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# PwC's Monthly Tax Update

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

August 2020



# Corporate Tax Update

## Restructuring for demerger purposes

The Australian Taxation Office (ATO) has released finalised Taxation Determination [TD 2020/6](#) which provides guidance on what is a 'restructuring' for the purposes of the demerger rules (in s125-70(1) of the *Income Tax Assessment Act 1997*). Demerger relief is intended to facilitate the demerging of entities by ensuring that capital gains tax considerations are not an impediment to restructuring a business.

According to the determination, what constitutes a particular restructuring is essentially a question of fact and the scope of the restructuring will be critical in establishing whether or not the conditions to qualify as a demerger are satisfied. Importantly, the ATO view is that restructuring of a demerger group is not necessarily confined to the steps or transactions that deliver the ownership interests in an entity to the owners of the head entity of the demerger group, but may include previous and/or subsequent transactions. Commercial understanding and the objectively inferred plan for reorganisation will determine which steps or transactions form part of the restructuring of the demerger group.

Key aspects of the determination include:

- Transactions which are to occur under a plan for the reorganisation of the demerger group may constitute parts of the restructuring of the demerger group even though those transactions are legally independent of each other, contingent on different events, or may not all occur.
- A transaction is not necessarily part of the restructuring of the group merely because it is necessary for the restructuring of the group to occur, or was the occasion for the restructuring, or because it is enabled by the restructuring of the group or is a consequence of the restructuring of the group.

The determination includes a number of examples to explain the ATO view, including scenarios involving a post-separation capital raising, a sale of the head entity after the separation of a subsidiary, a sale facility, separation by a closely-held corporate group and one outlining a range of preparatory steps and transactions form part of the restructuring of the demerger group. This determination is substantially the same as the draft determination TD 2019/D1.

## Deemed dividend reforms deferred

The Government has [announced](#) that it will revise the start date for its proposed reforms to the private company deemed dividend (Division 7A) rules from 1 July 2020 to income years commencing on or after the date that enabling legislation is given Royal Assent. To date, no draft legislation has yet been released.

## Division 7A loans: Repayment period extended for COVID-19 affected borrowers

The ATO has [announced](#) that taxpayers affected by COVID-19 will now be able to request an extension of the repayment period if they are unable to make their minimum yearly repayment by the end of the lender's 2019-20 income year (generally 30 June) on complying Division 7A loans.

## Benchmark interest rate for deemed dividend (Division 7A) loans

The [benchmark interest rate for Division 7A](#) purposes for the income year that commenced on 1 July 2020 is 4.52 per cent per annum. This benchmark interest rate is relevant to determine if a private company loan made in the 2020-21 income year is taken to be a dividend, and to calculate the amount of the minimum yearly repayment for the 2020 income year on an amalgamated loan taken to have been made prior to 1 July 2020.

## PRRT reforms delayed

Proposed compliance and administration changes to the petroleum resource rent tax (PRRT) as previously announced as part of the [Government's response](#) to the PRRT Review, provided by Michael Callaghan AM PSM, that were proposed to commence from 1 July 2019 have been [deferred](#) to commence in the income year commencing on or after three months after the date of Royal Assent.

## ASIC and financial reporting in COVID-19 environment

ASIC has issued [information](#) on focus areas for 30 June 2020 financial reporting in the COVID-19 environment. In addition to a focus on asset values, provisions and solvency, ASIC also indicates that entities should appropriately account for each type of support provided from government (e.g. JobKeeper, land tax relief), lenders, landlords etc., including

disclosure of significant amounts, commencement date and expected duration of support.

## Deductibility of environmental protection expenditure

The ATO has finalised its Taxation Ruling [TR 2020/2](#) which provides guidance on claiming deductions for expenditure on environmental protection activities. The ruling specifically explains:

- activities that constitute 'environmental protection activities',
- when expenditure is considered to be incurred for the 'sole or dominant purpose' of carrying on those activities,
- the limits on the amount that can be deducted, and
- the assessability of recouped expenditure on environmental protection activities.

The ruling is substantially the same as the draft Taxation ruling TR 2019/D3.

## Activities to develop algorithm were not core R&D activities

The Administrative Appeals Tribunal in [Camalic Pty Ltd and Innovation and Science Australia \[2020\] AATA 1590](#) has held that the alleged research and development (R&D) activities undertaken by the taxpayer relating to the development of an algorithm to predict shareholder value increases were not "core R&D activities" or supporting R&D activities. The Tribunal was not satisfied that the claimed activities were intended to generate a bespoke algorithm or new, previously unknowable, functionality in an existing algorithm.

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# Employment Taxes Update

## Changes to JobKeeper

Treasury completed a three-month [review of the JobKeeper Payment](#) and found that the JobKeeper Payment met its initial objectives of supporting business and job survival, preserving employment relationships, and providing needed income support. Importantly, the review recommended an appropriately targeted extension of JobKeeper would continue to provide assistance to the most affected businesses.

With the initial phase of the JobKeeper program due to conclude in September 2020, and in consideration of the Treasury review, the Federal Government [announced](#) on 21 July 2020 that the program would be extended for an additional six months through to March 2021, with a lower two-tier

payment structure and a requirement for employers to retest the decline in turnover to continue to access the payment. For more information on this latest JobKeeper payment proposal, view our [one-page summary](#).

In other developments affecting the JobKeeper payment system, the following changes were made since our last update:

- [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No 5\) 2020](#) which revises the JobKeeper rules so that approved providers of child care services are not entitled to the payments for business participants and their employees, if the sole business activity of the employer is to provide those child care services. The changes had

effect from the start of the JobKeeper fortnight commencing on 20 July 2020.

- [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 6\) 2020](#) which provides a mechanism to allow an Australian government agency or local governing body to seek confirmation from the Commissioner of Taxation about an entity's election to participate in the JobKeeper scheme.

For the latest up-to-date information, refer to our [JobKeeper payments webpage](#).

## Apprentice and trainees subsidy expanded

The Federal Government has [announced](#) that it is extending and expanding the [Supporting Apprentices and Trainees wage subsidy](#). From 1 July 2020, the subsidy will be available to support small and medium businesses with fewer than 200 employees, including those using a Group Training Organisation, who retain an Australian Apprentice engaged as at 1 July 2020. Eligible employers can apply for a wage subsidy of 50 per cent of the apprentice's or trainee's wage paid during the period from 1 July 2020 to 31 March 2021, up to a cap of AUD7,000 per quarter per eligible person.

## Taxpayer entitled to super contributions as employee under labour contract

The Full Federal Court in [Dental Corporation Pty Ltd v Moffet \[2020\] FCAFC 118](#) has held that Dr Moffet, a dentist who provided services under a services agreement to Dental Corporation Pty Ltd, was an employee for Superannuation Guarantee purposes. The Court found that the services agreement, from Dental Corporation's perspective, was wholly or substantially 'for' Dr Moffet's labour and, as such, the taxpayer was an "employee" under s12(3) of the *Superannuation Guarantee (Administration) Act 1992* (Cth). As such, the taxpayer's employer was obliged to make superannuation contributions.

## High Court upholds finding that jockeys are employees for superannuation guarantee purposes

In two separate matters, the High Court has dismissed the taxpayers' applications for special leave to appeal in relation to the application of the superannuation guarantee (SG) scheme to the [Scone Race Club](#) and the [Racing Queensland Board](#). This was an application to appeal against the respective decisions of the Full Federal Court in [Commissioner of Taxation v Scone Race Club](#)

[Limited \[2019\] FCAFC 225](#) and [Commissioner of Taxation v Racing Queensland Board \[2019\] FCAFC 224](#). The Full Federal Court had held that the Scone Race Club and Racing Queensland Board respectively were liable for SG charges relating to riding fees paid to jockeys. Both organisations had argued that they were not liable for superannuation payments because the owner or trainer had employed or engaged the jockey to ride in the race and they only made the payments of riding fees to the jockeys on behalf of the owners for administrative purposes. The Full Federal Court disagreed with this, holding that the club/board failed to demonstrate that it was not liable to pay riding fees to jockeys for riding in a horse race and were therefore deemed to be their employers for the purposes of the SG legislation.

## Super guarantee regulations exempt certain aged care bonus payments

The [Superannuation Guarantee \(Administration\) Amendment \(Aged Care Retention Bonus\) Regulations 2020](#) have been made to ensure that an employer is not required to make additional superannuation contributions as a result of a bonus payment paid to an employee under the Aged Care Workforce Retention Grant Opportunity. This is achieved by exempting payments made to an employee under the Grant from being included in the "salary or wages" that are used to calculate an employer's SG charge. The Regulations apply to bonus payments made under the Grant on or after 1 June 2020.

## Single touch payroll – reporting exemptions for 2020-21

The following legislative instruments have been made by the Australian Taxation Office (ATO) to exempt certain entities from reporting under Single Touch Payroll (STP) from 1 July 2020:

- [Taxation Administration - Single Touch Payroll - 2020/21 year Withholding Payer Number Exemption 2020](#) which applies to certain entities that do not have an Australian business number (ABN) but instead have a withholding payer number (WPN)
- [Taxation Administration – Single Touch Payroll – 2020-21 year Portable Long Service Leave and Portable Redundancy Scheme Providers Exemption 2020](#) applies to entities that administer a Portable Long Service Leave scheme or Portable Redundancy scheme, and make payments to members of the scheme.

## Victoria expands COVID-19 payroll tax relief

The Victorian Treasurer has [announced](#) that eligible businesses with payrolls up to AUD10m will be able to defer their payroll tax liability in Victoria for the first half of the 2020-21 financial year. For this and the latest up-to-date information, refer to our [State Tax COVID-19 updates webpage](#).

## Recent payroll tax decisions

The following payroll tax decisions have been handed down since our last update:

- The NSW Court of Appeal has dismissed the Chief Commissioner of State Revenue's appeal in the matter of [Chief Commissioner of State Revenue v Downer EDI Engineering Pty Ltd \[2020\] NSWCA 126](#) and found that the taxpayer was not liable for payroll tax on payments made to subcontractors engaged by them to deliver and install equipment for customers of subscription television. The Court found that the installation services supplied under the taxpayer's subcontract were ancillary to the supply of goods under the subcontract. Specifically, the court held that subcontracts

were excluded from the definition of "relevant contracts" under both s32(2)(a) and 32(2)(d)(i) of the *Payroll Tax Act 2007 (NSW)*, with the court revoking in full the Commissioner's payroll tax assessments of the taxpayer and finding the taxpayer was not liable to payroll tax on the payments.

- The Supreme Court of Queensland in [Compass Group Education Hospitality Services Pty Ltd & Anor v Commissioner of State Revenue \[2020\] QSC 184](#) has held that the taxpayers did not procure the services of their employees for clients under employment agency contracts within the meaning of s13G of the *Payroll Tax Act 1971 (Qld)*, but were instead common law employers under the general provisions of the Act. As such, the payments made to employees were subject to payroll tax. Specifically, the Court found that employers are not employment agents within the meaning of the definition in s13G and that the expression "procure services of another" was correspondingly not intended to apply in the circumstance where an employer directs, or even engages, an employee to provide services for a client.

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# Global Tax Update

## Latest news from international tax and transfer pricing

### JobKeeper payments and transfer pricing arrangements

The Australian Taxation Office (ATO) has published [guidance](#) on the treatment of JobKeeper payments in transfer pricing arrangements. Broadly, the ATO expects that the JobKeeper payment should not be taken into account in determining the price of goods/services using a cost plus methodology. The ATO notes that it has concerns where the benefits

of JobKeeper payments are effectively passed through to a non-resident related entity via a change in transfer pricing arrangements. The ATO will be reviewing arrangements where the JobKeeper payment resulted in a change to the transfer price paid or received by the Australian entity and was shown to effectively shift the benefit of the government assistance to offshore related parties.

## ATO revises guidance on the low tax lender rule

The ATO released a revised Draft Law Companion Ruling [LCR 2019/D1](#) for comment by 24 July 2020. The ruling discusses the hybrid mismatch targeted integrity rule (the low tax lender rule) that aims to prevent offshore multinationals from circumventing the hybrid mismatch rules by interposing an offshore entity incorporated in a low-tax (10 per cent or less) jurisdiction when investing or financing into Australia. The low tax lender rule, generally applicable to tax periods commencing on or after 1 January 2019, has the potential to effectively impose additional Australian tax on interest and derivative payments to foreign interposed zero or low rate related parties, irrespective of whether the arrangement involves a hybrid element.

The updated draft ruling includes additional content as a result of the amendments proposed in [Treasury Laws Amendment \(2020 Measures No. 2\) Bill 2020](#). If the Bill is enacted without amendment before this draft Ruling is finalised, this draft Ruling will represent the Commissioner's preliminary view on how the relevant provisions could apply. In addition, the ATO has released the [compendium of comments](#) received on initial draft to 8 July 2020.

## Canadian transfer pricing reconstruction case

The Canadian Federal Court of Appeal unanimously dismissed an appeal by the Canadian Revenue Agency from a judgment of the Canadian Tax Court which rejected an attempt to reconstruct transactions by eliminating an intra-group sale under the Canadian transfer pricing provisions. The principles arising from this Canadian case are consistent with the Australian Federal Court decision in *Glencore Investment Pty Ltd v Commissioner of Taxation [2019] FCA 1432* which, while currently the subject of appeal, provided much needed clarity on the operation of Australia's transfer pricing rules and reinforced their alignment with international standards. Refer to our [Tax Alert](#) for further detail.

## OECD's Corporate Tax and Revenue Statistics

The Organisation for Economic Co-operation and Development (OECD) has [released](#) the annual [Corporate Tax Statistics Report and database](#) which provides internationally comparable statistics and analysis from around 100 countries worldwide on six main categories of data:

- corporate tax revenues,
- statutory corporate income tax rates,

- anonymised and aggregated Country-by-Country Report statistics,
- forward-looking effective tax rates,
- tax incentives related to research and development and intellectual property regimes
- controlled foreign company rules, and
- interest limitation rules.

The OECD analysis shows that corporate income tax remains a significant source of tax revenues for governments across the globe. In 2017, corporate tax revenues accounted for 14.6 per cent of total tax revenues on average across the 93 jurisdictions in 2017, compared to 12.1 per cent in 2000. Corporate taxation is even more important in developing countries, comprising on average 18.6 per cent of all tax revenues in Africa and 15.5 per cent in Latin America and the Caribbean, compared to 9.3 per cent in the OECD.

## G20 update on international tax agenda

The [report](#) of the Secretary General to the OECD has been released to the G20 Finance Ministers and Central Bank Governors. The report contains two parts. Part I reports on the activities and achievements in the OECD's international tax agenda. Part II reports on the activities and achievements of the Global Forum on Transparency and Exchange of Information for Tax Purposes. In relation to the Tax Challenges Arising from the Digitalisation of the Economy, a detailed blueprint of Pillar One and the work to finalise Pillar Two is expected to be submitted to the G20/OECD Inclusive Framework at its plenary meeting in October 2020. In addition, the report also highlights the work carried out in response to the COVID-19 crisis. The following report was also published as an annexure:

- [OECD/G20 Inclusive Framework on BEPS: Progress Report July 2019 - July 2020](#): outlines major developments in dealing with the tax challenges of the digitalised economy and the entry into force of the Multilateral Instrument and shows how countries are progressing in the implementation of the OECD/G20 BEPS package.

## OECD model rules for reporting by platform operators in the sharing and gig economy

The OECD has published the [Model Rules](#) for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy in relation to the collection of information on the income realised by those offering accommodation, transport and personal services through platforms and to

report the information to tax authorities. The model rules have been developed for potential adoption by interested jurisdictions so as to collect information, on a uniform basis, on transactions and income realised by platform sellers and to facilitate the automatic exchange agreements between such interested jurisdictions.

## State Aid case in EU

The General Court of the European Union (EU) has annulled the EU Commission's August 2016 decision that Ireland granted illegal State aid to Apple as the Commission did not demonstrate the existence of an economic advantage within the meaning of EU State aid rules. For further information, refer to PwC's [EU Direct Tax News Alert](#).

## New EU disclosures relating to cross-border arrangements

The European Council has adopted new reporting obligations (DAC 6) which requires intermediaries to report cross-border agreements that may be indicative of "potentially aggressive tax planning" to their respective national authorities. The rule has effect from 1 July 2020, with the first reports due 31 August 2020, requiring reportable transactions dating back to 25 June 2018 to be disclosed. Refer to [PwC Global Insights](#) for further information.

## High Court upholds custom tariff concession order application

The High Court has dismissed the Comptroller-General's [application for special leave to appeal](#) against the decision of the Full Federal Court in

[Alstom Transport Australia Pty Ltd v Comptroller-General of Customs \[2020\] FCAFC 43](#). The Full Federal Court had found that the Administrative Appeals Tribunal had adopted an incorrect approach in finding that imported driverless trains were subject to duty, and had ordered the matter to be remitted to the Tribunal for re-determination according to law. The Court also observed that upon remittal "it may well be found that the uses to which the applicant's trains, as described in the [tariff concession order] TCO application, can be put are those described by the applicant as being "to transport passengers on a high capacity, high frequency, driverless metropolitan train line system".

## Indonesia-Australia free trade agreement

The [Indonesia-Australia Comprehensive Economic Partnership Agreement](#) (IA-CEPA) entered into force on 5 July 2020. Under the agreement, 99 per cent of Australian goods (by value) will enter Indonesia duty-free or under improved preferential arrangements. Australia's arrangements with Indonesia under the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) remain unchanged. While IA-CEPA builds on outcomes in AANZFTA, the two agreements will co-exist after IA-CEPA enters into force. Businesses will continue to be able to use AANZFTA. See also the [Government's media release](#).

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# Indirect Tax Update

## ATO's top 1,000 GST assurance program

The Australian Taxation Office's (ATO) [top 1,000 GST assurance program](#) seeks greater assurance that large public and multinational companies are reporting the right amount of goods and services tax (GST). This supports and expands on the ATO's existing Top 1,000 compliance reviews for income tax and the existing top 100 GST assurance program. The top 1,000 GST program is expected to cover around 320 large public and multinational businesses over four years with approximately 30 Top 1,000 GST assurance reviews expected to commence in August 2020.

In support of the program, the ATO has also released its *GST Governance, Data Testing and Transaction Testing Guide* explaining how the justified trust methodology is applied to reviewing the existence, design and operation of GST controls as part of an effective tax control framework. The Guide sets out clear expectations regarding GST governance, and GST data and transaction testing. It also includes information to assist in assessing whether control frameworks meet the ATO's expectations and to prepare for a GST streamlined assurance review. For further insight, refer to our [Tax Alert](#).

## High Court to consider timing of entitlement to interest on overpaid GST

The High Court has granted the Commissioner of Taxation [special leave to appeal](#) against the decision of the Full Federal Court in [Commissioner of Taxation v Travelex Limited \[2020\] FCAFC 10](#). The majority of the Full Federal Court had dismissed the Commissioner's appeal against the [decision](#) of the Primary judge regarding the taxpayer's entitlement to interest payable in respect of an amount of GST that was found to be overpaid as

a result of an earlier [High Court decision](#). The Court found that interest was payable by the Commissioner from the fourteenth day after the day on which the relevant surplus arose (i.e. when the taxpayer lodged the applicable Business Activity Statement (BAS)).

## Draft GST legislative instruments

The ATO has released the following draft legislative instruments for comment:

- [Taxation Administration \(Remedial Power – Certificate for GST-free supplies of Cars for Disabled People\) Determination 2020](#) – which proposes to continue to provide access to GST-free supplies of cars and car parts for disabled people by enabling a registered medical practitioner to issue a 'certificate of medical eligibility', certifying that the individual has lost the use of one or more limbs to such an extent that they are unable to use public transport. Comments are due on 10 August 2020.
- [Goods and Services Tax: Third Party Adjustment Note Information Requirements Determination 2020](#) – describes the information that must be included in a Third Party Adjustment Note under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The determination applies to the entity that makes the payment and will commence on 1 October 2020. Comments were due on 27 July 2020.

## ATO revises ruling on court orders and out-of-court settlements

The ATO has issued an [addendum](#) to [GSTR 2001/4](#) which deals with the GST consequences of court orders and out-of-court settlements to update cross-referenced documents and make other minor amendments. The addendum applies retrospectively from 2 July 2013.

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# Personal Tax Update

## Extension of the deadline for early release of super

It was announced in the [Economic and Fiscal Update](#) on 23 July 2020 that the deadline to apply for early release of superannuation has been extended from 24 September 2020 to 31 December 2020 for those individuals who are still financially impacted by COVID-19. Note there is no change to the current AUD 10,000 cap which applies for the 2020-21 financial year. There was also no change to the end date for eligible temporary visa holders who were able to apply for a single release of up to AUD 10,000 before 1 July 2020.

## Claiming deductions while working from home due to COVID-19

The Australian Taxation Office (ATO) has updated [PCG 2020/3](#) which provides a simpler alternative for individuals claiming deductions for additional running expenses incurred whilst working from home due to COVID-19. Under the updated guidelines individuals will be able to claim a rate of 80 cents per hour for all their running expenses, rather than calculating costs for specific running expenses, from 1 March 2020 until 30 September

2020 (extended from the original 30 June 2020 deadline).

The ATO has noted that further consideration will be given as to whether the date this guideline will cease to apply may be extended beyond 30 September 2020.

## Reasonable travel and meal allowances for 2020-21

The ATO has released Taxation Determination [TD 2020/5](#) which sets out the amounts considered to be reasonable in relation to deductible claims made by employees for the 2020-21 income year for overtime meal expenses, domestic travel expenses for accommodation, food and drink, and incidentals when travelling away from home overnight for work, and overseas travel expenses. The approach outlined can only be used where the employee received an allowance to cover the particular expenses that are being claimed.

The reasonable amounts only provide the maximum amount that a taxpayer can claim without being required to substantiate expenditure. However, the taxpayer will still need to show that they spent the money in performing work duties.

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# State Taxes Update

## NSW New Land Tax and Foreign Surcharge Relief for New Build-to-Rent Housing

The NSW government has announced that it is proposing to cut land tax for the next 20 years for new build-to-rent housing projects in an Australian-first, designed to give renters access to longer-term leases.

Draft legislation to give effect to this was introduced into Parliament on 29 July 2020. Key details are:

- There will be a 50 per cent discount on land tax to developers who invest in build-to-rent

schemes, which are designed to provide better quality rental properties and long tenancy agreements.

- To be eligible:
  - construction must have started on or after 1 July 2020;
  - an application for the reduction must be made;
  - guidelines to be approved by the Treasurer need to be satisfied. These include amongst other things, minimum lease conditions that must be offered to tenants of the build-to-rent property, minimum scale of a building to

qualify etc. Whilst the guidelines have not yet been released, we understand that a build-to-rent development in metropolitan areas may need to have at least 50 units, with a different threshold for regional areas to be considered – this will need to be confirmed. Where only part of a parcel of land is being used and occupied for build-to-rent property, there will be an ability for the land tax reduction to apply on a proportionate basis.

- Clawback of the reduced land tax will apply if, within 15 years, the land is subdivided, or the ownership of the land is otherwise divided. Reassessment will occur for the year in which the land is subdivided or the ownership of the land is otherwise divided, as well as for each preceding year the land tax was reduced, limited to 15 years preceding.
- The scheme will also extend to providing an exemption from foreign investor surcharges (stamp duty and land tax) until 2040 and integrity measures will be included to ensure discounts are not used for tax avoidance (similar to those referred to above in the clawback of reduced land tax). Other points to note include:
  - For both the surcharges, the land must be acquired and held by an Australian corporation (i.e. incorporated or taken to be incorporated under the Corporations Act 2001 (Cth)) and the construction of the build-to-rent development must be carried out by that corporation or a related body corporate. For the exemption from the stamp duty surcharge, this construction must occur after the land has been transferred to the Australian corporation.
  - Generally the surcharge purchaser duty and surcharge land tax exemption require the build-to-rent property to have been constructed to be eligible, meaning that the starting assumption under the provisions is that the surcharges would be paid and an application for a refund would be made (within certain time limits set out below). However, there is the ability for the Chief Commissioner to approve a person as an ‘exempt transferee’/‘exempt person’ if the Chief Commissioner is of the opinion that the person is likely to become entitled to a refund of the full amount of surcharge purchaser duty/land tax.
    - Surcharge purchaser duty - generally requires an application for the refund to be made within 12 months after the owner of the land first became entitled to a reduction in the value of the land for land tax purposes, and no later than 10 years after completion of the transfer of the

residential-related property to the Australian corporation.

- Surcharge land tax - generally requires an application for a refund to be made within 12 months after the owner of the land became entitled to the refund, and no later than 10 years after the land tax year concerned.

## NSW Review of Federal Financial Relations and tax reform options

The [draft report](#) of the New South Wales (NSW) Review of Federal Financial Relations has been released for comment before the Expert Panel, chaired by Mr David Thodey AO, delivers its Final Report to the NSW government. With regards to tax matters generally, the Panel "found consensus that it's time for state and Commonwealth governments to agree options for reforming our 20-year-old GST and scaling back inefficient and misaligned taxes."

The Panel recommends the NSW Government prioritise the following key reform areas:

- phasing out many of the nation's most unfair and damaging taxes, including transfer duties and taxes on insurance,
- working with other states to address the hollowing out and complexity of payroll tax,
- increasing the use of a broad-based land tax, and
- working with other states to modernise and design a nationally compatible and fair road user charging scheme.

## Recent Revenue NSW duty guidance

Revenue NSW has issued the following duties guidance since our last update:

- update to the Commissioner's Practice Note [CPN 004 v2](#), which outlines how surcharge purchaser duty and surcharge land tax will be applied in situations where land is held by a discretionary trust to take into account the recent amendments that provided an exemption from the duty where the trust deed prevents a foreign person from being a beneficiary. If the trustee of a discretionary trust is liable for surcharge purchaser duty on a transfer of dutiable property that occurred before 24 June 2020 or after that date but before midnight on 31 December 2020, the trustee will still not be liable if the terms of the trust have been amended before midnight on 31 December 2020 and if surcharge purchaser duty was paid, the trustee is entitled to a refund if the amendment is made before midnight on 31 December 2020.

- Revenue Ruling [DUT 049](#), which provides background and guidance on the application of s54A of the *Duties Act 1997* (NSW) which deals with transfers in relation to managed investment schemes (MIS), including setting out the dutiable transactions and providing examples.  
The transfers of dutiable property to which the section applies involves an 'internal' transfer of the dutiable property – comprising all or part of the scheme property of the relevant MIS – between different entities involved in the administration of the scheme or the holding of the scheme property.

## QLD Foreign Land Tax Surcharge – Release of ex gratia relief guidelines

The Queensland (QLD) Government has recently released [Public Ruling LTA000.4.1 – Guidelines for Ex Gratia Relief from the Land Tax Foreign Surcharge](#) which sets out the guidelines for ex gratia relief from the QLD land tax foreign surcharge. Since the Surcharge will apply to land tax assessments for the 2020-21 land tax year (i.e. based on ownership of land as at 30 June 2020), which will begin to issue in October 2020, entities with foreign ownership and holding QLD freehold land should seek to confirm whether the Surcharge applies to them. If so, an affected entity should consider whether they may be eligible for ex gratia relief having regard to the criteria set out in the Guidelines. For further details, refer to our [Tax Alert](#).

## QLD petroleum royalty changes

Changes are proposed to the QLD petroleum royalty regime by the [Royalty Legislation Amendment Bill 2020](#) which was introduced into QLD Parliament on 16 July 2020. The Bill proposes to change the basis for imposing petroleum royalty from 1 October 2020, by applying the relevant royalty rate to the volume of petroleum produced during a royalty return period, with different royalty rates applying depending on the class of petroleum and its use.

## Land tax decisions

The following land tax decisions were handed down since our last update:

- The Supreme Court of South Australia in [Takhar v Commissioner of State Taxation \[2020\] SASC 119](#) has partially allowed the taxpayer's appeal and held that some of their land that was used to grow crops was used for the business of primary production and, as such, was exempt from land tax under the *Land Tax Act 1936* (SA).
- The Supreme Court of Victoria in [Lifestyle Investments 1 Pty Ltd v Commissioner of State Revenue \[2020\] VSC 397](#) has allowed the taxpayer's appeal against the [decision](#) of the Victorian Civil and Administrative Tribunal (VCAT) and remitted the matter back to the Tribunal as it had neither construed nor made relevant factual findings when it found that land which was used as registered caravan park was not exempt from land tax. In particular, the Court held that determining whether land is used in whole or in part in the requisite way required that the expression "used as a registered caravan park", found within s77(1) of the *Land Tax Act 2005* (VIC), be construed. The Court acknowledged that while VCAT was not in error in holding that s77(3) permitted the Commissioner to apportion land comprising the registered caravan park, that was only part of the relevant statutory inquiry.
- The NSW Civil and Administrative Tribunal Appeal Panel in [Chief Commissioner of State Revenue v McIntosh Bros Pty Limited \(in liq\) \[2020\] NSWCATAP 124](#) has upheld the decision of the [Tribunal](#) and held that the taxpayer was not liable to pay land tax. The Tribunal found the taxpayer was entitled to the primary production exemption from land tax under the *Land Tax Management Act 1956* (NSW) as the dominant use of the land was for the maintenance of animals for the purpose of selling them or their bodily products. The land use had a significant and substantial commercial purpose or character and the taxpayer was engaged in for the purpose of profit on a continuous or repetitive basis (whether or not a profit was actually made).

## WA – Proposed land tax exemption for owner-occupied relocatable homes and caravan parks

The Western Australian Government has [announced](#) that it will introduce amendments to the *Land Tax Assessment Act 2002* (WA) to ensure people who own and occupy homes in residential parks are not disadvantaged by a change to the definition of a park home. The amendments will provide an exemption for sites in residential parks with owner-occupied relocatable homes and for common areas in these parks. As most relocatable homes are owner-occupied, a full exemption should apply to new parks and villages. A partial exemption will apply to caravan and camp sites if these sites comprise less than 75 per cent. The land tax exemptions are proposed to apply from the 2020-21 assessment year.

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## Superannuation Update

### Amendments to facilitate closure of eligible rollover funds

As part of the Federal Government's [Economic and Fiscal Update](#) on 23 July 2020, it was announced that the current proposals before Parliament ([Treasury Laws Amendment \(Reuniting More Superannuation\) Bill 2020](#)) to facilitate the closure of eligible rollover funds (ERFs) would be amended. Specifically, it is proposed to:

- defer by 12 months the start date of the measure that prevents superannuation funds transferring new amounts to ERFs,
- defer the date by which ERFs are required to transfer accounts below AUD6,000 to the Australian Taxation Office (ATO) from 30 June 2020 to 30 June 2021,
- defer the date by which ERFs are required to transfer remaining accounts to the ATO from 30 June 2021 to 31 January 2022, and

- allow all superannuation funds to voluntarily transfer amounts to the ATO in circumstances where the trustee believes it is in the best interests of that member, such as amounts that would otherwise have been transferred to an ERF.

### Lost and unclaimed super and KiwiSaver accounts

A further announcement was made in the [Economic and Fiscal update](#) to revise the start date for the 2015-16 Budget measure *Cutting Red Tape – lost and unclaimed superannuation* to allow the ATO to pay lost and unclaimed superannuation amounts directly to New Zealand KiwiSaver accounts. This measure will now apply from six months after the date of Royal Assent of the enabling legislation (in place of 1 July 2016).

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## Legislative Update

Since our last update, Federal Parliament has been in recess, so no new Commonwealth tax and superannuation legislation has been introduced.

Commonwealth revenue measures registered as legislative instruments or regulations since the last monthly update include:

- [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No 5\) 2020](#), which revises the JobKeeper rules so that approved providers of child care services are not entitled to the payments for business participants and their employees, if the sole

business activity of the employer is to provide those child care services.

- [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 6\) 2020](#), which provides a mechanism to allow an Australian government agency or local governing body to seek confirmation from the

Commissioner of Taxation about an entity's election to participate in the JobKeeper scheme. Federal Parliament is now in recess and is next expected to resume sittings on 24 August 2020, after the Prime Minister [requested](#) that the Parliamentary sitting fortnight commencing 4 August 2020 not be held.

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## Other News

### Economic and Fiscal Update July 2020

The Treasurer has [delivered](#) the [Economic and Fiscal Update](#). The underlying cash deficit in 2019-20 is expected to be AUD85.8 billion (4.3 per cent of GDP), a AUD90.8 billion deterioration since the 2019-20 MYEFO. The estimate for 2020-21 has also been revised down significantly, with an expected deficit of AUD184.5 billion (9.7 per cent of GDP), a AUD\$190.6 billion deterioration since the 2019-20 MYEFO. Declines in taxation receipts of AUD31.7 billion in 2019-20 and AUD63.9 billion in 2020-21, has significantly impacted the budget position. As the COVID-19 pandemic is still evolving and the economic and fiscal outlook remains highly uncertain, the update presents fiscal estimates for 2019-20 and 2020-21 only.

The Government will present fiscal estimates across the forward estimates and medium-term projections in the 2020-21 Federal Budget, to be delivered on 6 October 2020.

### Extension of film incentive

The Government has [announced](#) that it is extending the Location tax offset incentive program to 2026-27 to assist Australia's screen sector manage COVID-19 impacts. The location tax offset is calculated at:

- 16.5 per cent of the company's total qualifying Australian production expenditure (QAPE) on the film if production of the film commenced on or after 10 May 2011.
- 15 per cent of the company's total QAPE on the film if production of the film commenced before 10 May 2011.

The expanded Location Incentive program is designed to attract back-to-back productions and establish an ongoing pipeline of work for Australia's screen sector.

### Deferred start date for MITs and CGT discount

The Government has [announced](#) a revised start date for its proposal to remove the capital gains tax (CGT) discount at the trust level for Managed Investment Trusts (MITs) and Attribution managed investment trusts (AMITs). The start date for this measure is now to apply to the income years commencing on or after three months after the date the enabling legislation (which is not yet available) is given Royal Assent instead of 1 July 2020.

## Revised start date for certain DGR reforms

As part of the Economic and Fiscal Update July 2020 (see [Appendix A](#) of the update), the Government revised the start date for the 2017-18 MYEFO measure *Deductible gift recipient reform – strengthening governance and integrity and reducing complexity* (as amended by the 2018-19 MYEFO measure) from 1 July 2020 to three months after the date of Royal Assent of the enabling legislation

## Effective life of depreciating assets for 2020-21

The Australian Taxation Office (ATO) has issued Taxation ruling [TR 2020/3](#), which provides the effective life of depreciating assets applicable from 1 July 2020 which provides taxpayers in specific industries and for specific depreciating assets, the new effective life determinations made by the Commissioner of Taxation.

## CGT improvement threshold for 2020-21

The ATO has indicated that the [CGT improvement threshold](#) for the 2020-21 year is AUD155,849. Note the ATO previously issued a Taxation Determination setting out this threshold but will no longer do so.

## ATO draft effective lives of assets

The ATO is [seeking comments](#) (due on 28 August 2020) on the draft list of effective lives for depreciating assets used in the following industries:

- [casinos](#)
- [medical and surgical equipment manufacturing](#)
- [other non-metallic mineral mining horse training \(racing\)](#)

## Board of Taxation CEO Update

The Board of Taxation has released its [June 2020 update](#) where it discussed finalising elements of the Board's review of corporate tax residency rules and progressing the Board's review of CGT rollovers. In relation to the Board's review of corporate tax residency rules, the Board stated that it is close to finalising the review and is working closely with Treasury and the ATO in formulating its recommendations.

## Senate report on performance of the IGTO

The Senate Economics Legislation Committee has released its [report](#) on the performance of the Inspector-General of Taxation. The Committee made various recommendations, all of which have been [welcomed](#) by the Inspector-General of Taxation and Taxation Ombudsman (IGTO).

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