

PwC's Monthly Tax Update

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

May 2023



Corporate Tax Update

Trustee not entitled to R&D claim

The Full Federal Court has dismissed the taxpayer's appeal in [Sunlite Australia Pty Ltd v FC of T 2023 \[2023\] FCAFC 43](#) finding that the taxpayer was not entitled to apply the research and development (R&D) concession in relation to expenditure it incurred.

Sunlite Australia Pty Ltd was the trustee of a trading trust. In its capacity as trustee it owned and operated a business that develops and manufactures products such as awnings, external venetians, glazing and weather shades. In the 2012 and 2013 income years, Sunlite acting in its own interests and not as trustee was registered as an R&D entity and claimed notional deductions for those years on the basis that it had incurred expenditure on R&D activities.

The Court rejected the taxpayer's argument that when it, as a body corporate acting as trustee, incurred expenditure on R&D activities, the trust could not have incurred that liability because it was not a separate legal entity. The Court found that expenditure incurred by Sunlite as the entity that is a trustee of the trust is not expenditure that it incurs in its own right. The provision in section 355–205 of the Income Tax Assessment Act 1997 (Cth) has the effect that an R&D entity (a body corporate acting in its own right) can deduct 'expenditure it incurs' means expenditure it incurs in its own right and not as trustee.

Furthermore, in order to be entitled to claim a notional deduction an entity must be registered under section 27A of the *Industry Research and Development Act 1986* (Cth) in respect of the R&D activities the subject of the deduction because the notional deduction is only available to the extent that the expenditure is incurred on R&D activities 'for which the R&D entity is registered', ie it must be the R&D entity that is registered. Sunlite acting in its capacity as a trustee is not an R&D entity.

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Employment Taxes Update

FBT rates and thresholds for 2023–24

The Australian Taxation Office (ATO) has released details of the various FBT rates and thresholds for the FBT year commencing on 1 April 2023.

In particular, the ATO has published the following tax determinations which relate to the 2023-24 FBT year:

- [TD 2023/2](#) 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 2023/1](#) 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 2023 (for the 2023–24 FBT year) can be found on the [ATO's website](#), including:

- FBT gross up rates;
- the car parking threshold;
- the benchmark interest rate relevant to valuing a loan or a car fringe benefit; and
- the FBT record keeping exemption threshold.

Further analysis on the recent Full Federal Court decision on the application of Superannuation Guarantee to contractors

The Full Federal Court recently handed down its judgement in the matter of [Jamsek v ZG Operations Australia Pty Ltd \(No 3\) \[2023\] FCAFC 48](#) in relation to the obligation to pay superannuation guarantee on certain contractor arrangements. PwC has prepared an article that considers the key takeaways from this decision.

Please refer to our recent [article](#) for this analysis.

Protecting Worker Entitlements Bill: Introducing Superannuation Guarantee into the National Employment Standards

The [Fair Work Legislation Amendment \(Protecting Worker Entitlements\) Bill 2023](#) (PWE Bill) has been introduced into Parliament and will seek, amongst other things, to insert an entitlement to superannuation contributions in the National Employment Standards (NES) in the *Fair Work Act 2009* (Cth) (FWA).

The NES are minimum employment entitlements that have to be provided to the vast majority of employees in Australia. Workplace instruments (including modern awards, enterprise agreements and employment contracts) cannot provide for conditions less than the NES. There are currently 11 minimum NES entitlements, which include fundamental employment entitlements such as annual leave, long service leave, notice of termination and redundancy pay.

The superannuation guarantee regime is administered by the ATO, and noncompliance is currently regulated by the Commissioner of Taxation through powers granted by the SGAA. The inclusion of superannuation in the NES will give employees the right to pursue unpaid superannuation as a workplace entitlement, including through the Fair Work Ombudsman (FWO) or their union. This would be a significant change because individuals do not currently have a legal standing to directly pursue the underpayment of superannuation unless an entitlement is specifically included in their employment contract. Instead, any claim for unpaid superannuation has to be made by first approaching the ATO.

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The Bill's explanatory memorandum highlights that the inclusion of superannuation within the NES is "intended to reinforce the Government's position that underpayment of superannuation is a form of wage theft and worker exploitation". The creation of a NES entitlement will augment the ATO's regulatory powers by creating an additional mechanism for enforcement where superannuation underpayments occur.

The proposed dual regulator approach is unusual and raises questions as to how the FWO and ATO will operationalise these changes. We anticipate that additional guidance will need to be provided in due course including how the two regulators will interact in relation to investigative and compliance activity, and how the penalty regimes of the Fair Work Act and the SGAA will intersect.

For completeness, the PWE Bill includes other changes relating to migrant workers, unpaid parental leave and deductions. For more details, please refer to our recent [article](#).

Draft Practical Compliance Guideline provides guidance on calculating home vehicle charging costs

The ATO has released [PCG 2023/D1](#) which provides a simplified methodology for eligible employers and individuals to rely on when calculating the electricity costs for an electric vehicle that is charged at an employee's or individual's home.

Employers can rely on this Guideline to calculate electricity costs of charging an electric vehicle at the employee's home if they:

- provide the electric vehicle to an employee or associate for private use resulting in the provision of a car fringe benefit, residual fringe benefit or pays for expenses associated with the car resulting in a car expense payment benefit
- provide the electric vehicle to an employee or associate who charges the electric vehicle using electricity at a residential premises, where the electricity cost directly attributable to charging the electric vehicle cannot be practically segregated from the cost of running other electrical appliances in the home, and
- are required to calculate the taxable value for one or more of the following as part of their FBT obligations:
 - car fringe benefit
 - residual fringe benefit
 - car expense payment benefit – where the electricity charging cost incurred by the employee is reimbursed by the employer

- the grossed-up taxable value for reporting of the reportable fringe benefit amount for the employee – which continues to be reportable, even if the car benefit arising from the provision of the electric vehicle is exempt.

In summary, the draft PCG provides that, from 1 April 2022, a rate of 4.20 cents per kilometre travelled by the electric vehicle in the relevant income year or FBT year may be relied upon when calculating the electricity costs (provided the vehicle is charged using electricity at a residential premises).

Comments on the draft can be made by 26 May 2023. For more details, please refer to our [article](#).

Employment agency contracts and intra-group contracting arrangements: taxpayer's application for special leave dismissed

The High Court has dismissed the taxpayer's application for special leave to appeal against the NSW Court of Appeal decision in [Chief Commissioner of State Revenue \(NSW\) v E Group Security Pty Ltd \(No 2\) \[2022\] NSWCA 259](#).

In that case, the NSW Court of Appeal held that a security services provider was liable to payroll tax as arrangements between itself and three related companies were "employment agency contracts" under section 37 of the *Payroll Tax Act 2007* (NSW).

For further analysis in relation to the earlier decision of the NSW Court of Appeal, please refer to our [February 2023 Monthly Tax Update](#).

Payroll tax (VIC): updated interest and penalty tax revenue ruling

The Victorian State Revenue Office (SRO) has issued an updated revenue ruling explaining how interest and penalty tax is applied to a range of payroll tax defaults.

Revenue Ruling [PTA-036v5](#) which commences on 1 April 2023 replaces withdrawn [PTA-036v4](#) and updates the SRO's approach to ensure that the amount of premium interest imposed is not a disincentive for a taxpayer to make a voluntary disclosure of a payroll tax default prior to the commencement of an investigation.

PTA-036v5 explains that a taxpayer will be entitled to an 80 per cent reduction in penalty tax if they make a written disclosure which enables the Commissioner to determine the nature and extent of the tax default before an investigation starts. This means that penalty tax will be reduced to 5 per cent where the tax default was the result of the taxpayer's failure to take reasonable care, and 15 per cent where the tax default was the result of an intentional disregard of the law.

To encourage taxpayers to voluntarily disclose their tax defaults before an investigation starts, the Commissioner will remit:

- Penalty tax in full, and impose interest at the premium rate of 8 per cent per annum, in circumstances where the premium interest amount would be less than the reduced penalty tax amount.
- The premium interest amount in full, and impose the reduced penalty tax amount, in circumstances where the reduced penalty tax amount is less than the premium interest amount.

Interest at the market rate will continue to apply in both situations.

Payroll tax (WA): updated guidance on remission of penalty tax

Interest at the market rate will continue to apply in both situations.

The WA Office of State Revenue has released updated guidance on the remission of penalty tax for late payments in [TAA20.4](#), which replaces the former guidance within TAA20.3. The guidance considers self-assessments not paid by the due date, official assessments not paid by due date, corporate taxpayers under administration or liquidation, further remission and other matters.

This updated guidance applies from 1 April 2023.



Global Tax and Trade Update

Draft legislation for public country-by-country reporting

On 6 April 2023, Treasury released [draft legislation](#) to implement part of the Government's broader tax transparency measures that were previously announced as part of its broader multinational tax initiatives in the October 2022 Budget.

Specifically, this draft law will require certain large multinationals (known as Country by Country (CbC) reporting parent entities) to publicly release certain tax and financial information on a country-by-country basis, as well as a statement on their approach for taxation. If legislated, this would be the first unrestricted world-wide mandated public reporting of all CbC report data combined with additional information by jurisdiction.

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

Responses to this consultation could be made by 28 April 2023.

Draft legislation to deny deductions relating to intangible assets in law tax jurisdictions

On 31 March 2023, Treasury released [draft legislation](#) to implement the Federal Government's proposal, as announced in the October 2022 Federal Budget, to deny an income tax deduction for payments relating to intangible assets connected with low corporate tax jurisdictions (primarily with reference to a 15 per cent tax rate). The proposed new rules will apply to in-scope payments made or credited, or liabilities incurred on or after 1 July 2023.

Refer to our [Tax Alert](#) which reviews the proposed law for further details.

Submissions on the consultation were due to be made by 28 April 2023.

Mexico and MLI

Mexico has deposited its [instrument of ratification](#) for the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (Multilateral Convention or MLI). The MLI will enter into force on 1 July 2023.

Other OECD updates

In other developments from the Organisation for Economic Cooperation and Development (OECD):

- Vietnam has [signed](#) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* which enables jurisdictions to cooperate on a wide range of tax matters, including the exchange of information, tax examinations abroad, simultaneous tax examinations and assistance in tax collection.
- The [Fifth Peer Review Report on Treaty Shopping](#), which includes data on tax treaties concluded by the jurisdictions that were members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) on 31 May 2022. The report reveals that members of the OECD/G20 Inclusive Framework on BEPS are respecting their commitment to implement the minimum standard on treaty shopping and confirms the importance of the MLI as the tool used by the vast majority of jurisdictions that have started to implement the BEPS Action 6 minimum standard.
- The OECD has published and released [peer review reports](#) regarding the transparency and exchange of information on request (EOIR) initiatives for six of its members (Albania, the Czech Republic, Mexico, Nigeria, Saint Lucia and Togo) and one non-member (Nicaragua). More than half of the Global Forum members have now been fully reviewed in the second round of EOIR peer reviews and the ratings assigned are generally very good. With almost 90 per cent of the jurisdictions obtaining compliant or largely compliant results.

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Canadian government releases 2023 Federal Budget

The recent Canadian Budget includes tax measures relating to clean technology and energy, as well as a restatement of Canada's intention to implement Pillar Two, along with a domestic minimum top-up tax to come into effect for fiscal years that begin on or after 31 December 2023. Read more in our global [alert](#).

United Kingdom releases draft Pillar Two legislation

The United Kingdom (UK) released draft legislation on 23 March 2023 containing an income inclusion rule (IIR) and new draft legislation for a Domestic Minimum Top-up Tax, as part of the UK's implementation of the OECD's Pillar Two project. Both the UK IIR and the UK domestic minimum tax apply for accounting periods beginning on or after 31 December 2023. Read more in our [alert](#).



Indirect Tax Update

GST administration annual performance report

The [goods and services tax \(GST\) administration annual performance report 2021–22](#) was released by the Australian Taxation (ATO). The Commissioner of Taxation reported that there was a total of \$73.6 billion in GST cash collected in the year, with the net GST gap estimated to be only 5.9 per cent. This means that the ATO collects more than 94 per cent of the potential GST revenue available.

The report indicates that throughout the course of the COVID-19 pandemic, the ATO had taken a relatively accommodative stance towards outstanding tax obligations and focused on maintaining voluntary compliance and keeping taxpayers engaged with the tax system. However, the ATO stance has been firmer from November 2021, and this will continue.

Updated GST guidance for the buy now pay later industry

The ATO has released [updated guidance](#) on how buy now pay later (BNPL) entities should be calculating their entitlement to input tax credits. The guidance indicates that it is likely that not all supplies made by BNPL providers will entitle the BNPL provider to input tax credits.

The guidance highlights that the apportionment approaches currently undertaken by the industry may not be appropriate and that there is an expectation that BNPL providers analyse their acquisitions and appropriately determine their creditable purpose, rather than apportioning all acquisitions on the assumption that they all relate to both input taxed and taxable supplies. The ATO also expects the methodology and analysis of acquisitions to be well-documented which will assist with preparing for any compliance reviews. The ATO considers that the use of a revenue-based apportionment

methodology gives rise to a significant risk that input tax credits may be overclaimed and any entities using this approach will be a high priority for review to test whether their GST recovery is appropriate based on the activities of the business.

No discretion for the Commissioner to allow lapsed input credit tax entitlements

The Administrative Appeals Tribunal (AAT) in [Messenger Media and Information Technology Pty Ltd and Commissioner of Taxation \[2023\] AATA 752](#) has affirmed a decision of the Commissioner of Taxation that the company was not entitled to input tax credits because the relevant notification period had expired.

The legislation provides for a four year period under which the taxpayer needs to notify the Commissioner of their entitlement to input tax credits. The taxpayer was not able to furnish any evidence of a formal notification to the Commissioner regarding the entitlement. The AAT found that under the legislation there was no scope for the Commissioner to exercise any discretion to extend the period of entitlement without a notice within the required period.

Acquisitions not made in carrying on an enterprise

The Federal Court found in [Konebada Pty Ltd ATF William Lewski Family Trust v FC of T \[2023\] FCA 257](#) that the taxpayer was not entitled to input tax credits in respect of its payment of invoices for the provision of litigation and other services in relation to matters concerning members of the Lewski family and affiliated entities.

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The Court found that the taxpayer did not carry on a business of providing litigation consulting services or a business of receiving and disseminating advice or formulating and making recommendations based on advice it received to members of the family group in respect of litigation proceedings. There were no contemporaneous records that satisfied the Court that the taxpayer's activities extended to it providing such services. Nor was there evidence to support a conclusion that the engagement of service providers or the funding of the provision of the litigation or other services was made in the course of an enterprise involving the taxpayer providing procurement services for the members of the family group. Accordingly, the taxpayer was not entitled to input tax credits in respect of its payment of invoices for the provision of the litigation and other services since any acquisition was not made in carrying on an enterprise.



Personal Tax Update

Draft compliance guideline for determining deductions for electricity costs for electric vehicles

The Australian Taxation Office (ATO) has issued a draft Practical Compliance Guideline [PCG 2023/D1](#) which applies to individual taxpayers (and employers) who incur electricity costs when charging electric vehicles at residential premises and claiming car expense deductions using the logbook method or motor vehicle expense claims under the general deduction provision. Specifically, the draft seeks to address the compliance challenge for employers and individual taxpayers by setting out a methodology to calculate the cost of electricity when an electric vehicle is charged at an employee's or individual's home.

Employers should refer to the employment taxes section for the fringe benefits tax aspects of the draft Guideline.

For income tax purposes, from 1 July 2022, individuals can rely on the Guideline and for which the Commissioner of Taxation will not apply compliance resources to review the calculation for electricity costs of charging an electric vehicle at the home if they:

- use a zero emissions electric vehicle while carrying out income-earning activities
- incur electricity expenses when charging an electric vehicle at home, and
- have kept the relevant records for the income year.

The individual can choose to use the methodology outlined in the draft Guideline or determine the cost of the electricity by determining its actual cost. The choice is per vehicle and applies for the whole income year. However, it can be changed from year to year.

Comments on the draft can be made by 26 May 2023.

ATO data matching on residential loans from financial institutions

The Australian Taxation Office (ATO) will commence a [data matching program](#) relating to residential investment property loans from authorised financial institutions for the period 2021–22 through to 2025–26. The data collected will include:

- client identification details (names, addresses, phone numbers, dates of birth, etc)
- account details (account numbers, BSB's, balances, commencement and end dates, etc)
- transaction details (transaction date, transaction amount etc), and
- property details (addresses, etc)

The ATO estimates that records relating to approximately 1.7 million individuals will be obtained each financial year.

This program will enable the ATO to identify and examine investment property loans against income tax reporting.

Ride sourcing data matching program

The ATO will acquire ride sourcing data from a separate [data matching program](#) to identify individuals that may be engaged in providing ride sourcing services during the 2022–23 financial year.

The data items include:

- identification details (driver identifier, ABN, driver name, birth date, mobile phone number, email address, address), and
- transaction details (bank account details, aggregated payment details, gross fares, net amount paid to driver, and all other income to which goods and services tax (GST) may or may not apply to) of all payments received in the relevant period.

The ATO estimates that records relating to approximately 200,000 individuals will be obtained each financial year.

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The data in this program will be used to identify and inform ride sourcing providers (drivers) of their tax obligations as part of information and education campaigns. The data may also be used as part of the methodologies by which the ATO selects taxpayers for compliance activities.

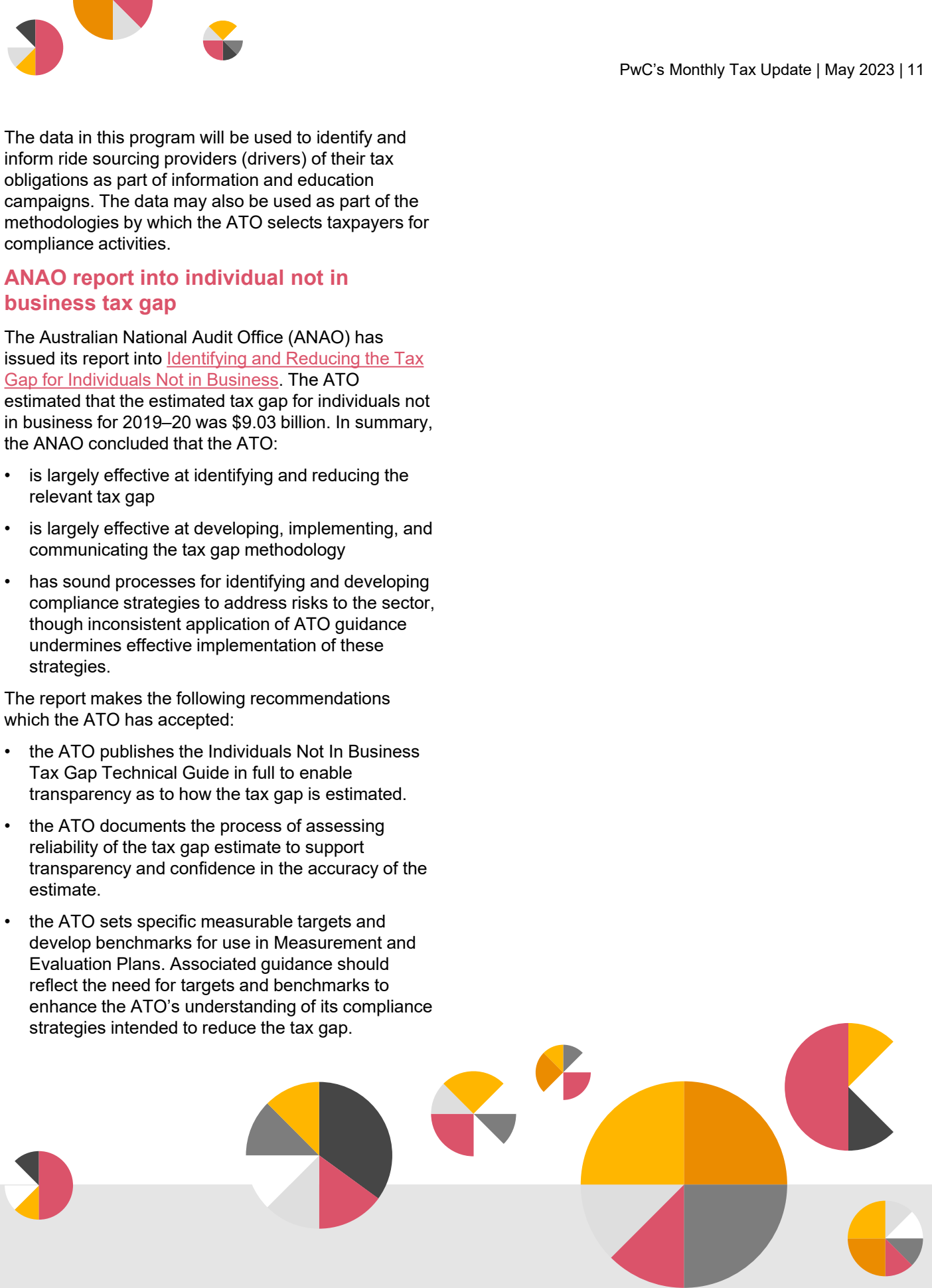
ANAO report into individual not in business tax gap

The Australian National Audit Office (ANAO) has issued its report into [Identifying and Reducing the Tax Gap for Individuals Not in Business](#). The ATO estimated that the estimated tax gap for individuals not in business for 2019–20 was \$9.03 billion. In summary, the ANAO concluded that the ATO:

- is largely effective at identifying and reducing the relevant tax gap
- is largely effective at developing, implementing, and communicating the tax gap methodology
- has sound processes for identifying and developing compliance strategies to address risks to the sector, though inconsistent application of ATO guidance undermines effective implementation of these strategies.

The report makes the following recommendations which the ATO has accepted:

- the ATO publishes the Individuals Not In Business Tax Gap Technical Guide in full to enable transparency as to how the tax gap is estimated.
- the ATO documents the process of assessing reliability of the tax gap estimate to support transparency and confidence in the accuracy of the estimate.
- the ATO sets specific measurable targets and develop benchmarks for use in Measurement and Evaluation Plans. Associated guidance should reflect the need for targets and benchmarks to enhance the ATO's understanding of its compliance strategies intended to reduce the tax gap.



State Taxes Update

QLD's affordable housing proposal for land developments

The Queensland (QLD) Government has announced an [affordable housing proposal](#) that includes halving the amount of land-tax payable for Build-to-Rent developments that feature at least 10 per cent of rental of rental homes as affordable housing.

Specifically, the range of investments attracting tax concessions for Build-to-Rent developments will include:

- A 50 per cent discount on land tax payable for up to 20 years
- A full exemption for the 2 per cent foreign investor land tax surcharge for up to 20 years
- A full exemption from the Additional Foreign Acquirer Duty for the future transfer of a Build-to-Rent site

The proposal has a commencement date of 1 July 2023. The QLD Treasury intends to consult with the property industry prior to this.

QLD increase rebate for electric vehicles

The QLD Government has [announced](#) new eligibility requirements and an increased rebate available to Queenslanders under the Zero Emission Vehicle Rebate Scheme, which could see eligible households access a \$6,000 rebate when purchasing a new electric vehicle. Changes include:

- An increase to the rebate from \$3000 to \$6000 for eligible households earning up to a total gross household income of \$180,000 per year.
- Applicants who have already applied and received a \$3000 rebate under the earlier scheme, and who are under the total gross income threshold, are eligible for reassessment and additional payment of \$3000 rebate (totalling \$6000 per eligible application).

- An increase to the eligibility threshold for vehicles, which will now exclude dealer delivery fees from determining 'dutiable value' from \$58,000 to \$68,000 (including Goods and Services Tax).

WA Commissioner's updated practice on remission of penalty tax

The Western Australian (WA) Commissioner of State Revenue has issued [updated guidance \(TAA 20.4\)](#) that provides for the circumstances in which the WA Commissioner will remit penalty tax for late payments. This new practice note replaces TAA 20.3, and was effective from 4 April 2023.

Victorian land tax: Primary production exemption not applicable

In [Premier Bay Pty Ltd v Commissioner of State Revenue \(Review and Regulation\) \[2023\] VCAT 277](#), the Victorian Civil and Administrative Tribunal found that the taxpayer's land was not eligible for the Victorian land tax primary production exemption applicable.

From mid-2017 to mid-2019, the relevant property which was owned by the company in its capacity as the trustee of a family trust, was primarily used for a business of breeding cattle for sale by a partnership that leased the property from Premier Bay. Premier Bay also bred cattle for sale, but did so from another property. While the Tribunal accepted that the relevant property was used primarily for the business of primary production and a trust beneficiary was normally engaged in a substantially full-time capacity in the business of primary production, it was not satisfied that primary production was the principal business of Premier Bay. Rather, during the relevant period, Premier Bay carried on two equally significant businesses, being primary production and leasing of the relevant property to the partnership, and other properties owned by it which were leased to third parties, neither of which can be said to be its principal business.

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Having failed to satisfy the requirement in section 67(2)(d)(ii) of the *Land Tax Act 2005* (Vic), it followed that the land tax exemption was not available to Premier Bay.

NSW Budget update

Following the New South Wales (NSW) election, the new Government has [indicated](#) that the NSW 2023–24 Budget will be handed down in September 2023. The NSW Treasurer will provide an update to NSW Parliament via an Economic Statement in June 2023.

For all other scheduled 2023–24 State and Territory Budgets, refer to our April 2023 monthly tax update.



Superannuation Update

Key superannuation rates and thresholds

The Australian Taxation Office (ATO) has published [key superannuation rates and thresholds](#) for the 2023–24 income year. The following key thresholds apply for the forthcoming financial year commencing from 1 July 2023:

- the superannuation guarantee rate is 11 per cent (up from 10.5 per cent)
- the concessional contributions cap is AUD 27,500
- the non-concessional contributions cap is AUD 110,000
- the capital gains tax cap amount for contributions from the sale of small business assets is AUD 1.705 million (up from 1.65 million)
- the Division 293 tax threshold amount is AUD 250,000
- the maximum super contribution base is AUD 62,270 per quarter (up from AUD 60,220)
- the low-rate superannuation benefit cap is AUD 235,000 (up from AUD 230,000)
- the general transfer balance cap is AUD 1.9 million (up from 1.7 million)
- the defined benefit income cap is AUD 118,750 (up from AUD 106,250)
- the employment termination payment (ETP) cap for life benefit termination payments is AUD 235,000 (up from AUD 230,000), and
- the tax-free part of genuine redundancy payments and early retirement scheme payments is AUD 11,98, and for each complete year of service is AUD 5,994.

Removal of the concessional tax rate for high superannuation balances

As noted in our last monthly tax update, the Government announced that it would reduce the available tax concessions to individuals whose superannuation balances exceed \$3 million. Specifically, under this proposal, individuals with total superannuation balances over \$3 million at the end of a financial year will be subject to a tax of 15 per cent on “earnings”. The proposed start date of this new initiative is 1 July 2025.

Subsequent to the announcement, the Treasury has released a [consultation paper](#) that provides an overview of the proposed model for identifying who will be affected, how the tax will be calculated and what the new rules mean for individuals and trustees of both self-managed superannuation funds (SMSFs) and APRA-regulated funds. It also seeks comments on the implementation of these changes. Submissions were due to be made by 17 April 2023.

SMSF quarterly transfer balance reporting

From 1 July 2023, a SMSF must report quarterly certain events that affect its members' transfer balance account. The ATO has [indicated](#) that these events are reported by lodging a transfer balance account report (TBAR) no later than 28 days after the end of the quarter in which they occur.

[Common events](#) that will require mandatory reporting include when a member starts a retirement phase income stream, including death benefit income streams, as well as commutations of retirement phase income streams, including commutation of a pension that occurs before it is rolled over to another fund.

Annually reporting SMSFs will need to lodge their TBAR with their annual SMSF return, which will need to include all relevant events from the year.

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ATO guidance on rectification directions for contraventions of SIS Act

The ATO has released Law Administration Practice Statement [PS LA 2023/1](#) that provides a framework under which ATO staff will be guided by when considering a rectification direction due to a contravention of the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*.

Rectification orders are a mechanism provided in the *SIS Act* that allow the Commissioner of Taxation to provide written directions regarding the correction of any conduct that has contravened the *SIS Act* or Regulations, as well as the implementation of systems and processes to prevent future contraventions.

The new guidance provides for when a rectification order can be made, the principles that should guide a decision to issue an order, to whom rectification orders can be issued as well as guidance on timeframes.

ATO insights for SMSFs

Justin Micale, Assistant Commissioner, ATO Self Managed Super Funds Risk and Strategy recently gave a [speech](#) delivered at the Tax Institute of Australia on 30 March 2023 at which he provided insights into what the ATO is seeing in the SMSF sector, including the ATO responsibilities as the regulator and its role in helping maintain the integrity of the sector. Areas noted that the ATO is paying particular attention to include:

- identity fraud and investment scams
- illegal early access
- outstanding lodgment of SMSF annual returns, and
- increase in contraventions reported.

In relation to non-arm's length expenditure (NALE), it was noted that the Government is currently considering its response to the [consultation process](#) and irrespective of this, we believe trustees have been provided with sufficient opportunity and warning about the need to enter into all transactions on an arm's length basis so we the ATO does not intend to extend its practical compliance guideline PCG 2020/5 beyond 30 June 2023.



Legislative Update

Federal Parliament will next sit on 9 May 2023, which is also the date of the 2023–24 Federal Budget. Refer to [PwC's comprehensive Budget analysis](#) which will be provided on the night.

No new tax or superannuation related Bills were introduced into Federal Parliament since our last update.

Since our last update, the following tax and related Bills have completed their passage through Parliament and enacted:

- [Safeguard Mechanism \(Crediting\) Amendment Bill 2022](#), which among other things, establishes the framework for creating Safeguard Mechanism Credits (SMCs), covering how credits are issued, purchased, and included in Australia's National Registry of Emissions Units and to ensure SMCs are subject to the existing tax rules covering registered emissions units.

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

- [Taxation Administration \(Withholding Variation for Personal Services Income\) Legislative Instrument 2023](#) which varies to nil the amount a personal services entity (PSE) is required to pay to the Commissioner of Taxation, when it receives alienated personal services payments, in certain circumstances. This instrument commences on 1 April 2023.
- [Taxation Administration \(Exemption from Providing Payment Summaries to Passbook Account Holders\) Legislative Instrument 2023](#) which exempts passbook account providers from the requirement to provide a payment summary to a holder of a passbook savings account, for certain payments made to that account. This instrument commences on 29 March 2023.
- [Treasury Laws Amendment \(Disclosure of Information to Fraud Fusion Taskforce\) Regulations 2023](#) which allows the Australian Taxation Office and ASIC to share information with the new Fraud Fusion Taskforce (announced in the October 2022–23 Federal Budget). The intent of the taskforce is to take action to prevent fraud from government programs, particularly the National Disability Insurance Scheme (NDIS), but its scope is expected to expand.

In addition, the following goods and services tax (GST) legislative determinations dealing with the waiver of the requirement to provide tax invoice for certain supplies, applicable from 25 March 2023, were registered:

- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Acquisitions Where Total Consideration Not Known\) Determination 2023](#)
- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Offer Documents and Renewal Notices\) Determination 2023](#)
- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Acquisitions from or by a Partnership\) Determination 2023](#)
- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Creditable Acquisition of Taxi Travel\) Determination 2023](#)
- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Acquisitions from or by a Beneficiary of a Bare Trust\) Determination 2023](#)
- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Acquisitions by Recipients Using Electronic Purchasing Systems\) Determination 2023](#)

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- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Acquisitions under an Agency Relationship\) Determination 2023](#)
- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Acquisitions from Property Managers\) Determination 2023](#)
- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Creditable Acquisition Following a Sale of a Reversionary Interest in Commercial Premises\) Determination 2023](#)
- [A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Acquisition of a Motor Vehicle Under a Novated Lease Arrangement\) Determination 2023](#)



Other News

Commissioner's power to remit interest and penalties

The Australian Taxation Office (ATO) has issued a [draft legislative instrument](#) which seeks to modify the Commissioner of Taxation's powers to remit the general interest charge (GIC), shortfall interest charge (SIC) and administrative penalties including the failure to lodge penalty in response to:

- a natural disaster or other serious and external adverse event impacting the community
- low value or low risk remissions, and
- agreement-based remissions, where a remission is agreed to prior to the relevant liability arising.

The modifications will support the use of automated processes that remit interest or penalties as soon as those liabilities arise, without requiring a separate request from a taxpayer and a decision from the ATO every time a liability arises.

The instrument is to remove any doubt about the Commissioner's power to make remission decisions in relation to classes of entities, as well as in circumstances where a charge or penalty has not yet become due and payable (but may become due and payable in the future).

Comments can be made on the draft instrument by 19 May 2023.

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