www.pwc.com.au

PwC's Monthly Tax Update

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

July 2021

pwc

Corporate Tax Update

R&D and "at risk" expenditure

The Australian Taxation Office (ATO) has issued a draft Taxation Ruling TR 2021/D3 which considers the provisions in the research and development (R&D) regime that prevent an R&D entity from notionally deducting expenditure that is not "at risk".

The Draft Ruling aims to provide certainty to taxpayers about whether the "at risk" rule is satisfied, for instance where R&D activities are carried out in the context of commercial contracts for the supply of goods or services. In particular, the draft ruling indicates that if at the time expenditure on R&D activities is incurred, the entity or an associate has received or could reasonably be expected to receive consideration as a result of that expenditure, regardless of the results of the activities on which the expenditure was incurred, the "at risk" rule may apply. The draft Ruling also provides a number of examples.

Comments can be made on the draft Ruling by 23 July 2021.

Withdrawal of practice statement on franking credits

The ATO has withdrawn Law Administration Practice Statement PS LA 2001/13 which considered the effect that a part payment of an activity statement liability has on an entitlement to franking credits. For further information regarding the allocation of payments and credits to taxpayer debts, the ATO refers taxpayers to Law Administration Practice Statement PS LA 2011/20.

Let's talk

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

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

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

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

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

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

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

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

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

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

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

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

Employment Taxes Update

Ruling on car parking benefits

The Australian Taxation Office (ATO) has issued Taxation Ruling TR 2021/2 which sets out the ATO's view of when the provision of car parking is a car parking benefit for Fringe Benefits Tax (FBT) purposes. Specifically, TR 2021/2 provides guidance on the term 'in the vicinity of', when a car park should be considered a commercial car parking facility and how to determine the lowest representative fee charged.

The Ruling is stated to be read in conjunction with Chapter 16 of Fringe benefits tax – a guide for employers which provides guidance to help employers calculate the taxable value of a 'car parking fringe benefit' and provides practical examples. However, it does not address the concept of 'primary place of employment' as a result of the decision in Virgin Australia Airlines Pty Ltd v Commissioner of Taxation [2021] FCA 523.

TR 2021/2 applies before and after the date of its issue except in respect of the view that car parking facilities that have a primary purpose other than providing all day car parking are considered commercial parking stations, which applies from 1 April 2022.

Note also the release of Ruling Compendium TR 2021/2EC which summarises key issues considered by the ATO in drafting TR 2021/2.

PAYG withholding schedules

The ATO has issued the Taxation Administration Act Withholding Schedules 2021 legislative instrument which specifies the formulas and procedures to be followed in calculating the amount of PAYG withholding from applicable payments from 1 July 2021.

SA Budget – payroll taxes

The 2021-22 South Australian (SA) Budget was handed down on 22 June 2021 by the Treasurer, the Honourable Rob Lucas MLC. A number of revenue measures were announced in this Budget, among other things, including the following payroll tax measures:

- 12 month extension of the payroll tax exemption for wages paid for eligible new trainees and apprentices to include relevant contracts of training entered into by 30 June 2022. Wages paid to eligible apprentices and trainees during their first 12 months of employment are exempt from payroll tax under the exemption (see announcement).
- the existing payroll tax exemption applicable to wages paid or payable in connection to a feature film produced in SA will be abolished from 1 July 2021 and the provision of ex-gratia relief on a case by case basis for wages paid or payable for film production in SA will be abolished from this date.

Victorian Budget payroll tax measures now law

The Victorian State Taxation and Mental Health Acts Amendment Act 2021 has enacted, among other things (see State Taxes section) the payroll tax measures announced in the Victorian 2021-22 State Budget. This includes the measures to:

- increase the payroll tax annual threshold amount to AUD 700,000 from 1 July 2021
- reduce the payroll tax rate for regional employers to 1.2125 per cent from 1 July 2021, and
- introduce the Mental Health and Wellbeing Levy which will be implemented as a payroll tax surcharge on wages paid in Victoria for businesses with national payrolls over AUD 10 million a year at a rate of 0.5 per cent and an additional 0.5 per cent for businesses with national payrolls above AUD 100 million.

Report into NSW wage theft proposed legislation

The NSW Legislative Council Portfolio Committee No 1 – Premier and Finance has released its report into the Tax Administration Amendment (Combating Wage Theft) Bill 2021 (NSW). This Bill seeks to provide further measures to deter the underpayment of wages, including by increasing penalties for certain offences and creating an offence of knowingly evading or attempting to evade tax. In the report, the Committee stated that it supported the legislation to combat wage theft, however it recommended that wage theft should be criminalised and Revenue NSW should be empowered to actively investigate and identify wage theft.

Extension of STP reporting exemption

The ATO has issued draft legislative instrument STP 2021/D1 'Taxation Administration – Single Touch Payroll – 2021-22 year Withholding Payer Number Exemption 2021' which proposes to exempt entities that do not have an Australian Business Number (ABN) from reporting under Single Touch Payroll (STP) for the 2021-22 income year where the entity has a withholding payer number.

STP 2021/D1 is proposed to commence retrospectively on 1 July 2021 with comments due on 8 July 2021.

Let's talk

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

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

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

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

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

Stephanie Males, Canberra
Partner
+61 (2) 6271 3414
stephanie.males@pwc.com

Maria Ravese, Adelaide
Partner
+61 (8) 8218 7494
maria.a.ravese@pwc.com

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

Lisa Hando, Perth
Partner
+61 (8) 9238 5116
lisa.hando@pwc.com

Global Tax Update

Latest news from international tax and transfer pricing

Royalties and the character of receipts in respect of software

The Australian Taxation Office (ATO) released draft Taxation Ruling TR 2021/D4 deals with the circumstances in which receipts from the licensing and distribution of software will be royalties as defined under Australian domestic tax law. The draft ruling has a particular focus on the circumstances where receipts will be treated as royalties under arrangements involving the distribution of packaged software, digital software distribution and cloud computing arrangements including software-as-a-service (SaaS).

Companies involved in the software industry and other "digital" businesses should review the potential application of the views expressed in the draft Ruling. This may require a detailed consideration of existing legal agreements and specifically the rights provided to the relevant parties under those agreements. This should include consideration of how Australian intellectual property law applies to arrangements involving the distribution of packaged software, digital software distribution and cloud computing arrangements including SaaS. In many cases, it will be necessary to consider if apportionment is required.

Comments can be made on the draft Ruling by 23 July 2021.

Refer to our Tax Alert which examines the draft ruling and the key implications.

Trust distribution of capital gains to foreign residents

The Full Federal Court has held in Peter Greensill Family Co Pty Ltd (as trustee) v Federal Commissioner of Taxation; Nicholas Martin & Anor v Federal Commissioner of Taxation [2021] FCAFC 99 that a resident trustee of a non-fixed trust was liable to tax on the distribution of capital gains arising from the disposal of non-taxable Australian property made to a non-resident beneficiary. The decision considered the interaction between the provisions governing capital gains made by foreign residents and provisions providing for the taxation of beneficiaries of a trust.

Memorandum of Understanding on Arbitration with UK

The ATO and Her Majesty's Revenue and Customs in the United Kingdom (UK) have signed a Memorandum of Understanding (MoU) on the Mode of Application on the Implementation of Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MoU sets out the procedural and operational details of an arbitration process arising from a mutual agreement case.

The MoU was signed and took effect from 21 May 2021.

G7 agreement on global tax reforms

The finance ministers of the Group of 7 have reached agreement on global tax reform that will affect the largest multinationals. Under the agreement, large multinationals with at least a 10 per cent profit margin will be required to pay tax in the countries in which they operate based on a reallocation of 20 per cent of profit above the 10 per cent profit margin ("Pillar One"). They also agreed to enact a global minimum tax rate of at least 15 percent ("Pillar Two").

The agreement is to be discussed at the Group of 20 Financial Ministers and Central Bank Governors meeting in July 2021. There is significant detail to be addressed even if a global agreement is forthcoming later this year, including detail on implementation, template legislation and a multilateral convention.

For further information, refer to this PwC Tax Policy Alert.

OECD update

The Organisation for Economic Cooperation and Development (OECD) has published comments received on the proposed changes to the commentaries on Article 9 of the OECD Model Tax Convention concerning transactions between associated enterprises.

Matthias Cormann, former Finance Minister for Australia, took office as the six Secretary General of the OECD from 1 June 2021 beginning his five year term.

European Commission proposal to address distortions caused by foreign subsidies

The European Commission has proposed a new regulation to address foreign subsidies, which in certain cases are seen to be distorting the internal European Union (EU) market. This proposal may result in an increased regulatory burden for businesses outside the European Union that wish to invest in or otherwise enter the EU internal market. Furthermore, it could result in increased scrutiny for mergers and acquisitions, and a prolonged public tender process, to name just some of the potential impacts. Refer to this PwC Tax Policy Alert.

Heavy vehicle road user charge

The Minister for Infrastructure, Transport and Regional Development has issued the Fuel Tax (Road User Charge) Determination 2021 (Fuel Tax Determination) setting the rate of the heavy vehicle road user charge at 26.4 cents per litre of taxable fuel. The Fuel Tax Determination commences from 1 July 2021

New fuel tax credits

The ATO has advised of the new fuel tax credit rates for businesses for fuel purchased from 1 July 2021 to 1 August 2021.

Australia-UK free trade agreement

The governments of Australia and the UK have reached in principle agreement on a free trade agreement (FTA). The FTA will provide for the elimination of tariffs on a number of agricultural products including beef, sheep meat, sugar and dairy. Tariffs on these products will be eliminated over periods of up to ten years with transitional arrangements applying during that time. The FTA also contains provisions relating to other sectors of the economy such as financial and professional services and will provide for the increase in the threshold before Foreign Investment Review Board approval is required for investments made by UK entities.

Anti-dumping investigation of related party exports terminated

In Wilson Transformer Company Pty Ltd v Anti-dumping Review Panel (No 2) [2021] FCA 591, the Federal Court rejected the applicant's application for judicial review of the determinations made by the Anti-Dumping Review Panel to affirm the decisions of the Commissioner of the Anti-Dumping Commission to terminate anti-dumping investigations in respect of power transformers exported from China. The Panel affirmed the Commissioner's decisions on the basis that the Commissioner had been correct to conclude the relevant sales had been arms length transactions.

Let's talk

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

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

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

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

Gary Dutton, Brisbane & Sydney
Australian Trade Leader
+61 (7) 3257 8783
gary.dutton@pwc.com

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

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

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

Ben Lannan, Melbourne
Partner
+61 (3) 8603 2067
ben.lannan@pwc.com

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

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

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

Indirect Tax Update

GST and burial rights

The Australian Taxation Office (ATO) has indicated in draft goods and services tax (GST) determination GSTD 2021/D2 that the supply of a burial right in respect of a public cemetery that is operated by an Australian government agency is not subject to GST. However, the supply of other goods or services such as gravedigging, stonemasonry and plaques will be subject to GST as none of the exclusions from consideration apply.

This means that apportionment may be necessary if an undissected amount is charged for a burial right and taxable goods and services. Comments can be made on the draft determination by 23 July 2021.

Luxury car tax thresholds

The ATO has advised that the luxury car tax threshold for the 2021-22 financial year is AUD 69,152 (up from AUD 68,740 for 2020-21). The fuel efficient car threshold for the 2021-22 financial year is AUD 79,659 (up from AUD 77,565 for 2020-21).

Let's talk

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

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

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

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

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

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

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

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

Personal Tax Update

Temporary COVID-19 lockdown payment

The Federal Government has announced (and since enacted) a temporary disaster payment for workers that have had their work hours and income significantly affected by lockdowns related to COVID-19. Eligible recipients can receive up to AUD 500 per week for losing 20 hours or more of work or AUD 325 per week for losing under 20 hours of work where they are unable to attend work and earn an income due to state imposed health restrictions for more than a week and have exhausted any leave entitlements (other than annual leave) or special pandemic leave.

The temporary payment will be made for the second and subsequent weeks of lockdown restrictions.

Seasonal Worker Program

The Australian Taxation Office has published a fact sheet providing guidance to seasonal workers subject to the Seasonal Worker Program (SWP).who have changed from a Temporary Work (International Relations) subclass 403 visa to a different temporary visa. The fact sheet reflects changes to the law ensuring that seasonal workers continue to be taxed at a concessional rate of 15 per cent when changing to a different temporary visa. This is done by an employer withholding a final tax of 15 per cent. The fact sheet also indicates that affected workers are not required to lodge an Australian income tax return but if they did, the ATO will process the return and apply the correct tax rate to the employment income from the SWP and tax any other income declared at the applicable tax rate.

Let's talk

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

Martina Crowley, Melbourne Partner +61 (3) 8603 1450 martina.crowley@pwc.com	**Glen Frost,** Sydney Partner +61 (2) 8266 2266 glen.frost@pwc.com	**Amy Etherton,** Newcastle Partner +61 (2) 4925 1175 amy.etherton@pwc.com
Samantha Vidler, Brisbane Partner +61 (7) 3257 8813 samantha.vidler@pwc.com	**Matt Gurner,** Perth Partner +61 (8) 9238 3458 matthew.gurner@pwc.com	**Alistair Hutson,** Adelaide Partner +61 (8) 8218 7467 alistair.hutson@pwc.com

State Taxes Update

QLD Budget

The 2021-22 Queensland (QLD) Budget was delivered on 15 June 2021 by the Treasurer, the Honourable Cameron Dick MP. The QLD Government anticipates a return to surplus in the State Budget by 2024-25. Although no new revenue measures were announced, the 50 per cent payroll tax rebate for apprentices and trainees was announced to be extended for 12 months until 30 June 2022.

NSW Budget

The 2021-22 New South Wales (NSW) Budget was delivered on 22 June 2021 by the Treasurer, the Honourable Dominic Perrottet MP. The NSW Government anticipates a return to surplus in the State Budget by 2024-25. From a revenue perspective, the following measures were announced in the Budget:

- progressive abolition of motor vehicle stamp duty on electric car sales – from 1 September 2021, new and secondhand battery electric vehicles and hydrogen fuel cell vehicles (FCEVs) under AUD 78,000 will be exempt from motor vehicle duty. This exemption will be extended to all zero and low emissions vehicles (ZLEVs), new and used, from the start date of the new road user charge (see below).
- introduction of a new tax, in the form of a 'road user charge' (RUC) on all new and used ZLEVs, which is not expected to apply until the earlier of 1 July 2027 or such time as battery electric vehicles comprise 30 per cent of new vehicle sales in NSW. The charge will be levied at a rate of 2.5 cents per kilometre (in 2021- 22 dollars) and indexed annually at Sydney Consumer Price Index.
- investment in system upgrades and improved data management in Revenue NSW to make it easier for taxpayers to manage their surcharge land tax obligations and facilitate improved compliance.

- a minor indexation-based adjustment of the transfer duty brackets.

No other changes to payroll tax, land tax or transfer duty were newly announced in the Budget, although the introduction of certain new infrastructure charges in relation to development land was announced via a proposed amendment to the NSW planning legislation.

SA Budget

The 2021-22 South Australian (SA) Budget was handed down on 22 June 2021 by the Treasurer, the Honourable Rob Lucas MLC. A number of revenue measures were announced in this Budget including the following tax measures:

- a 50 per cent land tax discount will be introduced for eligible new build to rent housing projects until the 2039-40 financial year where construction commences from 1 July 2021.
- further land tax relief in the 2021-22 financial year through the land tax transition fund for those taxpayers negatively impacted by changes to land tax aggregation rules in 2021-22, by increasing relief from 30 per cent to 70 per cent of the relevant increase in 2021-22.
- as outlined in last year's Budget, the SA Government intends to introduce a road user charge for ZLEVs with legislation to be introduced in the coming months.
- 12 month extension of the payroll tax exemption for wages paid for eligible new trainees and apprentices to include relevant contracts of training entered into by 30 June 2022.
- the existing payroll tax exemption applicable to wages paid or payable in connection to a feature film produced in SA will be abolished from 1 July 2021 and the provision of ex-gratia relief on a case by case basis for wages paid or payable for film production in SA will be abolished from this date.

NSW tax reform

The NSW Productivity Commission has released a White Paper outlining over 60 opportunities that can help to reboot productivity growth in the areas of talent; investment and innovation; housing; and infrastructure and natural resources. From a tax perspective, the White Paper recommends that stamp duty be replaced with a broad-based property tax, motor vehicle duty be replaced with a road user charge for eligible electric vehicles, and the development of a single payroll tax coordination body in order to create a consistent approach to payroll tax measures across all states and territories.

NSW Treasury has released a progress paper on the NSW Government property tax reform proposal. The progress paper provides additional detail taking into account submissions received from the community and other stakeholders. The proposed reform would give prospective homeowners the choice to pay stamp duty or an annual property tax when they purchase their new home. Some key findings of the consultation period were there is a strong view that reform is needed, however there was uncertainty over potential annual tax increases in the future and how the reform might affect housing affordability in practice. Comments can be made on the additional information presented in this document by Friday 30 July 2021.

Victorian Budget measures now law

The Victorian State Taxation and Mental Health Acts Amendment Act 2021 and the Gambling Regulation Amendment (Wagering and Betting Tax) Act 2021 enacts the duties, land tax, gambling tax and payroll tax measures announced in the Victorian 2021-22 State Budget. This includes, among other things, the measures to:

- impose a premium land transfer duty rate for transactions with a dutiable value above AUD 2 million from 1 July 2021
- apply a temporary land transfer duty exemption and concession for the transfer of new homes in the Melbourne local government area
- ensure that shared equity arrangements between a person and the state in specified circumstances are not subject to land transfer duty
- increase the land tax threshold from AUD 250,000 to AUD 300,000 for owners and absentee owners
- extend the exemption for vacant residential land tax for new developments to apply for up to two land tax years
- increase the land tax rates for taxpayers with taxable landholdings of AUD 1.8 million or more.

SA land tax and discretionary trusts

The South Australian Land Tax (Discretionary Trusts) Amendment Bill 2021 is now law and provides additional time until 31 December 2021 for discretionary trusts that own land to nominate designated beneficiaries to avoid being subject to land tax surcharge rate.

PwC webcast – State budgets in focus

PwC's State Taxes team presented a webcast on 24 June 2021 entitled "The budgets in focus", covering the announcements in the respective State budgets, with a particular focus on NSW and

Victoria. A video-on-demand recording of the webcast can be found here.

Let's talk

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

Rachael Cullen, Sydney
Partner
+61 (2) 8266 1035
rachael.cullen@pwc.com

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

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

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

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

Matthew Sealey
Partner
+61 (2) 400 684 803
matthew.sealey@pwc.com

Superannuation Update

New super changes

A number of reforms to Australia's superannuation system recently completed their passage through Parliament, some with some important amendments, and are now law. This included the following Bills which collectively seek to provide more flexibility and control for individuals in managing their retirement savings, cut red-tape and increase accountability and transparency of funds:

- Treasury Laws Amendment (Your Future, Your Super) Bill 2021 which will:
  - prevent the creation of unintended multiple superannuation accounts when employees change jobs (applicable from 1 November 2021)
  - make it easier to choose a better fund through access to a new interactive online YourSuper comparison tool (effective from 1 July 2021)
  - require superannuation products to meet an annual objective performance test for MySuper products, and
  - ensure trustees only act in the best financial interests of members and provide better information regarding how they manage and spend members' money in advance of Annual Members' Meetings and through enhanced Portfolio Holdings Disclosure.
- Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020 which increases the maximum number of allowable members in self-managed superannuation funds (SMSFs) and small APRA funds from four to six from 1 July 2021.
- Treasury Laws Amendment (More Flexible Superannuation) Bill 2020 which not only extends the bring-forward rule for non-concessional contributions by individuals aged 65 and 66 from 1 July 2020, but significant amendments were made during its passage through Parliament which:
  - removes the excess concessional contributions charge from 1 July 2022, and
  - allows additional non-concessional contributions to be made to superannuation from 1 July 2021 until 30 June 2030 to make up for amounts that were withdrawn under the COVID-19 temporary early release concession applicable in either or both of the 2019-20 or 2020-21. This contribution will not count towards the existing non-concessional contribution caps.

Refer to the Government's media release announcing the passage of these measures.

Reminder about new superannuation thresholds for 2021-22

A reminder that with effect for the financial year commencing from 1 July 2021, new thresholds apply for many superannuation matters. Refer to the Australian Taxation Office's (ATO) published list of key superannuation rates and thresholds for the 2021-22 income year. Of particular note is the increase in the annual amounts that can be contributed to superannuation, including:

- the concessional contributions cap is AUD 27,500
- the non-concessional contributions cap is AUD 110,000 (for individuals with a total superannuation balance of less than AUD 1.7m at 30 June 2021)

- the capital gains tax cap amount for non-concessional contributions is AUD 1.615 million, and
- the maximum super contribution base for superannuation guarantee purposes is AUD 58,920 per quarter.

Superannuation and family law proceedings

The Federal Treasury has released exposure draft legislation designed to improve the visibility of superannuation assets in family law proceedings using information held by the Australian Taxation Office (ATO). The proposed amendments will allow a party to family law proceedings in the Family Court of Australia, Federal Circuit Court of Australia and Family Court of Western Australia to request information from the ATO about the identity and value of their partner's superannuation assets and for the ATO to disclose this information to the relevant court.

The aim of the proposed law change is that once commenced, the new information-sharing process will make it harder for parties to hide or under-disclose their superannuation assets in family law proceedings, and will reduce the time, cost and complexity for parties seeking accurate superannuation information.

Comments on the exposure draft materials were due on 28 June 2021.

Extension of temporary reduction in minimum super drawdown rates

The government has announced that the temporary reduction in the minimum superannuation drawdown rates for account-based pensions and similar products by 50 per cent for the 2019-20 and 2020-21 income years will be extended for a further year until 30 June 2022. The minimum drawdown requirements determine the minimum amount of a pension that a retiree has to draw from their superannuation in order to qualify for tax concessions.

Superannuation entitlements in family law settlements

The Australian Government Actuary has made the Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2021 that adjusts certain superannuation entitlements of separated and divorced spouses, and of separated de facto couples made in family law property settlements. The instrument relates to orders or agreements providing for a base amount split of superannuation benefits payable in respect of a defined benefit superannuation interest or interest in a self-managed superannuation fund. The instrument commences on 1 July 2021.

Let's talk

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

Naree Brooks, Melbourne Partner + 61 (3) 8603 1200 naree.brooks@pwc.com	**Marco Feltrin**, Melbourne Partner + 61 (3) 8603 6796 marco.feltrin@pwc.com	**Abhi Aggarwal**, Brisbane Partner + 61 (7) 3257 5193 abhi.aggarwal@pwc.com
Alice Kase, Sydney Partner + 61 (2) 8266 5506 alice.kase@pwc.com	**Matthew Strauch**, Melbourne Partner + 61 (3) 8603 6952 matthew.strauch@pwc.com	**Ken Woo**, Sydney Partner + 61 (2) 8266 2948 ken.woo@pwc.com

Legislative Update

Since our last update, the following new Commonwealth tax and superannuation legislation has been introduced into Federal Parliament:

- Customs Tariff Amendment (Incorporation of Proposals) Bill 2021, which was introduced to the House of Representatives on 16 June 2021, amends the *Customs Tariffs Act 1995* (Cth) to extend the application of the free rate of customs duty for goods capable for use in combating COVID-19 and incorporates other customs proposals tabled before Federal Parliament.
- Treasury Laws Amendment (COVID-19 Economic Response) Bill 2021, which was introduced to the House of Representatives on 16 June 2021, amends the income tax law to:
  - make certain state and territory grants made in response to COVID-19 non-assessable non-exempt income for eligible businesses; and
  - allow for protected information to be disclosed to Services Australia for the

purposes of administering COVID-19 disaster payments.

- Treasury Laws Amendment (2021 Measures No 5) Bill 2021, which was introduced into the House of Representatives on 24 June 2021, proposes a number of amendments including to taxation law as follows:
  - increase the producer offset for films that are not feature films released in cinemas to 30 per cent of total qualifying Australian production expenditure, and to make various threshold and integrity amendments across the three screen tax offsets, and
  - make minor and technical amendments to taxation laws including to clarify that a country by country reporting (CbC) entity is to provide a statement on the global operations and pricing policies of other members of the CBC reporting group for the income year to which the statement relates rather than the previous income year; clarify how a company may change its loss carry back choice; ensure a franking credit arises for a company in particular circumstances where the company's tax offset refund is subsequently reduced; clarify that capital works are included within the requirement to spend AUD 100 million on certain assets for the purposes of the alternative test for eligibility for the temporary full expensing measure; and expand the operation of the tax consolidation cost setting rule that applies to finance leases so as to cover all leases.

The following Commonwealth superannuation legislation has now completed its passage through Federal Parliament:

- Treasury Laws Amendment (2021 Measures No 4) Bill 2021 which amends the income tax law to:
  - provide employers with an exemption from fringe benefits tax on providing training or education to a redundant, or soon to be redundant, employee for the purpose of assisting that employee to gain new employment
  - extend the operation of the junior minerals exploration incentive for a further four years to continue to encourage mineral exploration companies to undertake greenfields minerals exploration in Australia
  - provide a targeted capital gains tax (CGT) exemption for CGT events that occur on entering into, varying or terminating formal written arrangements under which an older person or person with a disability acquires, varies or disposes of a granny flat interest
  - amends the *International Tax Agreements Act 1953 (Cth)* to disregard days spent in Australia due to COVID-19 by New Zealand sportspersons on teams participating in cross-border competitions and their support staff in determining whether income derived from such competitions is taxable in Australia
  - make the low and middle income tax offset available in the 2021-22 income year.
- Treasury Laws Amendment (More Flexible Superannuation) Bill 2020 which enables individuals aged 65 and 66 years to make up to three years of non-concessional superannuation contributions from 1 July 2020. Amendments were made to the Bill in the Senate to remove excess concessional contributions charges in relation to excess concessional contributions made for the 2021-22 and later financial years and to allow recontribution of COVID-19 early release superannuation amounts outside of contribution caps from the 2021-22 to 2029-30 financial years.
- Treasury Laws Amendment (Self-Managed Superannuation Funds) Bill 2020 which increases the maximum number of self-managed superannuation fund members from four to six; and
- Treasury Laws Amendment (Your Future, Your Super) Bill 2021 which implements the Your Future, Your Super package of reforms announced in the 2020–21 Federal Budget, including measures to:
  - limit the creation of multiple superannuation accounts for new employees (amended in the Senate to delay the start date for the single default account amendments to apply for employees commencing employment on or after 1 November 2021)
  - require APRA to conduct an annual performance test for MySuper products; and
  - ensure that trustees act in the best financial interests of the beneficiaries.
- Private Health Insurance Amendment (Income Thresholds) Bill 2021 which continues the pause on the indexation of private health

insurance income thresholds used in determining the tier for the private health insurance rebate and the Medicare levy surcharge for a further two years and adjusts the formula for recommencement of indexation at the current income thresholds from 1 July 2023.

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

- Excise Amendment (Alcohol Manufacturers Remissions) Regulations 2021 which implement tax relief for eligible alcohol manufacturers (as announced in the 2021-22 Federal Budget) by providing, with effect from 1 July 2021, an immediate remission of excise duty for eligible alcohol manufacturers up to an annual cap of AUD 350,000 per each income year.
- Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021 which amend various Treasury portfolio regulations, including goods and services tax (GST) and superannuation laws, to make minor and technical amendments as part of the Government's commitment to the care and maintenance of Treasury portfolio legislation.
- Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2021 which reduce the minimum superannuation drawdown rates by 50 per cent for account-based pensions (and equivalent annuity products) for the 2021-22 financial year.
- A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Determination 2021 which specifies the kinds of supplies to a participant of the National Disability Insurance Scheme (NDIS) that are GST-free, subject to the supply meeting the other conditions prescribed by the GST Act.
- Treasury Laws Amendment (Self-Managed Superannuation Funds) Regulations 2021 which amends relevant provisions in superannuation regulations that refer to self-managed superannuation funds (SMSFs) and small superannuation funds (SSFs) to ensure the provisions accord with the increased member limits of SMSFs and SSFs provided by the Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021.

Federal Parliament next resumes for the Spring Sittings on 3 August 2021.

Let's talk

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

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

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

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

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

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

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

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

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

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

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

Other News

It's tax time – 2021 tax returns and schedules

The Australian Taxation Office (ATO) has released the return forms, schedules and instructions for 2021-22 income year tax lodgments. The full list of forms can be accessed under the 'Tax Time 2021' heading on the Forms and Instructions page.

ATO's Top 500 Performance Program findings report

The ATO has published its first Findings report for the Top 500 tax performance program based on its findings to 28 February 2021. The report:

- provides a profile of the median Top 500 group and the characteristics that define the Top 500 population

- outlines how the justified trust methodology is applied in tax assurance engagements, and details the ATOs findings and observations from its implementation to date
- provides high-level observations about the common tax technical issues whose treatments are frequently identified as requiring assurance and the risks we have identified as part of the tax assurance process.

The ATO has generally observed a reluctance among groups within the Top 500 population to meaningfully invest in tax governance, particularly over the numerous tax issues that arise in the process of wealth extraction. As a result, only 52 groups with the Top 500 population have achieved Justified Trust (with a further 121 progressing towards Justified Trust). Activities are under way to provide Top 500 entities with meaningful suggestions about how they can demonstrate that they are making improvements to their tax governance framework, processes, and procedures.

Draft ATO guidance on temporary full expensing

The ATO has issued draft Law Companion Ruling LCR 2021/D1 which provides guidance on a number of concepts relevant to the temporary full expensing stimulus measure. These areas of guidance in LCR 2021/D1 include eligibility of both entities and assets, the application of the measures, the choice to opt out, interaction with other provisions and integrity issues.

Comments on LCR 2021/D1 are due by 9 July 2021.

Draft determination on working out aggregated turnover for different income years

The ATO has published draft Taxation Determination TD 2021/D1 on working out aggregated turnover where connected or affiliated entities have a different income year. An entity's 'aggregated turnover' is relevant to determining whether it meets the requirements of a 'small business entity' and to access tax incentives, such as temporary loss carry back and temporary full expensing measures.

TD 2021/D1 provides the initial ATO view that when calculating the aggregated turnover of a taxpayer, the annual turnover of entities that are affiliates or connected with the taxpayer should be determined by reference to the taxpayer's income year even where those entities have a different accounting period.

Comments on TD 2021/D1 are due by 9 July 2021.

Temporary reprieve from failure to lodge penalties for SGEs

The ATO has advised that it will automatically remit the failure to lodge penalties to nil for significant global entities (SGEs) until 30 August 2021. This applies to SGEs with a 31 December 2020 substituted accounting period with an income tax return lodgment due on 15 July 2021 (or 30 July 2021 for those with an agent lodgment concession) and who lodge their income tax return and/or general purpose financial statements less than 30 days late.

ATO puts business on notice for claims for stimulus measures

The ATO has effectively put business on notice in relation to their eligibility to make a claim for the loss carry-back tax offset, the temporary full expensing deduction or the backing business investment accelerated depreciation deduction. Specifically it has listed the behaviours or issues that will attract its attention and reiterated the importance of keeping adequate records to support a claim.

ATO guidance on COVID-19 rental concessions

The ATO has published new guidance on the income tax and goods and services tax (GST) implications of rental concessions provided due to COVID-19. This information will be useful for:

- tenants who receive rent concessions, such as waivers or deferrals, from their landlords, and
- landlords who give rent concessions, such as waivers or deferrals, to their commercial tenants.

ATO compliance focus for small business

In a speech presented to the Chartered Accountants Australia and New Zealand Strategic Tax Planning Day, Deborah Jenkins, Deputy Commissioner Small Business, indicated that the ATO's compliance focus areas for small businesses going into the 2020-21 income tax time are:

- using third party data like the Taxable Payments Annual Report data to check that income from contract work is declared in tax returns
- monitoring loss claims, particularly for first time loss makers, and closely monitoring loss carry back and temporary full expensing measure claims
- monitoring small businesses to ensure they are making appropriate distinctions between private and business activities and accounting for these accordingly, and

- ensuring that JobKeeper and JobMaker Hiring Credits amounts are included as income in the tax return.

Review of effective lives of depreciating assets

The ATO has advised that it will commence a review to determine the effective lives of depreciating assets used in the following industries:

- salt manufacturing and refining industry within Australian and New Zealand Standard Industry Classification (ANZSIC) codes 11920, 11990 and 18130
- clothing manufacture industry within ANSIC code 13510
- wooden furniture and upholstered seat manufacturing industry within ANZSIC code 25110
- fertiliser manufacturing industry within ANZSIC code 18310
- plastic safety screens used to prevent the spread of COVID-19, and
- e-bicycles and e-scooters.

The ATO will issue draft effective lives for public comment and the new effective life determinations are intended to apply from 1 July 2022.

Car limit increased

The car limit for the purposes of capital allowances has been increased to AUD 60,733 for the 2021-22 income year (up from AUD $59,136 which applied for the 2020-21 income year). The car limit is relevant for determining the first element of the cost of passenger vehicles (except motorcycles or similar vehicles) designed to carry a load of less than one tonne and fewer than nine passengers, for capital allowance purposes.

Data matching programs for cryptocurrency

The ATO has provided notice that it will conduct a data matching program in respect of cryptocurrency. Under this program, the ATO will access account identification and transaction data from cryptocurrency designated service providers for the 2020-21 to 2022-23 income years. The data will be used by the ATO to identify taxpayers that have failed to report a disposal of cryptocurrency in their income tax return or have not complied with other taxation obligations.

Data matching programs for novated leases

The ATO has provided notice that it will conduct a data matching program in respect of novated leases. Specifically, the ATO will access novated lease data from a range of lease service suppliers for the 2018-19 to 2022-23 income years. The data will be used by the ATO to conduct an information and education campaign, identify cases for administrative action, allow the ATO to provide tailored messages to taxpayers and generate insights to assist taxpayers when interacting with ATO systems.

Tribunal finds a scheme to access cash flow boost

The Administrative Appeals Tribunal (AAT) has held in VNBM v Federal Commissioner of Taxation [2021] AATA 1626 (VNBM) that a business was not eligible for the cash flow boost stimulus measures after finding a scheme had been entered into for the sole or dominant purpose of obtaining the payment. The taxpayer had reported wages for the previous five years below the tax free threshold for Pay As You Go (PAYG) withholding purposes, but after the announcement of the cash flow boost scheme, a one off payment above the PAYG withholding threshold was made however no payment record that these wages we actually paid was maintained. Having regard to the long-established previous pattern of reported wages, the timing of the extraordinary payment said to have been made, and that it would give rise to a PAYG withholding obligation of a small amount over the amount required to qualify for the maximum cash flow boost, the Tribunal concluded that there was a scheme for the dominant purpose of obtaining the cash flow boost.

Income from subdivision and sale of property

The AAT in McCarthy v Federal Commissioner of Taxation [2021] AATA 1511 has held that profit generated from the purchase, subdivision and subsequent sale of land was assessable as ordinary income. The issue for determination by the Tribunal was whether, at the time of the purchase of the property, the taxpayer had a potential profit by subdivision and sale as a purpose for the purchase. Such a purpose was found not to have to be the sole or even the predominant purpose, it just has to be a not insignificant purpose.

Having regard to the facts, the AAT found that at the time of purchase of the property, the taxpayer was firmly considering subdividing and selling the property. Accordingly, the Tribunal found that any resulting gain should be assessable as income arising from an isolated transaction as the property generating the profit or gain was acquired in a business operation or commercial transaction for the purpose of profit-making by the means giving rise to the profit.

Let's talk

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

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

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

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

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

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

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

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

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

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

Editorial

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

Editorial		
Emma Thomson Marketing & Communications +61 (3) 8603 1255 emma.b.thomson@pwc.com	**Lynda Brumm** Principal, Tax Markets & Knowledge +61 (7) 3257 5471 lynda.brumm@pwc.com	**Blake Lloyd** Manager, Tax Markets & Knowledge +61 (2) 8266 5059 blake.lloyd@pwc.com

PwC's Monthly Tax Update