



# PwC's Monthly Tax Update

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

October 2023



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# Corporate Tax Update

## ATO corporate tax transparency data check

The Commissioner of Taxation is required to publish certain income tax information of some corporate taxpayers (including total income, taxable income, tax payable) as well as Petroleum Resource Rent Tax (PRRT) payable by an entity.

The Australian Taxation Office (ATO) has [indicated](#) that it plans to release this year's annual Report of corporate tax information in early November 2023. The report will include information reported in 2021–22 income tax returns (and returns for earlier years if not previously published).

The taxpayers to be included in this year's report include:

- Australian public or foreign owned entities with total income of \$100 million or more
- Australian resident private companies with total income of \$200 million or more, and
- Entities reporting PRRT payable.

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# Employment Taxes Update

## Superannuation Guarantee: Employee v contractor – absence of written contract

The Administrative Appeals Tribunal (AAT) has held in [Trustee for the Kitchen Unit Trust and Commissioner of Taxation \[2023\] AATA 2831](#) that a worker engaged by a kitchen and bathroom supplier was an “employee” within both the ordinary meaning of the term and its extended definition in the superannuation guarantee legislation, largely because he performed his duties under the control of, and within the business of, the supplier.

The applicant acted as the trustee for the Kitchen Unit Trust, which operated a business selling and renovating kitchens and bathrooms for which an individual was hired to design, price, and sell the trust's products to customers. The terms of engagement were not documented, but the worker used the trustee's materials in his work, was assigned customers by the trustee's system, and received training from the trustee. Although he did not wear a uniform, he used the trustee's stationery and had a workspace provided by the trustee. He was not allowed to delegate or subcontract his work. It was claimed that the worker was paid on commission by the trust, but no evidence supported this assertion.

In affirming the objection decisions under review, the AAT said that the terms of the agreement between the parties in respect of the performance of the work, and the fact that he could not delegate his work, indicated that he was working under the control of, and within the business of, the trustee. The evidence was that he was paid a weekly amount as salary or wages and that he was required to work regular hours, which was indicative of an employment relationship.

The AAT found that the totality of the relationship led firmly to the conclusion that it was one of employer and employee under section 12(1) of the *Superannuation Guarantee (Administration) Act 1992*. Mr Z was liable to make superannuation contributions in respect of payments made to Mr N. Although not strictly necessary to

decide, the AAT also found that the contract was wholly or principally for Mr N's labour. Thus Mr N was also an “employee” pursuant to the extended definition in s 12(3) of that Act.

## Payroll tax: GP payroll tax amnesty deadline extended in QLD and medical centre ruling released

Businesses in Queensland (QLD) that operate medical practices have been given an [extension](#) to apply for the payroll tax amnesty. This amnesty applies to eligible payments made to general practitioners under contractor arrangements. The deadline for submitting an expression of interest form to the Queensland Revenue Office has been extended to 10 November 2023.

Additionally, the Queensland Revenue Office released on 19 September 2023 an updated public ruling ([PTAQ000.6.2](#)) to clarify the relevant contract provisions for medical centres. It provides the Commissioner's view on where Medicare benefits and out-of-pocket expenses will constitute deemed wages. Critically, whether or not this will be the case is dependent on the flow of monies between parties as well as the final ‘recipient’ of such costs.

Notably, other States and Territories have not yet provided commentary on whether or not they will adopt a consistent view.

## Payroll tax: New ruling on nexus rules in ACT

The ACT Government released public ruling [GEN011.2](#) on 11 September 2023 on the concept of a ‘principal place of residence’ for a number of laws, including payroll tax. The ruling outlines key factors in determining an employee's ‘principal place of residence’, which is key for determining an employee's taxable jurisdiction under this first test.

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In brief, the ruling states that the principal place of residence will generally be the place of residence or home that the person primarily occupies, on an ongoing and permanent basis, as the person's settled or usual home. Guidance is provided as to the meaning of occupy, and explains the impact of an absence from that residence.

Among other things, this ruling will be relevant to the first test of the nexus provisions, where services are performed in more than one Australian jurisdiction (or partly outside an Australian jurisdiction), as in such circumstances payroll tax is payable in the Australian jurisdiction in which the employee's 'principal place of residence' is located in that month.



# Global Tax and Trade Update

## Update on proposed interest limitation and enhanced transparency measures

The proposed interest limitation rules and enhanced transparency measures ([Treasury Laws Amendment \(Making Multinationals Pay Their Fair Share – Integrity and Transparency\) Bill 2023](#)) still remain before Parliament. The Senate Economics Legislation Committee has issued its [report](#) on the Bill and has recommended that the Bill be passed, subject to technical amendments to the interest limitation measures foreshadowed by Treasury (in the Senate hearings).

The next opportunity that the Bill can be considered by Parliament is from 16 October 2023.

## ATO working on administration for Pillar 2

A recent [speech](#) given by Hector Thompson, Deputy Commissioner, International, Support and Programs at the Australian Taxation Office (ATO), outlined the ATO's approach to the forthcoming Pillar 2 reforms to address the challenges of the digitalisation of the economy.

Namely, the ATO has already established a dedicated project team for the implementation of the proposed Pillar 2 global minimum tax and domestic minimum tax, including developing its compliance approach, providing guidance to in-scope taxpayers and advisers, developing systems to allow for lodgement and exchange of the GloBE information return (GIR) and to develop data and analytics capabilities.

Other comments of particular note were:

- While the GIR is being developed by the Organisation for Economic Cooperation and Development (OECD), separate tax returns will need to be developed by the ATO to enable the assessment of any top-up tax liability for GloBE or Domestic Minimum Tax attributable to Australia.

The ATO will seek to minimise the compliance burden by considering the use of the informational elements of the GloBE computations that will already be reported in the GIR.

- It is expected that the first returns will be due for filing by 30 June 2026 for multinationals with fiscal years ending 31 December 2024.
- The ATO has no plan to follow a traditional justified trust methodology for the initial years of GloBE to obtain assurance that taxpayers have paid the correct amount of tax, although it will still seek a level of comfort or confidence that obligations are met.

## OECD releases Pillar One comments

The OECD has [published](#) the public comments received following its consultation on the design elements of Amount B of Pillar One of the two-pillar solution to address the challenges of the digitalisation of the economy. Pillar One introduces 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. Amount B is intended to simplify pricing for baseline marketing and distribution activities in accordance with the arm's length principle in order to enhance tax certainty.

## Other OECD updates

Other updates from the OECD include:

- Publication of the latest [Progress Report to G20 Leaders](#) from the Secretary-General of the OECD
- [Tax Policy Reforms 2023](#) report, which describes tax reforms announced and enacted in 2022 in 75 jurisdictions of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting.
- A working paper comparing [the tax treatment of labour and capital income](#) across OECD countries, through stylised effective tax rates.

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- The Platform for Collaboration on Tax (PCT) – a joint initiative of the IMF, OECD, UN and World Bank Group – has released a [new report](#) on carbon metrics of its partners.

## Papua New Guinea and MLI

Papua New Guinea 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 in Papua New Guinea on 1 December 2023.

Additionally, the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#) will enter into force in Papua New Guinea on 1 December 2023, and will be in effect for exchanges as from 1 January 2024.

## Tunisia and MLI

Tunisia 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 in Tunisia on 1 November 2023.

## ATO updates reflect amendments to Excise Act

The ATO has updated Practice Statement [PS LA 2011/15](#) which deals with lodgment obligations, due dates and deferrals, to incorporate the option for quarterly lodgments of excise returns as a result of change to the *Excise Act 1901*, which came into effect 1 July 2023.

The ATO has also issued an [addendum](#) ER 2012/1A3 to Excise Ruling [ER 2012/1](#) which deals with the meaning of the expression 'manufactured or produced' for the purposes of the Excise Acts. The addendum amends ER 2012/1 to reflect the amendments made to subsection 77FC(2) of the *Excise Act 1901* (enacted by the *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023*) to ensure that repackaging of beer is not taken to be the manufacture of beer for excise purposes if it meets certain requirements.

## UK transfer pricing documentation: new law in force

The United Kingdom (UK) has legislated to align the UK's transfer pricing documentation requirements more closely with the OECD model for documentation. These new rules will take effect for accounting periods beginning on or after 1 April 2023 (corporate tax) and from 6 April 2024 (income tax). For more information, refer to our [Client Alert](#).

# Indirect Tax Update

## Frozen food products found not to be GST-free

The Federal Court of Australia has recently decided the case of [Simplot Australia Pty Limited v Commissioner of Taxation \[2023\] FCA 1115](#) which involved the goods and services tax (GST) treatment of certain frozen food products supplied and imported. The Court held that the products were not GST-free as they were of a kind marketed as prepared meals, which are excluded from the GST-free category of food.

The reasons for the decision were based on the interpretation of the phrase "food of a kind" in section 38-3 of the GST Act and the ordinary meaning of the phrase "prepared meal" in its context. The Court considered each of the products and concluded that they were all of a kind marketed as prepared meals, and therefore not GST-free.

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

## GST and ABN cancellations confirmed

In [Assad and Commissioner of Taxation \(Taxation\) \[2023\] AATA 2995](#), the Administrative Appeals Tribunal (AAT) has found that the Commissioner was correct to cancel the taxpayer's Australian Business Number (ABN) and GST registrations, and to have issued him with amended GST assessments for the relevant periods.

The AAT was not persuaded that the taxpayer was carrying on an enterprise during the relevant periods, nor that he was likely to carry on an enterprise for at least 12 months after the relevant periods. Although the taxpayer asserted that he carried on a business of hiring cars, he acknowledged that he did not have a motor vehicle dealer's licence nor a driver's licence. There was nothing before the Tribunal such as bookings or invoices or specific details of any drivers or customers to show that he had undertaken an activity or series of activities in the form of a business or to show the scale of activities, if any, and whether or not whatever he did was carried out in a

business-like way. The taxpayer also failed to provide independent evidence to support his claims of carrying on a business.

The AAT also found that since the taxpayer was not carrying on an enterprise, he cannot have made taxable supplies, nor have made creditable acquisitions. Accordingly, the amended GST assessments were not excessive.

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# Personal Tax Update

## Federal Court dismisses main residence argument

The Federal Court has dismissed the taxpayer's appeal in the matter of [Makrylos v Commissioner of Taxation \[2023\] FCA 971](#), which considered the question of when land was first held as trading stock.

In this case, the taxpayer – an experienced property developer – purchased land in Darwin in 2006. This land was later rezoned, subdivided, developed and sold pursuant to a joint venture agreement between the taxpayer and corporate entities associated with him. The taxpayer claimed that the property had been his main residence at acquisition until May 2011, at which point it became trading stock held in the course of a business. This would mean the property had a deemed value as at that date, calculated in accordance with section 70–35(1) of the *Income Tax Assessment Act 1997*.

The Federal Court dismissed the taxpayer's appeal, finding that after considering the evidence the taxpayer held the property as trading stock from the date of acquisition, and not for the purpose of building his family home as he claimed.

## Taxpayer found to be Australian resident

The Administrative Appeals Tribunal (AAT) has considered the question of a taxpayer's residency in the matter of [PQBZ v Commissioner of Taxation \(Taxation\) \[2023\] AATA 2984](#).

The taxpayer was born in Malaysia and was a citizen of Papua New Guinea (PNG). In 1997, he came to Australia on a student visa and in 2000, he married an Australian citizen, going on to have three children.

During the 2013 and 2016 financial years the taxpayer spent time in both Australia and PNG, though he argued that his permanent and usual place of abode during that time was in PNG, where he worked in his father's business.

The taxpayer prepared his 2012–13 to 2015–16 income tax returns (inclusive) on the basis that he was not an Australian resident for tax purposes, such that certain receipts were not income and not assessable.

The AAT found after having regard to the evidence that the taxpayer was a resident of Australia under ordinary concepts during the relevant years, noting that the majority of his family – including his wife and children – resided in Australia, where he also had significant business ties and relationships.

Although the AAT found for the Commissioner regarding the point on residency, the AAT ultimately found that the Commissioner's amended Notices of Assessment in the relevant years were excessive, and that they, alongside the penalties and interest imposed by the Commissioner, should be set aside and reassessed.

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# State Tax Update

## New South Wales 2023–24 State Budget

The New South Wales (NSW) Treasurer, Daniel Mookhey, handed down the [NSW Budget 2023–24](#) on 19 September 2023. A budget deficit of AUD 7.8 billion is projected for 2023–24, with a return to surplus proposed by 2024–25.

The Budget announced a range of tax integrity and fairness measures, summarised below. The [Treasury and Revenue Legislation Amendment Bill 2023](#), which broadly legislates for the measures announced in the Budget, has also passed through the NSW Parliament.

### Changes to the landholder duty regime

The amendments made by the [Treasury and Revenue Legislation Amendment Bill 2023](#) reduce the threshold for the acquisition of a significant interest in a landholder that is a “private unit trust scheme” (see also additional changes below) from 50 per cent or more, down to 20 per cent or more. This would reflect the current acquisition threshold for private unit trusts in Victoria.

As an additional measure, the threshold for tracing through linked entities of a landholder will decrease from 50 to 20 per cent, aligning with the current Victorian position.

The result of this means more entities (whether companies or trusts) are expected to constitute landholders from 1 February 2024, many for the first time.

### Changes to corporate reconstruction and consolidation exemption rules

The existing corporate reconstruction and consolidation exemptions from transfer duty and landholder duty will be replaced with a 90 per cent concession, similar to Victoria.

Under the proposed transitional rules, the rules currently in force (i.e. a 100 per cent exemption) are still expected to apply to:

- transactions occurring before 1 February 2024, or

- a transaction occurring on or after 1 February 2024 if an application for the exemption is made on or before 1 April 2024 and the transaction arose from an agreement or arrangement entered into before 19 September 2023.

### Registration of Private Unit Trust Schemes and introduction of “wholesale unit trust schemes”

The [Treasury and Revenue Legislation Amendment Bill 2023](#) also introduces a framework to apply from 1 February 2024 around the registration of certain private unit trust schemes that meet certain requirements as “wholesale unit trust schemes”. The newly introduced framework allows the Chief Commissioner to register a unit trust scheme if the Chief Commissioner is satisfied that the unit trust scheme is a wholesale unit trust scheme or will be a wholesale unit trust scheme within 12 months after the day the first units in the scheme are issued to a qualified investor (an imminent wholesale unit trust scheme).

There is also transitional relief for relevant acquisitions occurring on or after 1 February 2024 (i.e. these acquisitions may be subject to the 50 per cent or more acquisition threshold). This is provided that the acquisition in the unit trust scheme that has not otherwise been registered for the above purposes occurs on or after 1 February 2024, an application to register the unit trust scheme is made before 1 May 2024 and the application is approved.

### Other measures

- The fixed and nominal duty amounts for various transactions under the *Duties Act 1997* (NSW) will be increased for most transactions occurring on or after 1 February 2024.
- The exemption from motor vehicle registration duty for battery electric vehicles or hydrogen fuel cell electric vehicles with a value of not more than \$78,000 will be discontinued effective from 1 January 2024.
- A newly introduced road user charge payable for electric vehicles from 1 January 2024 is to be implemented.

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- From 1 February 2024 the principal place of residence exemption from land tax will only be available if the persons who use and occupy the land as a principal place of residence together own at least 25 per cent interest in the land.
- The operation of the land tax thresholds indexation system is corrected from the 2024 land tax year. This measure does not recoup past undercollection but seeks to ensure that the error is not repeated and the land tax base is not eroded.
- The First home Buyers Assistance Scheme is expected to unlock a maximum saving of \$30,735 for first time home buyers. The budget also promises investment of \$2.2 billion into new housing and infrastructure. Incidentally, the budget also points to \$60 million worth of Build-to-Rent trials as a part of the NSW Government's housing strategy.
- Coal royalty rates will increase from 1 July 2024 following the end of the Coal Market Price Emergency declaration.
- The Government is implementing increased casino duty rates and has reached an agreement with The Star casino that guarantees jobs and commits to cashless gaming. A transitional levy will apply until 30 June 2030 accompanied by a jobs guarantee from The Star. Further rate changes will come into effect from 1 July 2030.
- A power of the Chief Commissioner to remit interest is re-enacted and there will be a new power for the Chief Commissioner to issue guidelines about how interest must be remitted

Additional compliance investments were also announced for payroll tax, land tax and transfer duty.

For further analysis of the key measures in the NSW Budget, please refer to our [Tax Alert](#).

## NSW: Guidance on land tax concession for unoccupied land

Effective 1 July 2023, the *Land Tax Management Act 1956 (NSW)* extends the time from four to six years during which unoccupied land may be treated as a principal place of residence with respect to the payment of land tax in certain cases when the owner cannot use and occupy the land because of a delay in the completion of building or other work.

Under the new clause 7A, the Chief Commissioner may offer the extension where satisfied:

- there has been a delay in the completion of the building or other works necessary to facilitate the owner's intended use and occupation of the land as a principal place of residence
- the delay is due to exceptional circumstances beyond the control of the owner, and
- the delay could not reasonably have been avoided by the owner.

The Commissioner of State Revenue has issued a [Commissioner's Practice Note](#) to provide guidance on what the Chief Commissioner may classify as exceptional circumstances beyond the owner's control and what could not reasonably be avoided by the owner. Applications for an extension should be made in writing.

## NSW: Miscellaneous revenue amendments now law

The [Revenue, Fines and Other Legislation Amendment Bill 2023 \(NSW\)](#) has been given Royal Assent. As noted in last month's update, the Bill amends a number of NSW Acts as part of an ongoing program of maintaining the integrity and effectiveness of the revenue legislation.

Separately, Revenue NSW has issued the [Revenue, Fines and Other Legislation Amendment Act 2023 guide](#). Designed for property professionals, the guide provides key information relating to the amendments, and how they affect duties transactions.

## ACT: Principal place of residence circular updated

The Commissioner for ACT Revenue has released an updated [circular](#) on the concept of "principal place of residence" (PPR). The concept of a PPR is relevant to several taxes and schemes run by the ACT Revenue Office, including for stamp tax, land tax, and payroll tax purposes, as well as for various duty concessions.

The circular features updates regarding occupancy factors, place of residence, and determining the PPR, as well as new guidance on the Commissioner's power to review the residence period.

The circular is effective 11 September 2023.

## Queensland: Updated Rulings on foreign duty

The Queensland (QLD) State Revenue Office has released a number of updated Public Rulings concerning additional foreign acquirer duty (AFAD):

- AFAD residential land (Public Ruling [DA232.1.3](#))
- Foreign corporations and foreign trusts – interests of foreign persons and related persons (Public Ruling [DA000.14.4](#))
- Additional foreign acquirer duty – ex gratia relief for significant development (Public Ruling [DA000.15.4](#))

AFAD applies to direct or indirect transactions in land that are liable to QLD transfer duty, landholder duty and corporate trustee duty where the land is both 'AFAD residential land' and the acquirer is a foreign person.

Following the introduction of the AFAD Build-To-Rent (BTR) concession from 1 July 2023, a new Public Ruling [DA000.17.1](#) – AFAD concession for eligible build-to-rent (BTR) developments – has also been issued. This Ruling clarifies the Commissioner's interpretation of the following, for the purpose of determining eligibility for the AFAD concession:

- When a dwelling is self-contained
- When land is 'used solely or primarily for an eligible BTR development'
- When a BTR development is 'used solely or primarily for residential purposes'

The updated Rulings, including the new BTR Ruling, all apply from 28 August 2023.

### Victoria: Inquiry into land transfer duty fees

The Victorian Legislative Council Economy and Infrastructure Committee has delivered its [final report](#) into its inquiry into land transfer duty fees, making 12 findings and various recommendations to the government, including that the Department of Treasury and Finance:

- Model and publish the findings of 'switch on sale', 'credit' and 'gradual transition' proposals
- Regularly review stamp duty rates to adjust for bracket creep.

The report also recommends that the Victorian Government:

- Should consider additional measures to increase housing supply, including strengthening housing targets
- Advocate for a national approach to stamp duty reform, recognising its potential to address housing affordability and accessibility nationwide
- As an interim measure until a national commitment is made, urgently explore state-based reform options, including conducting an investigation into the feasibility of abolishing stamp duty and implementing a broad-based land tax as an alternative.

While the report makes the above recommendations, it does not recommend any single solution.

The Victorian Government has six months to respond in writing to any recommendations made in the report.

### Victorian Government proposes Short Stay Levy

The Victorian Government has [announced](#) that it intends to introduce a Short Stay Levy on short stay

accommodation platforms such as Airbnb or Stayz. The measure intends to address the issue that using short stay accommodation reduces the ability for such properties to be used for longer term accommodation or be rented out. More details are expected in due course.

### Victoria: Acquisition was a 'relevant acquisition' for landholder duty purposes

In [Woodsman Properties Pty Ltd v Commissioner of State Revenue \(Review and Regulation\) \[2023\] VCAT 1044](#), the Victorian Civil and Administrative Tribunal (VCAT) has confirmed an assessment to landholder duty on the taxpayer in respect of its acquisition of 100 per cent of the shares in another company that was a 'landholder' as defined in section 71 of the *Duties Act 2000* (Vic).

Under the *Duties Act*, a liability for duty arises when a person makes a 'relevant acquisition' of interests in a company that is a landholder. To be a relevant acquisition, the interest acquired by the person must be a 'significant interest' which for a private company means 50 per cent or more of the company's shares. When assessing whether a person's interest is a significant interest, regard is had to interests acquired by any 'associated person' or any other person who acquires in an 'associated transaction'.

The taxpayer argued that its acquisition of 37 per cent of the shares in a company was not a "relevant acquisition" for duty purposes, and that the remaining 63 per cent of shares (which were acquired by two other companies controlled by the taxpayer's director's siblings) should not be aggregated with the taxpayer's interest. In the alternative, the taxpayer claimed that its acquisition was exempt from duty under section 42(3) of the *Duties Act*, which applies to certain transfers of land from a deceased estate to a beneficiary.

VCAT rejected the taxpayer's arguments. The other companies and the taxpayer were 'related persons' and so 'associated persons' (as separately defined). Therefore, the taxpayer's acquisition was a relevant acquisition, with the interests acquired by the other companies to be aggregated with the taxpayer's interest. VCAT also held that the acquisition was not an exempt acquisition.

### Victoria: Wrong year for land tax exemption

In [Healey Management Pty Ltd v Commissioner of State Revenue \(Review and Regulation\) \[2023\] VCAT 1009](#), the VCAT confirmed a land tax assessment, finding that the land tax exemption for the construction of a retirement village only applied for the land tax year following the issue of the building permit.

In December 2021, the Commissioner of State Revenue issued a 2020 land tax assessment to the taxpayer in respect of land on which it is the operator of a retirement village. The taxpayer objected to the assessment on the basis that the relevant land should be exempt from land tax under section 78A of the *Land Tax Act 2005 (Vic)*, which allows for a land tax exemption for up to two land tax years during the construction of a retirement village.

Referencing the decision in [Rainn Pty Ltd v Commissioner of State Revenue \[2016\] VSCA 338](#), VCAT found that the land tax exemption would only have been available for the 2020 land tax year if the construction of the retirement village commenced by no later than 31 December 2019. As the building permit was not granted until after this date, no exemption was available for the 2020 land tax year (although VCAT noted that the Commissioner did apply the exemption under section 78A for the 2021 land tax year).

### WA: Dutiable value of mining tenements guidance

Updates have been made to the Western Australian (WA) Commissioner of State Revenue's practice [DA 42](#), which outlines the Commissioner's treatment of certain issues when assessing and determining the dutiable value of a dutiable transaction involving mining tenements or the unencumbered value of mining tenements held by a landholder. The latest changes to DA 42 are effective 15 September 2023.



# Superannuation Update

## Draft legislation for objective of superannuation

The Treasury has released [draft legislation](#) for consultation regarding the objective of superannuation.

The proposed objective of superannuation is 'to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.' This objective will be enshrined in legislation, requiring policy-makers to assess future changes to superannuation legislation for compatibility with the objective, and include a statement of compatibility with the objective in the explanatory materials accompanying all Commonwealth Bills and regulations relating to superannuation, unless an exception applies. The objective also includes the key principles which policy-makers should consider in delivering on this purpose – i.e. the system should operate in an equitable and sustainable way and recognise the interaction of superannuation with forms of government support, particularly the Age Pension.

Note that the objective is not intended to change the operation or interpretation of existing superannuation law, prudential standards or governing rules of superannuation entities. For example, it will not change or prevent how members can currently access their superannuation.

Consequential amendments and transitional arrangements to support the proposed law, which is to apply 28 days after amending legislation is enacted, are also provided.

Comments on the draft law closed 29 September 2023.

## NALE measures before Parliament

As noted in the Legislative Update, [legislation](#) is currently before Parliament to give effect to the proposals to change the non-arm's length expense (NALE) rules for complying superannuation entities. In summary, the amendments will apply to:

- limit the income of self-managed superannuation funds (SMSFs) and small Australian Prudential Regulation Authority (APRA) regulated funds that is taxable as non-arm's length income (NALI) to twice the difference between the amount that would have been expected to have been incurred for a general expense at arm's length, and the amount actually incurred (with no deductions applied against that amount). Amendments also ensure that assessable contributions less related deductions are always part of the low tax component and not taxed as NALI
- exempt large APRA-regulated funds, exempt public sector superannuation funds, Pooled Superannuation Trusts and Approved Deposit Funds from the NALI provisions for both general and specific expenses of the fund, and
- ensure that expenses incurred or expected to have been incurred before 1 July 2018 cannot result in the application of the NALE rules.

The amendments are proposed to apply in relation to income derived in the 2018–19 income year and following income years. This is to ensure the rules operate in line with their original policy intent and provide certainty beyond the expiry of the Commissioner's transitional compliance approach ([PCG 2020/5](#)) on 30 June 2023.

## Defined benefits funds – consider changes for certain pensions

[Recent amendments](#) to the superannuation tax law mean that all pensions paid from all defined benefit funds (other than invalidity benefits paid from certain military schemes) will be taxed as superannuation income streams and not eligible for superannuation lump sum income tax treatment. Although the measures have retrospective effect in relation to defined benefits pensions that commenced on or after 20 September 2007, certain transitional rules operate to ensure that affected individuals are not disadvantaged such that the

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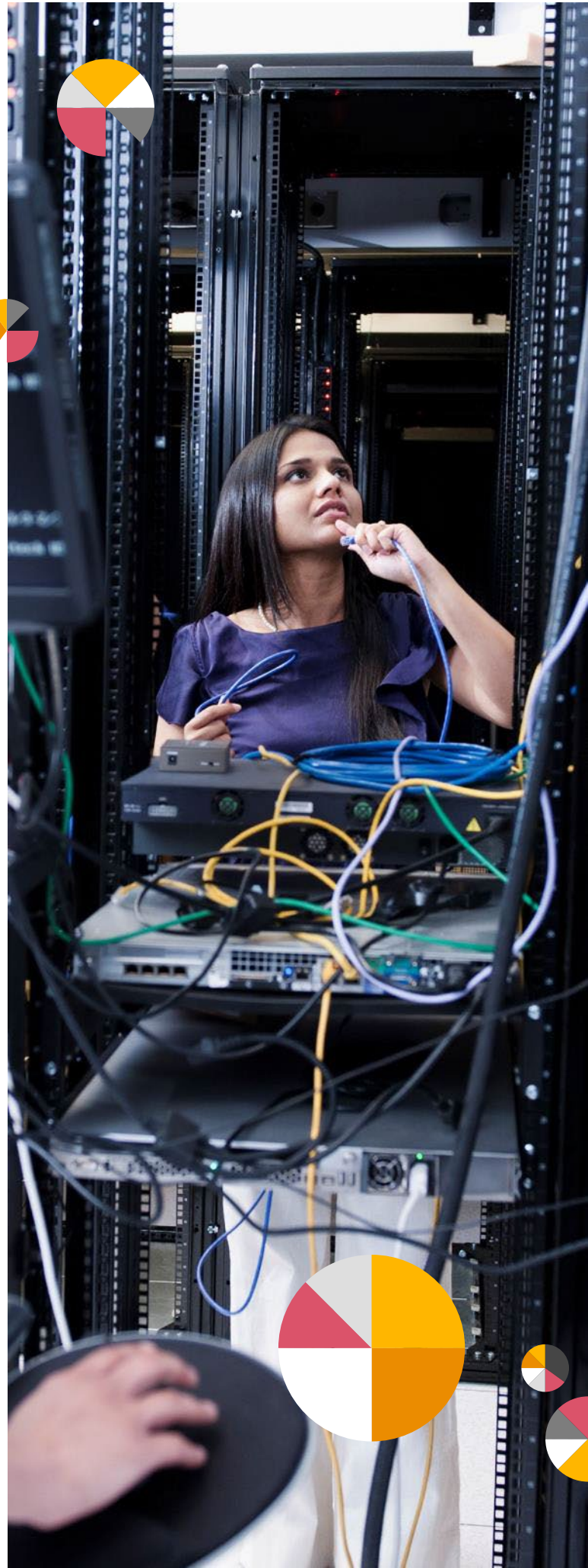
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Commissioner of Taxation cannot amend an income tax assessment for the 2021–22 income year or an earlier year that was issued before 4 December 2022. However, in other cases, such pensions will no longer be subject to superannuation lump sum income tax treatment and will be taxed as pension income streams.



# Legislative Update

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

- [Treasury Laws Amendment \(Support for Small Business and Charities and Other Measures\) Bill 2023](#), which was introduced into the House of Representatives on 13 September 2023, introduces a package of measures to provide short-term relief to small businesses as well as other tax and superannuation amendments. This includes:
  - increasing the instant asset write-off threshold from \$1,000 to \$20,000 for small businesses with aggregated annual turnover of less than \$10 million. This measure applies to eligible depreciating assets first used or installed ready for use between 1 July 2023 and 30 June 2024.
  - providing a small business energy incentive in the form of a bonus deduction (up to a maximum amount of \$20,000) equal to 20 per cent of the cost of eligible assets or improvements to existing assets that support electrification or more efficient energy use by businesses with an aggregated annual turnover of less than \$50 million. The measure is to apply to eligible assets first used or first installed ready for use, and eligible improvement costs incurred, between 1 July 2023 and 30 June 2024.
  - allowing certain community charities to achieve deductible gift recipient (DGR) status as well as updating the current DGR listing
  - providing the Global Infrastructure Hub with an exemption from income tax on its ordinary and statutory income

- amending the income tax law with respect to general insurance, to provide broad alignment with new accounting standard AASB 17 *Insurance Contracts* that will allow general insurers to continue using audited financial reporting information as the basis for their tax returns. This measure will apply to income years starting on or after 1 January 2023
- making changes to the application of the non-arm's length income (NALI) rules that apply to superannuation funds (see further information in the Superannuation section of this update). These amendments apply in relation to the 2018–19 and following income years
- reinstating the Australian Financial Complaints Authority's (AFCA) jurisdiction to hear complaints relating to superannuation, whether or not they meet the definition of superannuation complaint in the *Corporations Act*.

The following tax and superannuation related Bills have now completed their passage through Federal Parliament:

- [Treasury Laws Amendment \(2023 Measures No. 3\) Bill 2023](#), which, among other things (not tax or superannuation related), makes technical changes to the First Home Super Saver Scheme to improve the scheme's flexibility.
- [Treasury Laws Amendment \(2023 Law Improvement Package No. 1\) Bill 2023](#), which among other things, makes amendments relating to tax and superannuation that align with the Australian Law Reform Commission recommendations to improve the navigability of the law, and makes minor and technical amendments including to:

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- ensure that the definition of 'year of income' in the *Superannuation Industry (Supervision) Act 1993* is the same as for income tax purposes,
- clarify the provisions relating to the supply of goods and services tax (GST)-free cars and car parts to eligible individuals with current disability certificates, and
- ensure that the entity that is liable to pay GST on the relevant taxable supply of new residential premises and potential residential land would be entitled to the credit for the GST paid by the purchaser.

The following Commonwealth revenue measure was registered as a legislative instrument since our last update:

- The [Shipping Reform \(Tax Incentives\) \(Specification of Kinds of Vessels\) Instrument 2023](#) (which replaces its predecessor [Shipping Reform \(Tax Incentives\) Act 2012, Subsection 10 \(5\) specification of kinds of vessels](#)) applicable from 1 October 2023 specifies LNG tankers and gas carriers operating on international routes and ro ferries operating on interstate routes as kinds of vessels that are not to be excluded vessels under subsection 10(4) of the *Shipping Reform (Tax Incentives) Act 2012*.

The next sitting day for the Federal Parliament is 16 October 2023.



# Other News Update

## MBR program stopped

The Federal Government has [announced](#) that it will stop the Modernising Business Registers (MBR) program, following an [independent review](#) that concluded that the “most responsible and best available option” for the government was to stop the program.

The MBR program was designed to consolidate registry information from more than 30 Australian Securities and Investments Commission (ASIC) registers with the Australian Business Register, as well as deliver the Director ID scheme.

The Government stated that business as usual registry operations will continue under ASIC, and that it will also consider options to uplift registries following further analysis. The Government also confirmed that Director ID will continue.

## Guidance on Commissioner's discretion regarding 'control' finalised

The Australian Taxation Office (ATO) has released Taxation Determination [TD 2023/5](#), which provides guidance on issues arising from the administration of the Commissioner's discretion in section 328–125(6) of the *Income Tax Assessment Act 1997* on when an entity does not 'control' another entity. This is relevant for determining when an entity is connected with another entity for purposes of calculating an entity's aggregated turnover that is relevant for a range of tax measures, including small business concessions and the research and development (R&D) incentive.

There are no substantive changes from Draft Taxation Determination [TD 2023/D2](#), the details of which can be found in our [August](#) issue.

The Determination applies both before and after its issue. For further information, refer to our Tax Alert.

## ATO updates guidance on market valuation

The ATO updated its [guidance](#) on market valuations for tax purposes, by removing specific references to institutes that provide certification and standards for valuers.

The guidance now also includes general statements on the need for valuers to have the appropriate certification and registration or licensing. For our earlier summary of the ATO's guidance on market valuations for tax purposes, refer to this [Tax Alert](#).

## ATO's communication protocols on objections

The ATO has issued Practice Statement Law Administration [PS LA 2023/2](#), which sets out the framework governing the communications between objection officers and officers involved in making the original decision. The overarching principles set out in the Practice Statement include:

- objection officers being open and transparent about their decisions and decision-making processes, and providing a fair, objective and impartial review. This involves a balance of ensuring that decisions are made independently from the original decision-maker and that the objection officer is fully informed in coming to their decision.
- in making an objection decision, the objection officer must ensure consistency and coherency in interpreting and applying the law and administration of the tax and superannuation system.
- objection officers are expected to take steps to be as informed as possible on the relevant facts, circumstances and supporting evidence. This may include engagement with the original decision-makers.

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- the objection officer must seek to understand the basis of the original decision and the reason it has been objected to. This should include an appropriate appreciation of the broader context of the case, including any relevant ATO strategies and risks.

## Exposure draft law on enhanced tax regulation

The government has released several items of exposure draft legislation, concerning:

- [Tax Practitioners Board](#) reforms which aim to enhance the Tax Practitioners Board's (TPB) investigation processes and improve the TPB Register by lifting its functionality and utility, and increase the transparency of tax practitioner misconduct
- [information sharing](#) which aims to remove limitations in the tax secrecy laws, and enable the ATO and TPB to refer ethical misconduct by advisers with prescribed professional associations for disciplinary action
- reform of [promoter penalty laws](#) which will increase the time the ATO has to bring an application for civil penalty proceedings in the Federal Court of Australia, align the maximum civil penalties that the Federal Court of Australia can impose on promoters, and expand the application of the current regime
- [whistleblower protections](#) which will extend existing whistleblower protections to a new range of disclosures related to potential misconduct by tax practitioners and authorise the ATO and TPB to share information they have received from whistleblowers with the Australian Charities and Not-for-profits Commission, as well as from each other.

Responses to each consultation close 4 October 2023.

## ACNC publishes updated Commissioner's interpretation statement on PBIs

The Australian Charities and Not-for-profits Commission (ACNC) has released an updated [Commissioner's interpretation statement](#) (CIS) on Public Benevolent Institutions (PBIs), explaining the ACNC's view of how a PBI is defined and how it applies that definition in its consideration of applications for registration with that charity subtype. The updated CIS incorporates recent court decisions.

## Review of Payment Times Reporting Act

A [statutory review](#) of the *Payment Times Reporting Act 2020* has been released. The Payment Times Reporting Scheme (PTRS) requires large businesses to report on how quickly they pay their small business suppliers.

The review, conducted by the Hon Dr Craig Emerson, found that while the PTRS had merit, certain requirements in the Act impose unnecessary regulatory burdens on reporting entities, compromise the effectiveness of the Regulator, and limit the accuracy and accessibility of the data.

The review makes 14 recommendations, encompassing 23 actions for Government, including an overhaul of the PTRS, by clarifying objectives, simplifying who needs to report and what needs to be reported, improving the accessibility of information and addressing constraints on the effectiveness of the Regulator. The review also recommended undertaking a further statutory review of the Act within five years of the implementation of the reforms to the PTRS to assess their impact.

The Government has said it will consider the findings and recommendations from the review, and has [asked](#) the Treasury to immediately proceed with actions that require only changes to existing guidance materials and operational processes.

## Commissioner of Taxation's term

The Commissioner of Taxation Chris Jordan effectively confirmed in his [speech](#) at the Tax Institute Tax Summit that he will not seek a further term as Commissioner of Taxation when he indicated that his speech would be his final address as Commissioner. His [current term](#) as Commissioner and Registrar of the Australian Business Register ends on 29 February 2024.

## Editorial

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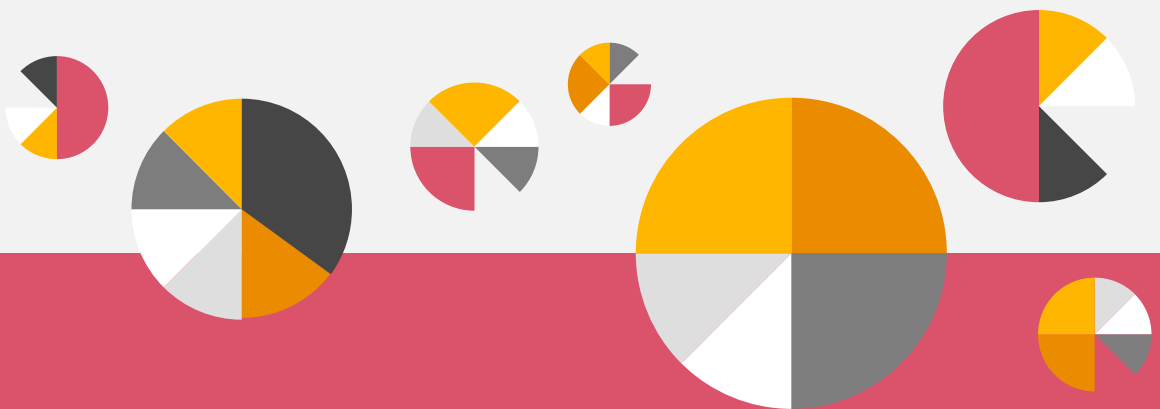
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WLTD0632733