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PwC's Monthly Tax Update

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

September 2021



Corporate Tax Update

ATO consultation on changes to LIBOR and other interest rate benchmarks

The Australian Taxation Office (ATO) is undertaking **consultation** to seek input for proposed high level guidance on common tax implications of changes that will be required to certain financial instruments as a result of the transition of various interest rate benchmarks, including the London Inter-bank Offered Rate (LIBOR), the Euro Inter-bank Offered Rate (EURIBOR), the United States of America's Effective Federal Funds Rate and other Inter-bank Offered Rate (IBOR) benchmarks, to alternative risk-free rates (RFRs).

Although the change is of particular relevance to financial institutions, taxpayers outside the financial sector may also be impacted as LIBOR is used to determine the interest rate for a large number of loans, derivatives and other financial instruments. The paper notes that the tax consequences of IBOR reform will largely depend on the legal effect of any amendments made to legacy contracts in response to IBOR reform and specifically whether the relevant amendments cause a mere variation or rescission to the existing legal contract. In order to illustrate some of the more common tax issues that may arise as a result of changes made to financial arrangements driven by IBOR, the principles discussed in this discussion paper are provided in a series of examples.

Comments in response to the discussion paper are due by 10 September 2021.

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Employment Taxes Update

ATO guidance on travelling expenses

The Australian Taxation Office (ATO) has released [Taxation Ruling TR 2021/4](#) which considers the income tax and fringe benefits tax implications of food and drink expenses incurred by employees while travelling for work. TR 2021/4 also considers the criteria for when an allowance is a travel allowance or a living away from home allowance. TR 2021/4 will apply to dates both before and after

the date of issue, however the ATO will have regard to any conflict between TR 2021/4 and previous draft rulings in determining whether to allocate compliance resources to previous income years.

The ATO has also released [Practical Compliance Guideline PCG 2021/3](#) that outlines the ATO's compliance approach to determining if allowances or benefits provided to an employee relate to travelling on work or living at a location. PCG 2021/3 is intended to provide practical guidance to assist employers with determining whether an allowance is

paid for travelling on work or living at a location and also whether amounts reimbursed or paid by an employer would have been deductible to the employee had they purchased the goods or services.

Although both TR 2021/4 and PCG 2021/3 finalise previous draft iterations on the issue, there are a number of important clarifications and differences that have arisen through the consultation process. Refer to this [PwC Alert](#) for further details.

SG and Your Future, Your Super choice of fund reforms

The ATO released for comment (due by 16 August 2021) draft legislative instruments providing concessions to employers for the first year of compliance with the *Your Future, Your Super* reforms relating to the choice of fund rules as they apply to SG contribution obligations. The choice of fund rules relate to employees who start employment on or after 1 November 2021, and which aim to limit the creation of multiple superannuation accounts for employees. The following determinations, once finalised, will also take effect from 1 November 2021:

- draft [Superannuation Guarantee \(Administration\) – choice of fund – written guidelines for the reduction of an increase in an employer's individual superannuation guarantee shortfall determination 2021](#) outlines facts and circumstances that are proposed to be considered by the Commissioner when deciding to reduce an SG shortfall amount if an employer makes contributions to a superannuation fund or retirement savings account but does not comply with appropriate choice of fund requirements. The Commissioner proposes to reduce the shortfall amount to nil where the employer's non-compliance arose from lack of knowledge of the new requirements and it is the first occasion of non-compliance. Other factors, such as prior SG compliance history, will be relevant to the ATO's assessment of any reduction in penalties.
- The [Superannuation Guarantee \(Administration\) – stapled fund – guidelines for the reduction of an employer's individual superannuation guarantee shortfall for late contributions due to non-acceptance by notified stapled fund determination 2021](#) outlines facts and circumstances that are proposed to be considered by the Commissioner when deciding to reduce SG shortfall where contributions were made late because the employee's stapled fund did not accept the contributions. During the first year of the amendments, the Commissioner proposes to reduce SG shortfalls to nil unless there is evidence that the employer did not make reasonable attempts to comply with stapled fund rules. Of note, the determination includes a

range of specific criteria which the Commissioner will have regard to when making this assessment, including the circumstances which led to the rejected contribution, subsequent steps taken by the employer to make the contribution to another fund which met the choice of fund rules, within a reasonable timeframe.

Importantly, this instrument does not apply where the employer's contributions (other than by reason of the late payment) result in an SG shortfall (e.g. if an underpayment is made in relation to a particular pay code).

AAT decision on salary and benefits

The AAT in [Hartley v Federal Commissioner of Taxation \[2021\] AATA 2622](#) has held that amounts that were paid to and assessed as income over seven years to the taxpayer were in fact salary and not payments of remote area housing benefits or expense payment benefits that would have otherwise been wholly or partly exempt from income tax. Although the taxpayer's employment contract permitted salary packaging arrangements, it did not contain any clauses specifying any particular arrangements. There was nothing to indicate that the taxpayer or the employer agreed on the portion of salary to be received as benefits nor did they agree about any proportion of salary that would be taken as remote housing benefits or expense payment benefits.

COVID-19 and Tasmanian payroll tax waivers

The State Revenue Office of Tasmania has released a number of guidelines providing information on the payroll tax waiver and payroll tax rebate scheme to support businesses through COVID-19. The guidelines available cover payroll tax waivers or rebates for:

- [JobKeeper payments](#)
- [employers with annual wages up to \\$5 million](#)
- the [hospitality, tourism and seafood industries](#); and
- [apprentices, trainees and youth employees](#).

Payroll tax (NSW): Rulings on parental leave and contractor exemptions

Revenue New South Wales (NSW) has issued [Revenue Ruling PTA 012B](#) that discusses exemptions from payroll tax for wages paid to employees on maternity leave, adoption leave and paternity leave. Ruling PTA 012B incorporates previous guidance applying to wages paid while on paternity leave and clarifies that payments made to

an employee that have no connection to the maternity, adoption or paternity leave are not eligible for the exemption. These payments could include performance bonuses, wages in excess of the leave period, commissions, overtime for services before the leave commenced or payments for future periods of service. Ruling PTA 012B applies from 1 July 2021.

Revenue NSW has also issued [Revenue Ruling PTA 021v2](#) that deals with the exemption for contractors who ordinarily perform services to the public, following the decision of the Supreme Court of Victoria in *Nationwide Towing & Transport Pty Ltd & Ors v Commissioner of State Revenue (Vic)* [2018] VSC 262. The updated Revenue Ruling provides that the Commissioner of State Revenue does not need to be satisfied that a contractor conducts a genuine independent business in order for an exclusion from payroll tax to apply. This ruling removes that requirement and clarifies the application of this particular exemption.

Payroll tax (Qld): Ruling on parental leave

Queensland Treasury has issued [Public Ruling PTAQ014A.3.1](#) explaining the application of the payroll tax exemptions for parental, adoption, surrogacy and cultural parent leave pay. The Ruling explains the types of wages that are exempt under these exemptions, the maximum entitlement and record keeping requirements. The update specifically incorporates the applicable change in law to ensure that from 1 July 2021, the exemption includes cultural parent leave. A cultural parent is defined as a person who agrees to accept the permanent transfer of the parental rights and responsibility for a child in accordance with Ailan Kastom child rearing practice.

COVID-19 and QLD payroll tax

The Queensland (QLD) Government [announced](#) as part of its COVID-19 business support measures that it will allow a deferral of payroll tax liabilities due in August 2021 for a period of six months with businesses that have already paid their August payroll tax able to defer their next monthly payroll tax liability.

Payroll tax (Qld): Single director had controlling interest

The Court of Appeal of the QLD Supreme Court in [Salemade Pty Limited & Ors v Commissioner of State Revenue](#) [2021] QCA 164 has dismissed the taxpayer's appeal and accordingly affirmed the Commissioner's decision that the taxpayers were a group of commonly controlled companies for QLD payroll tax purposes. The taxpayer's position was that the relevant provisions of the *Payroll Tax Act*

1971 (QLD) were not satisfied on the basis that, as a single director company, no meetings of the directors were held in which voting power could be exercised that would exceed the 50 per cent threshold required under these provisions.

The Court rejected the taxpayer's ground of appeal that the primary judge should have held that the reference in the law concerning grouping of commonly controlled business to "voting power at meetings of the directors" of a corporation did not encompass the power of a sole director to make a written resolution as conferred by the *Corporations Act 2001* (Cth). Furthermore, the Court rejected the taxpayer's contention that the primary judge should have held that, in the absence of evidence to the contrary, there was sufficient evidence that the New South Wales payments relied on as the basis of the subject assessments were not "interstate wages" for the purposes of the payroll tax law.

Draft law on proposed ESS changes

The Federal Government has released for consultation [exposure draft legislation](#) that will implement previously announced reforms to regulatory and tax arrangements for employee share schemes (ESS). These reforms should make it easier for businesses to offer ESS and will support Australian businesses to attract and retain the talent they need to compete on the global stage.

The draft legislation covers the removal of cessation of employment as a taxing point and reforms to simplify the disclosure and licensing requirements which was announced in the 2021-22 Federal Budget.

Refer to [PwC's Alert](#) for further details about the proposed changes.

Committee report on tax treatment of ESS

The House of Representatives Standing Committee on Tax and Revenue has presented its [report on the Tax Treatment of Employee Share Schemes](#).

The Committee's main recommendation is that ESS be treated as capital, and that a tax liability would arise on the disposal of the assets granted, using the current capital gains tax regime. Other recommendations also include:

- regulatory relief to reduce disclosure requirements in certain situations
- enhanced collection and sharing of data
- a public awareness program
- an investigation by the Productivity Commission to identify how Australia's existing arrangements can be improved, and

- proposed amendments to simplify the complicated and restrictive current tax arrangements and support more individuals to access tax concessions for ESSs.

Settlement claim treated as ETP

The Administrative Appeals Tribunal (AAT) in [Stark v Federal Commissioner of Taxation \[2021\] AATA 2583](#) has held that a payment received in settlement of a claim for deceptive conduct and wrongful dismissal was appropriately tax as an employment termination payment (ETP). The taxpayer's employment was terminated by the employer after which time the taxpayer instigated legal proceedings in the Supreme Court of Queensland, which were settled for a \$555,500 payment (being \$50,000 for general damages and \$505,500 for lost earnings) and execution of a deed that released the employer from all claims under the litigation. The taxpayer argued that the majority of the settlement payment was compensation for lost earnings and was capital in nature and covered by section 82-135(i) of the *Income Tax Assessment Act 1997* (ITAA 1997) as a capital payment for "personal injury" (excluded from being an ETP).

The Tribunal relied on established authorities that it is not necessary for a payment to relate solely (or even the dominant cause) to a wrongful dismissal or other termination of employment in order for a payment to be characterised as received in consequence of termination of employment. The payment settled all claims and is properly characterised as received in consequence of termination of his employment. Furthermore, the Tribunal noted in any case, even if the payment were solely compensation for lost earning capacity, it would not follow that it was not made in consequence of termination of his employment. The litigation would not have occurred if his employment had not been terminated.

The Tribunal concluded that the payment was made in consequence of termination of Mr Stark's employment for the purposes of the definition of an ETP. The Tribunal further found there was no basis on which to identify any part of this undissected sum as relating to personal injury.

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Global Tax Update

OECD update on transfer pricing and harmful tax practices

The Organisation for Economic Cooperation and Development (OECD) has [released](#) updated transfer pricing country profiles for 20 jurisdictions, focusing on key principles used in domestic law and indicating to what extent these principles follow the OECD transfer pricing guidelines. The updated profiles also include two new sections relating to the transfer pricing treatment of financial transactions and the application of the Authorised OECD Approach to permanent establishments. Updates to

the transfer pricing profiles will continue to be conducted in batches through 2021 and early 2022.

The OECD Forum on Harmful Tax Practices (FHTP) has also [updated](#) the peer review results on harmful tax practices following new conclusions on 25 preferential tax regimes. The preferential regimes discussed include Australia's offshore banking unit (OBU) regime and the United States foreign derived intangible income regime., noting that Australia has abolished its OBU regime, with grandfathering provided to existing taxpayers within FHTP timelines.

Review of the 2021 foreign investment reforms

Federal Treasury is undertaking [consultation](#) on the operation of the foreign investment framework following major reforms which commenced on 1 January 2021. The reforms updated the framework in three broad ways:

- addressed national security risks
- strengthened the existing system, including in relation to compliance; and
- streamlined investment in non-sensitive businesses.

The reforms also set up a framework to establish a register of foreign ownership of Australian assets and provided additional funding for the Treasury to upgrade its foreign investment case management system and uplift its capability as the regulator of foreign investment in Australia. Submissions in response to the consultation closed on 31 August 2021.

Decision on tariff concession order

The Administrative Appeals Tribunal in [Ceramic Oxide Fabricators Pty Ltd v Comptroller-General of Customs \[2021\] AATA 2770](#) held that an applicant had not undertaken the necessary inquiries to

establish no Australian producers of suitable goods were available in order to obtain a tariff concession order. The applicant had conducted searches of Australian suppliers but had made no inquiries with any manufacturers on the basis the applicant was confident no Australian supplier had the necessary capabilities.

New Zealand rental property deductions to be limited

Earlier this year the New Zealand Government announced that deductions for interest expenses on rental properties will be restricted from 1 October 2021. A [public consultation document](#) seeking feedback on a range of design issues for implementing that proposal was released. This included a transitional approach for residential investment property acquired before 27 March 2021 and an exception for land outside New Zealand and for property developers and owners of new builds. Consultation closed on 12 July 2021. The measures are expected to be introduced into New Zealand Parliament later this year but will apply from 1 October 2021.

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Indirect Tax Update

Consultation guide for Board of Taxation's review of low value imported goods measure

As part of the Board of Taxation's [review](#) of the collection of Goods and Services Tax (GST) on low value imported goods, it has now released a [consultation guide](#). The low value imported goods measure requires suppliers, online platforms and re-deliverers to register, collect and remit GST to the Australian Taxation office (ATO) on imported goods that cost AUD 1,000 or less.

The consultation guide explains the review process, guides stakeholders on how to contribute and poses a number of questions for interested parties to consider. A series of virtual roundtable consultation sessions will be held by the Board until September and written submissions may also be made until 22 September 2021.

Supplies of cars for people with disabilities

The ATO has issued the [Taxation Administration \(Remedial Power – Certificate for GST-free supplies of Cars for Disabled People\) Repeal and Transitional Arrangements Determination 2021](#). The Determination ensures that eligible individuals with disabilities with the appropriate current disability certificates continue to be able to access GST-free supplies of cars and car parts, taking into account proposed amendments contained in the [Treasury Laws Amendment \(2021 Measures No. 5\) Bill 2021](#). Transitional arrangements also provided by this instrument are necessary to ensure that disabled individuals that held disability certificates and certificates of medical eligibility in force immediately prior to the amendment of the relevant GST law taking effect are not disadvantaged by the change to the provision.

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Personal Tax Update

Commonwealth COVID-19 disaster payments to individuals not taxable

COVID-19 Disaster Payments received by individuals from the Commonwealth will be non-assessable non-exempt income in accordance with recently [enacted law](#).

Tax traps for property investors

The Australian Taxation Office (ATO) has put property investors on [notice](#) to beware of common tax traps that could result in an audit or delay any tax refund. The most common error made by rental property and holiday homeowners is to fail to declare all of their income, including capital gains.

Other common errors include failing to keep records, claiming capital works as a lump sum rather than spreading the cost over a number of years, claiming interest deductions on personal loans or claims for capital improvements.

In relation to COVID-19, the ATO states that only rent received in a financial year needs to be declared as income and expenses may still be deductible despite reduced rental income. If the taxpayer was planning to rent a short-term rental property in the same way as previous income years but this was disrupted by travel restrictions, the ATO will generally accept claims for the same proportion of expenses as in previous years.

ATO guidance on residency for COVID-19 impacted mobile employees

The ATO has updated its website [guidance](#) on residency and source of income for individuals working remotely in Australia as a result of the

COVID-19 pandemic. The updated guidance draws a distinction between someone who is able to leave Australia but chooses to remain and someone unable to leave Australia. For further details, refer to PwC's [insight](#).

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State Taxes Update

COVID-19 support measures

A range of State and Territory support measures are in place to deal with the recent lockdowns and travel restrictions that are currently or were in place across many jurisdictions in Australia. These include specific grants and other cash flow support or relief measures.

To see a summary of the current funding and cash flow programs that are available to certain affected businesses across the various States and Territories, refer to our [webpage](#).

Tasmanian Budget

The 2021-22 Tasmanian Government Budget was delivered on 26 August 2021 by Treasurer Peter Gutwein. The state taxation revenue for 2020-21 of \$1,448.3 million exceeded expectations and former budget forecasts by approximately \$227.7 million. This reflects an overall increase across all state taxes including payroll tax, land tax, stamp duty and motor vehicle duty. This revenue is forecast to grow by \$236.3 million from 2021-22 to 2024-25.

Several changes to taxation measures have been introduced. These include:

- Resetting the land tax thresholds, with:
 - an increase in the tax-free threshold from \$24,999 to \$49,999; and
 - an increase in the top tax band threshold from \$350,000 to \$400,000.
- An increase to the First Home Buyer Duty Concession and Pensioner Duty Concession maximum value threshold to \$500,000 (from \$400,000).

- A two-year waiver of stamp duty when buying electric and hydrogen fuel cell vehicles (new or second hand) with lower up-front costs aimed to incentivise the purchase of these vehicles.
- A 50% reduction in the premium component of the interest rate charged on unpaid tax (from 8% to 4%).

ACT landholder duty

The ACT Revenue Office has issued a [circular](#) explaining how ACT landholder duty is calculated, including how relevant acquisitions are valued.

NSW land tax exemption for certain primary production transfers

Revenue NSW has issued [Revenue Ruling DUT 050](#) which explains the operation of the stamp duty exemption for the transfer of certain primary production property between family members. The Ruling addresses the key concepts arising from the specific legislative exemption and transactions to which the exemption applies.

NSW duty ruling dealing with evidence of value

Revenue NSW has issued updated [Revenue Ruling DUT 012 v3](#) which provides some general guidelines as to when evidence of value will be required, and sets out the types of valuations or other evidence of value acceptable to the Chief Commissioner of State Revenue in assessing dutiable transactions. The updated Ruling now includes additional comments on when evidence of value will be required where options are exercised.

NSW surcharge land tax affirmed

The Civil and Administrative Tribunal in New South Wales affirmed the Chief Commissioner's assessment of surcharge land tax in the matter of [Chu v Chief Commissioner of State Revenue \[2021\] NSWCATAD 238](#). The taxpayer owned two properties in NSW and was a permanent resident of Australia although not an Australian citizen, and due to business responsibilities was required to be out of Australia for extended periods covering the period of surcharge assessment.

The Tribunal found that the taxpayer was not "ordinarily resident" in Australia and was not physically

present in Australia for the requisite 200-day period in the relevant years. The reasons for a person not actually being in Australia for the 200-day period are not relevant in assessing liability and there is no discretion for the Chief Commissioner to exempt the imposition of surcharge land tax where the statutory criteria are not met, including by taking into account the taxpayer's business and any benefits to Australia which may be seen to arise from the international nature of that business. The taxpayer's other grounds for argument were rejected.

The Tribunal found that the Chief Commissioner's decision to issue the surcharge land tax assessment was the correct and the preferable decision.

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Superannuation Update

ATO fact sheet on compensation payments and whether a contribution

The Australian Taxation Office (ATO) has published a [fact sheet](#) explaining the implications of compensation payments on superannuation contribution caps. A fund may receive compensation from a financial services provider due to the provision of inappropriate financial advice or where fees were paid but no advice provided. The compensation may include an amount reflecting a refund or reimbursement of adviser fees and/or an amount to compensate for lost earnings and may also include an interest component. The fact sheet discusses whether an amount of compensation will be considered a contribution and the ATO's discretion to disregard or reallocate an individual's excess concessional or non-concessional contributions for an income year.

Whether the compensation is a contribution and therefore counted towards your contribution caps will depend on the circumstances in which the compensation is received, including:

- where your super fund engaged the financial service provider and has a right to compensation
- where you personally engaged the financial services provider and you have a right to compensation
- where there is no right to compensation.

Non-arm's length income rules

The ATO has issued Law Companion Ruling [LCR 2021/2](#) which clarifies the ATO's interpretation of amendments to the non-arm's length income (NALI) rules that operate when a complying superannuation entity incurs non-arm's length expenditure (or where expenditure is not incurred) in gaining or producing ordinary or statutory income. The Ruling applies from 1 July 2018 given the amendments apply in relation to income derived in the 2018-19 and later income years.

The taxable income of a complying superannuation fund includes a 'non-arm's length component', which is taxed at the top individual marginal tax rate. The non-arm's length component is the amount of the superannuation fund's non-arm's length income less

any deductions to the extent that they are attributable to that income.

The Ruling provides guidance with examples, on the application of the amendments. It also confirms the Commissioner's view that non-arm's length expenditure incurred by a trustee of a superannuation fund that is of a general nature (e.g. fees for accounting or audit services, actuarial costs, investment adviser fees) can have a sufficient relationship to all of the income of a superannuation fund. Where the fund incurs non-arm's length expenditure of this nature, the nexus between the expenditure and all the income derived by the fund is sufficient for all the income to be non-arm's length income.

LCR 2021/2 also sets out the ATO's practical compliance approach when considering whether general expenses are 'arms' length'. Specifically, while the ATO have stated they will not apply additional compliance resource until 1 July 2022 as set out in Practical Compliance Guideline [PCG 2020/5](#), where the ATO applies any compliance resources for general fund expenses, they will only be directed:

- for a self-managed super fund (SMSF) – toward ascertaining whether the parties have made a reasonable attempt to determine an arm's length expenditure amount for services provided to the fund, other than services provided by an individual either acting in the capacity as trustee of the fund or as a director of a body corporate that is a trustee of the fund, and
- for a large Australian Prudential Regulation Authority (APRA) regulated superannuation fund – toward reviewing supporting documentation that evidences that appropriate internal controls and processes are in place and that reasonable steps were taken to determine an arm's length expenditure amount.

However, there is no guarantee that the ATO will not apply their interpretation of NALI to any fund they review where the fund has not dealt with the issues raised in the ruling effective from 1 July 2018.

Additional information on APRA Connect

The APRA Superannuation Data Transformation project aims to drive better industry practices and improve member outcomes by significantly enhancing the comparability and consistency of reported data. To this end, APRA has [published](#) additional information to assist entities with APRA Connect which will be available from 13 September 2021. It has also released [taxonomy artefacts](#) which include the data dictionary, validations, reporting taxonomy and XSD (to validate files) which are provided to help entities prepare data for submission

on APRA Connect. Additional [frequently asked questions](#) (FAQs) for registrable superannuation entity licensees have also been made available. The FAQs provide an update on reporting standards and the implementation of the Superannuation Data Transformation project.

APRA information paper on MySuper performance histories

The *Your Future, Your Super* measures came into effect on 1 July 2021 and are designed to ensure superannuation works in the best financial interests of all members. APRA will support one of the key measures which is administering the annual performance test for superannuation products and holding funds to account for underperformance, which includes enhancing industry transparency through publication of the results of the performance test.

In this regard, APRA has released an [information paper](#) on its approach to combining performance histories for MySuper products to hold funds to account for underperformance. Specifically, APRA has developed a number of principles which will be followed when determining whether to combine the performance of multiple MySuper products. The performance history of MySuper products may be combined where there have been changes to the structure or nature of one product or where a product has ceased and members are transferred to a new product. The information paper includes a simple example of the methodology adopted.

Draft law on financial reporting and portfolio holdings

The Federal Treasury has [released](#) exposure draft legislation and explanatory materials on financial reporting and auditing obligations for registrable superannuation entities (RSEs) for consultation. The draft legislation proposes to require RSEs to prepare and lodge full year and half year financial reports, publish the financial report on the RSE's website and provide the financial reports to members and beneficiaries on request. The draft legislation also proposes to impose additional requirements for auditors of RSEs. Submissions in response to the draft legislation are due by 8 September 2021.

Treasury has also released [exposure draft regulations](#) covering portfolio holding disclosures by superannuation funds as part of the *Your Future, Your Super* reforms. The draft regulations follow earlier consultation and have been amended to:

- provide that information should be easily downloadable
- allow cash and bank bill investments to be aggregated

- sub-divide infrastructure and property investments in disclosures
- remove the requirement to disclose counterpart details for derivatives; and
- provide that RSEs are free to provide supplementary information.

Submissions in response to the draft regulations closed on 31 August 2021.

ATO issues Division 293 assessments

The ATO has recently issued approximately 30,000 [Division 293 assessments](#) for the 2018-19 and 2019-20 financial years. These assessments – either an initial or amended Division 293 assessment – have been issued due to an identified system issue where

concessional contributions reported for these financial years were not included in Division 293 assessments where the superannuation account was also reported as closed during that financial year.

Stapled super fund details for employees

From 1 November 2021, to comply with the new choice of fund rules, an employer will need to request the employee's 'stapled super fund' details from the ATO. A stapled super fund is an existing super account which is linked, or 'stapled', to an individual employee so that it follows them as they change jobs. Consider the [process](#) that the ATO sets out to confirm this.

Let's talk

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Legislative Update

Parliament resumed sittings on 3 August 2021 Federal.

Since our last update, the following Commonwealth tax legislation were introduced into Parliament:

- [Treasury Laws Amendment \(COVID-19 Economic Response No 2\) Bill 2021](#), which was introduced into the House of Representatives on 3 August 2021 and since enacted, amends the income tax law to:
 - enable tax information to be disclosed to Australian government agencies for the purposes of administering COVID-19 business support programs
 - make payments received under Commonwealth administered business support programs non-assessable non-exempt income for businesses with turnover of less than AUD 50 million; and
 - make COVID-19 Disaster Payments received by individuals non-assessable non-exempt income.
- [Treasury Laws Amendment \(2021 Measures No. 6\) Bill 2021](#) which was introduced into the House of Representatives on 11 August 2021, amends the income tax law to:
 - make refunds of large scale generation shortfall charges non-assessable non-exempt income;
 - removes the requirement for actuarial certificates when calculating exempt pension income where all members are in their retirement phase; and
 - creates an information sharing mechanism between family law courts and the Australian Taxation Office to improve identification of superannuation assets in family law proceedings.

- [Treasury Laws Amendment \(2021 Measures No 7\) Bill 2021](#), which was introduced into the House of Representatives on 25 August 2021, amends tax and superannuation laws to:
 - require electronic platform operators to provide information on transactions made through the platform to the Australian Taxation Office and will apply from 1 July 2022 for transactions in relation to the supply of taxi travel and short-term accommodation, and from 1 July 2023 for all other transactions
 - facilitate the closure and any transitional arrangements associated with Australian Financial Complaints Authority replacing the Superannuation Complaints Tribunal, and
 - removes the \$250 non-deductible threshold for work-related self-education expenses.

The following Bills have completed their passage through Parliament:

- [Customs Amendment \(2022 Harmonized System Changes\) Bill 2021](#) and [Customs Tariff Amendment \(2022 Harmonized System Changes\) Bill 2021](#) which together implements changes resulting from the sixth review of the Harmonized Commodity Description and Coding, including measures to:
 - amend the definition of 'tobacco products' to include a reference to a new tariff subheading that applies to tobacco products designed for inhalation without combustion (i.e. e-cigarettes)
 - insert new subheading classifications for emerging technologies and product categories
 - remove subheading classifications for products that are no longer traded in significant volume

- insert new subheading classifications to improve monitoring of trade for goods of concern
- create specific classifications for flat panel displays, semiconductor-based transducers and electronic waste; and
- make consequential amendments.

Commonwealth revenue measures that were registered as legislative instruments or regulations since our last monthly update include:

- [Treasury Laws Amendment \(Your Future, Your Super—Addressing Underperformance in Superannuation\) Regulations 2021](#) to support the *Your Future, Your Super* measures that require an annual performance test for certain superannuation products.
- [Treasury Laws Amendment \(Your Future, Your Super—Single Default Account\) Regulations 2021](#) to support the *Your Future, Your Super* measures relating to the choice of fund rules and to specifically prescribe the definition of an employee's "stapled fund".
- [Superannuation Industry \(Supervision\) Amendment \(Your Future, Your Super—Improving Accountability and Member Outcomes\) Regulations 2021](#) to support the *Your Future, Your Super* measures to prescribe what information should be provided in a notice of the annual meeting and will prohibit a trustee from using goods or services to influence an employer.
- the [Taxation Administration \(Remedial Power – Certificate for GST-free supplies of Cars for Disabled People\) Repeal and Transitional Arrangements Determination 2021](#) ensures that eligible individuals with disabilities continue to be able to access CGT-free supplies of cars and car parts.

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Other News

Draft law for proposed CCIV regime

The Government has released for public consultation [draft legislation](#) (and associated explanatory material) that will implement the tax and regulatory components of the corporate collective investment vehicle (CCIV) regime.

A CCIV is an investment vehicle with a corporate structure similar to comparable vehicles overseas. A single CCIV can offer multiple products and investment strategies within the same vehicle.

The proposed new law includes:

- new measures in the *Corporations Act 2001* (Cth) containing the core provisions outlining the establishment of CCIVs and their operational and regulatory requirements
- amendments to other legislation to support the implementation of CCIVs; and
- the tax legislation, which ensures the tax treatment of CCIVs aligns with the existing treatment of attribution managed investment trusts, providing investors with the benefits of flow-through taxation.

Comments can be made by 24 September 2021.

COVID-19 business grants not assessable

COVID-19 business grants administered by the Commonwealth will be non-assessable non-exempt income to certain business taxpayers where declared. This is in accordance with the [Treasury Laws Amendment \(COVID-19 Economic Response No 2\) Act 2021](#). Business grants will only be considered non-assessable non-exempt income for entities with aggregated turnover less than \$50 million.

Furthermore, in light of the recent lockdowns, the following recent State-based grant programs have been declared by [legislative instrument](#):

- New South Wales grant programs:
 - 2021 COVID-19 business grant
 - 2021 COVID-19 JobSaver payment
 - 2021 COVID-19 micro-business grant; and
 - NSW Performing Arts COVID Support Package.
- Victorian grant programs:
 - Alpine Resorts Support Program (Streams 1, 2 and 3)
 - Business Continuity Fund

- Business Costs Assistance Program Round Two – July Extension
- Licenced Hospitality Venue Fund 2021 – July Extension; and
- Small Business COVID Hardship Fund.

Deducting costs relating to vacant land

The Australian Taxation Office (ATO) has published draft Taxation Ruling [TR 2021/D5](#) setting out the preliminary ATO view on the application of the provision (section 26-102 of the *Income Tax Assessment Act 1997 (Cth)*) that has applied since 1 July 2009 that prevents the deduction of costs relating to holding vacant land in certain circumstances.

TR 2021/D5 discusses various issues such as what is considered a substantial and permanent structure, whether a structure is in use or available for use and whether a structure is independent of any other structures on the land and dealing with multiple titles of land.

This draft Ruling also sets out practical compliance approaches for newly-constructed property temporarily unavailable for lease, hire or licence and determining if a lessee is using land to carry on a business.

Comments can be made on the draft by 17 September 2021.

Trusts and profits on sale of properties

The Full Federal Court in [Advanced Holdings Pty Ltd as trustee for the Demian Trust & Ors v Federal Commissioner of Taxation \[2021\] FCAFC 135](#) considered the tax consequences of the sale of properties by a unit trust within a property development group. Specifically, the matters relate to the calculation of the net income of the trust and whether the trustee held 50 per cent of its interest in the properties on trust for another entity, a proper construction of a joint venture agreement, and whether an amount is to be deducted from the net income of the trust on the basis it was a repayment of a “revenue borrowing”.

The Court held that call options and joint venture agreements with a loan facility provider did not create a trust for the benefit of the lender and that repayments of “revenue borrowings” were not deductible as they were on capital account.

AAT decisions on COVID-19 stimulus

The Administrative Appeals Tribunal (AAT) has held in [Cessnock Holden Central Pty Ltd v Federal Commissioner of Taxation \[2021\] AATA 2576](#) that a taxpayer incorporated on 16 June 2020 was not eligible for JobKeeper payments for the employees of a business it acquired because the taxpayer was not carrying on a business on 1 March 2020.

In a separate decision ([S & L Consulting Pty Ltd v FC of T \[2021\] AATA 2714](#)), the AAT found that the

taxpayer was ineligible to receive the first cash flow boost payment. The issue centred on whether the taxpayer was required to withhold Pay-As-You-Go (PAYG) amounts from fortnightly payments it made to a contractor in the quarter ending 31 March 2020. Consistent with its conduct in not withholding any PAYG amounts from the payments to the contractor, the Tribunal found that the taxpayer was not under an obligation to withhold PAYG in the March 2020 quarter and therefore was not entitled to the first instalment of the cash flow boost.

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