationship was not established and approached the determination of legal privilege on a 'document-by-document' basis by examining a

series of sample documents with reference to the content, context and other evidence relevant to each document.

Further COVID-19 support programs declared

The [Income Tax Assessment \(Eligible State and Territory COVID-19 Economic Recovery Grant Programs\) Amendment Declaration \(No 3\) 2022](#)

was made to enable income from additional COVID-19 support programs to be considered non-assessable non-exempt income. The determination includes the following grant programs:

- NSW Accommodation Support Grant
- Commercial Landlord Hardship Grant (NSW)
- NSW Performing Arts Relaunch Package
- NSW Festival Relaunch Package
- 2022 Small Business Support Program (NSW)
- 2021 COVID-19 Business Support Grants (Queensland)
- COVID-19 Business Support Grant – July 2021 (SA)
- COVID-19 Additional Business Support Grant (SA)
- COVID-19 Tourism and Hospitality Support Grant (SA)
- COVID-19 Business Hardship Grant (SA)
- COVID-19 Business Support Grant (ACT)

ANAO report on JobKeeper

The Australian National Audit Office (ANAO) has released its [performance audit report](#) into the administration of the JobKeeper scheme. The ANAO found the administration of the scheme by the ATO to be largely effective except for shortcomings in relation to its compliance program. Both the Treasury and the ATO welcomed the findings of the ANAO, while noting areas for improvement.

Who might be required to lodge a 2022 income tax return?

The following legislative instruments set out which persons and entities might be required to lodge an income tax return for the year ending 30 June 2022:

- [General Notice of Requirement to Lodge a Return](#), and
- [Notice of Requirement for Parents with a Child Support Assessment](#).

Consultation on distribution rules for ancillary funds

Treasury has released a [consultation paper](#) on proposed new distribution guidelines for ancillary funds that would allow approved funds to

accumulate funds to support large projects and relax restrictions on the transfer of assets between ancillary funds. Ancillary funds are trusts that are set up for the sole purpose of distributing money or property to deductible gift recipients (DGRs). Under current rules, the requirement for funds to make a minimum distribution each financial year might prevent ancillary funds working with certain DGRs to support large projects, particularly capital intensive projects such as health or research infrastructure and also the limitation on moving assets between ancillary funds prevents private ancillary funds contributing to the work of public ancillary funds that are better placed to support particular types of DGRs.

The Government seeks feedback on proposals addressing these limitations while preserving the philanthropic nature of ancillary funds. Submissions may be made until 6 May 2022.

Commissioner found to have engaged in oppressive conduct

The Federal Court in the decision of [Hyder & Ors v Commissioner of Taxation \[2022\] FCA 264](#) has found the Commissioner of Taxation engaged in oppressive conduct by seeking to enforce payment of the total amount of a debt against multiple taxpayers. In the case, the Commissioner had issued alternative assessments to multiple taxpayers concerning the same amounts of income and requiring the taxpayers to pay the total debt or make a partial payment and provide security for the remainder. The Court also found that an ATO officer had erred by failing to take into account the multiple assessments, showing that the Commissioner held genuine doubt about where the true liability should arise, when failing to grant a deferral for the due date of payment.

Beneficiaries' trust distribution disclaimers ineffective

The High Court has held in [Commissioner of Taxation v Carter & Ors \[2022\] HCA 10](#) that disclaimers of trust distributions by beneficiaries were ineffective. The taxpayers were all default beneficiaries of a trust and were issued with assessments in respect of default distributions made by the trust.

Following the assessments, the taxpayers retrospectively disclaimed the distributions. The High Court found that the wording in the income tax legislation, assessing beneficiaries presently entitled to a share of the income of the trust estate, was directed to the position in existence immediately before the end of the income year. As a result, the present entitlement of a beneficiary is determined at the close of the income tax year and disclaimers made after that time are ineffective.

Coalition's lower taxes guarantee

In the lead up to the Federal election to be held on 21 May 2022, the Coalition has [indicated](#) that a Morrison Government commits to a Lower Tax Guarantee during the next term of Parliament as well as providing an ironclad guarantee that the planned \$100 billion of tax relief will be delivered to Australian workers over the next four years.

Specifically, it has been indicated that a re-elected Morrison Government will continue to keep taxes below 23.9 per cent of GDP and that its Lower Tax Guarantee includes no new taxes on: Australian workers, retirees, superannuation, small businesses, housing and electricity.

Greens' tax policies

The Greens have a proposed a number of tax policies including:

- a new Corporate Super-Profits Tax of 40 per cent on big corporations:
 - for non-mining corporations with over AUD 100 million turnover, the tax would apply to their super-profits, i.e. applied to net revenue after deducting income tax and after making an allowance for a fair return to shareholders, and
 - for mining projects, the tax on corporations will be assessed on an Australian project-by-project basis, based on the original Henry Review's mining super profits tax.
- an annual extra 6 per cent wealth tax on billionaires, and
- a crackdown on multinational tax avoidance including:
 - stopping the artificial shifting of debt to Australia to increase tax deductions
 - stopping tax deductions for royalties paid to other arms of the same company
 - establishing a public register of beneficial owners
 - publishing basic information on the tax paid by companies earning over AUD 50 million, and
 - requiring the ATO to publish the details of the settlement of tax disputes with companies.

For all the Greens policies, refer to their [website](#).

ALP tax policies

The Australian Labor Party (ALP) has released its tax policies directed at [small business](#) and [multinationals](#) which it proposes to apply if it forms government after the Federal election.

From a small business tax perspective, the ALP propose measures to:

- ensure small businesses are paid on time to sustain growth across the economy with a mechanism to ensure payment within 30-days, and
- commit to reduce the time small businesses spend doing taxes, cut paperwork and target support.

The ALP's multinational tax proposals include the following measures which are said not to start before 2023:

- Supporting the OECD's Two-Pillar Solution for a global 15 per cent minimum tax and ensuring some of the profits of the largest multinationals (particularly digital firms) are taxed where the products or services are sold.
- Limiting debt-related deductions by multinationals at 30 per cent of profits (EBITDA – earnings before interest, taxes, depreciation, and amortisation) from 1 July 2023, consistent with the OECD's recommended approach, while maintaining the arm's length test and the worldwide gearing ratio.
- Limiting the ability for multinationals to abuse Australia's tax treaties when holding intellectual property in tax havens by denying tax deductions for payments for the use of intellectual property when they are paid to a jurisdiction where they don't pay sufficient tax.
- Introducing transparency measures including reporting requirements on tax information (and the number of employees) for all jurisdictions the multinational operates in, implementing a public registry of beneficial ownership, mandatory reporting of tax haven exposure and requiring all entities tendering for Australian Government contracts worth more than AUD 200,000 to state their country of domicile for tax purposes.

The Shadow Treasurer has also [confirmed](#) that the ALP will not proceed with a previous proposal to impose a 30 per cent minimum tax on family trust distributions. All ALP policies can be found on their [website](#).

Let's talk

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

Chris Morris, Sydney
Australian Tax Leader
+61 (2) 8266 3040
chris.morris@pwc.com

Sarah Hickey, Sydney
Sydney Tax Market Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Market Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

James O'Reilly, Brisbane
Brisbane Corporate Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Rob Bentley, Perth
Perth Corporate Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Jason Karametos, Melbourne
Industries Corporate Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Editorial

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

Editorial

Bluebell Holdaway

Manager, Communications

bluebell.holdaway@pwc.com

Lynda Brumm

Principal, Tax Markets & Knowledge
+61 (7) 3257 5471

lynda.brumm@pwc.com

Blake Lloyd

Manager, Tax Markets & Knowledge
+61 (2) 8266 5059

blake.lloyd@pwc.com

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