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# PwC's Monthly Tax Update

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

October 2020



# Corporate Tax Update

## R&D updates

The following research and developments (R&D) updates have occurred since our last update:

- The Department of Industry, Science, Energy & Resources [consulted](#) on the [refreshed R&D Tax Incentive Program's Guide to Interpretation](#). According to the Department, whilst the scope of the refreshed Guide has not changed, the language and style of the Guide has been refreshed so it is clearer and users are able to understand the eligibility requirements of the program. The Guide aligns with recent Federal Court and Administrative Appeals Tribunal decisions. Comments were due on 25 September 2020.
- The Senate Economic Legislation Committee's report on the inquiry into the [Treasury Laws Amendment \(Research and Development Tax Incentive\) Bill 2019](#) which contains the 2018-19 Budget measures to reform the R&D incentive has been [extended](#) again from 24 August 2020 to 12 October 2020.

## Update on Board of Taxation's corporate tax residency review

In the Board of Taxation's [August 2020 update](#) it was indicated that the Board's final report on corporate tax residency rules has now been submitted to the Government. During the course of the Board's review of corporate tax residency rules, it notes that it became clear that the rules determining the tax residency of a foreign incorporated company are in need of urgent reform.

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# Employment Taxes Update

## JobKeeper update

With the initial stage of the JobKeeper program ended on 27 September 2020, employers will now need to assess their eligibility under the extended JobKeeper program which commenced from 28 September 2020.

Under the extended JobKeeper program (see amendments to the Rules made by [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 8\) 2020](#) registered on 15 September 2020) applicable from 28 September 2020 through to 28 March 2021, there is a lower two-tier payment structure and a requirement for employers to retest eligibility based on actual decline in turnover to continue to access the payment.

In relation to the actual decline in turnover test, for the JobKeeper period from 28 September 2020 to 3 January 2021, businesses and not-for-profits will need to demonstrate that their actual goods and services tax (GST) turnover has fallen by the requisite percentage (i.e 15, 30 or 50 per cent as relevant to the organisation) for the September 2020 quarter relative to the comparable period in the prior year. Similarly, for the period from 4 January 2021 to 28 March 2021, businesses and not-for-profits will need to demonstrate that their actual GST turnover has fallen by the requisite percentage for the December 2020 quarter relative to the comparable period in the prior year.

The following legislative instruments were also registered to support the application of the actual decline in turnover test applicable under the extended JobKeeper program:

- [Coronavirus Economic Response Package \(Payments and Benefits\) \(Timing of Supplies Made and Decline in Turnover Test\) Rules 2020 \(No. 1\)](#) which sets out the time that a supply is treated as being made.
- [Coronavirus Economic Response Package \(Payments and Benefits\) Alternative Decline in Turnover Test Rules \(No. 2\) 2020](#) which sets out alternative decline in turnover tests where there is not an appropriate relevant comparison period in 2019.

In working out which of the new JobKeeper payment rates apply from 28 September 2020, it is necessary to determine for each eligible employee whether or not the requisite minimum 80 paid hours test has been met for the relevant reference period. The following legislative instruments were also registered to support the practical application of this test:

- [Coronavirus Economic Response Package \(Payments and Benefits\) Higher Rate Determination 2020](#) which sets out when the higher JobKeeper payment rate applies to an eligible employee, identifying specific circumstances in which the Commissioner is satisfied that the employee's total hours in the reference period are not readily ascertainable (for example, where there are no, or incomplete, records of hours or where remuneration is not tied to hourly rates).
- [Coronavirus Economic Response Package \(Payments and Benefits\) Alternative Reference Period Determination 2020](#) which sets out an alternative reference period for specified classes of individuals if the Commissioner considers that the period set out in the Rules may not be suitable (for example, where the employee was on unpaid leave or not employed for all or part of the relevant reference period).

To enable businesses sufficient time to assess their eligibility from 28 September 2020, and to also determine whether the higher or lower payment rate applies to eligible employees, the Australian Taxation Office (ATO) has provided an [extension of time](#) until 31 October 2020 for all eligible employees to meet the wage condition for the JobKeeper fortnights starting 28 September 2020 and 12 October 2020.

You can read about the latest JobKeeper Payment Update in our [one-page summary](#) and more detailed guidance on the JobKeeper program on our dedicated [JobKeeper payments webpage](#).

## COVID-19 and FBT

A range of potential fringe benefits tax (FBT) issues can arise from changing work conditions and support provided by employers to employees in the current COVID-19 environment. In this respect, the ATO has issued [guidance](#) addressing the FBT consequences which may apply if employers provide benefits relating to working from home arrangements or health-related support.

For those employers in the not-for profit sector only, the ATO has indicated that given the unprecedented circumstances, it will not apply compliance resources to scrutinise expenditure under salary-packaged meal entertainment arrangements for the:

- FBT year ending 31 March 2021 - where meals are provided by a supplier that was authorised as a meal entertainment provider as at 1 March 2020
- FBT year ended 31 March 2020 - when restaurants and public venues were closed.

## COVID-19 and further payroll tax support

Since our last update, further COVID-19 support has been provided to assist some employers in relation to their applicable State payroll taxes:

- The Victorian Government has [announced](#) that it will defer payroll tax for businesses with payrolls up to AUD10 million (based on their 2019-20 financial year annual reconciliation returns) for the full 2020-21 financial year until the 2021-22 financial year.
- The Queensland Government has [announced](#) the following:
  - a two-month payroll tax waiver for July and August 2020 for businesses with annual Australian taxable wages up to AUD6.5m, and
  - allowing businesses to pay off existing payroll tax deferred liabilities over the course of 2021.
- The NSW Government has [announced](#) further deferrals of payment of payroll tax for all employers for the outstanding liability for the 2019-20 financial year and the payments for July, August and September until October 2020. There is an option of paying the outstanding liability in full or entering into an instalment plan after October 2020.
- The Western Australian Government has [announced](#) that payments made to employees under the JobKeeper scheme will continue to be exempt from payroll tax until 28 March 2021.

For the latest up-to-date information on payroll tax relief in ACT and other States and Territories, refer to our [State Tax COVID-19 updates webpage](#).

## Revenue NSW payroll tax guidance on ESS interests

Revenue NSW has released a Commissioner's Practice Note [CPN 013](#) which explains payroll tax liability on wages which are provided in the form of shares and options, or are based on shares and options (ESS interest). In particular, the note provides further guidance on the Commissioner's view in relation to the taxing point of shares and options for payroll tax purposes, as well as valuation considerations.

## Tribunal finds employment agent liable to NSW payroll tax

The NSW Civil and Administrative Tribunal in [Bonner v Chief Commissioner of State Revenue \[2020\] NSWCATAD 231](#) has held that taxpayer (a sole trader) and associated company in which the taxpayer was at all relevant times the sole director, engaged in "employment agency contracts" within the meaning of Division 8 of Part 3 of the *Payroll Tax Act 2007* (NSW). The applicants' business was to represent models/talent to clients, or source models for clients, for a commission payable on each transaction between a client and a model. Having regard to the evidence, the Tribunal was not satisfied that the models, as service providers, were not effectively added to the workforce of the client for the conduct of the client's business in circumstances where the models agreed to provide services to the relevant client and perform work in accordance with agreements negotiated between the relevant model and the client. The applicants were employment agents, the models were service providers, and the agreements between the applicants and the models were employment agency contracts. Accordingly, the Tribunal found that amounts paid by the applicants to, or in relation to, models were wages upon which there was a liability to payroll tax.

## Single Touch Payroll Data Matching Program - Services Australia

The ATO has provided [notice](#) of the commencement of a new data matching program with Services Australia in relation to the use of Single Touch Payroll (STP) data. The data matching program involves the exchange of STP data from the ATO for individuals who have a relationship with Services Australia and will allow the STP data to be matched against Services Australia records.



In particular, the notice states that Services Australia intends to use the STP data obtained under this data matching program for the following purposes:

- pre-filling employer details (as reported through STP) onto Services Australia online services for review by customers;
- supporting the timely confirmation of employment and establishment of child support employer withholdings (where appropriate);
- identifying where there is a significant difference between STP income and the estimate the customer has provided to Services Australia, and contacting the customer to suggest that they revisit their income estimate;
- supporting existing debt recovery processes, including the contacting of customers with whom contact has been lost; and
- analysis of the data with a view to improving Service Australia's processes.

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## Global Tax Update

### ATO guidance on FITO limit and capital gains

The Australian Taxation Office (ATO) has released finalised Taxation Determination [TD 2020/7](#) which provides the Commissioner of Taxation's view that capital gains in respect of which the taxpayer has not paid any foreign income tax are not included when calculating the foreign income tax offset (FITO) limit that operates to reduce the Australian income tax otherwise payable on amounts where foreign tax has also been paid.

The FITO limit calculation broadly compares the total Australian tax payable and the Australian tax that would be payable if certain amounts (including ordinary and statutory income from a non-Australian source) were disregarded. The determination states that because a 'net capital gain' (being a product of capital gains and capital losses made during an income year) is an amount of statutory income (rather than each component capital gain), and a net capital gain does not have a source, it cannot be disregarded in the FITO limit calculation. Further, the relevant provisions do not allow you to disaggregate a net capital gain to identify capital gains that have been included in working out the net capital gain. The determination applies both before

and after 26 August 2020. This determination is substantially the same as its predecessor draft TD 2019/D10.

### Hybrid mismatch rules and complying with IDS disclosure requirements

The ATO has [reminded](#) taxpayers of the importance of complying with the disclosure requirements in relation to hybrid restructures in Section G of the International Dealings Schedule (IDS). The ATO has observed that there have been instances where some of the details that it expects to be disclosed have been omitted. It has also made it clear that it intends to follow up those cases in the 2019 and/or 2020 IDS where the lodged disclosures do not meet its level of required disclosure. In broad terms, the ATO is mandating disclosure of each step of any arrangements that have effectively replaced previous arrangements, which would have been subject to the hybrid mismatch rules had they not been unwound, restructured or replaced.

## Memorandum of Understanding for arbitration process under Australia-Swiss DTA

The competent authorities of the Swiss Confederation and Australia have entered into mutual arrangements (a "Memorandum of Understanding") to establish the mode of application of the arbitration process provided for in paragraph 5 of Article 24 of the double tax agreement Australia has with Switzerland. The Memorandum of Understanding took effect on 15 September 2020.

## US 2020 presidential election

The outlook for legislative action in the United States on business tax proposals will depend on the outcome of the forthcoming Presidential election and which party controls the House and Senate. The status of the pandemic and the US economy also likely will influence legislative priorities next year. If former Vice President Biden is elected, chances of a significant tax overhaul will depend on whether Democrats retain control of the House and take control of the Senate, and what policies current and newly elected members would support. For further information on business tax proposals refer to this [PwC Global Insights](#) and for information on tax proposals affecting individuals, refer to this [PwC Tax Insight](#).

## OECD releases Tax Policy Reforms report

The Organisation for Economic Co-operation and Development (OECD) has [released](#) its report on [Tax Policy Reforms 2020](#) which describes the latest tax reforms across OECD countries, as well as in Argentina, China, Indonesia and South Africa. The report identifies major tax policy trends adopted before the COVID-19 crisis and takes stock of the tax and broader fiscal measures introduced by countries in response to the pandemic, from its outbreak to June 2020.

In relation to the COVID-19 reform responses, the report shows that while the size of fiscal packages has varied across countries, most have been significant and most countries have adopted a phased approach. The most recent measures and discussions suggest that the recovery phase will be supported by expansionary fiscal policy in a number of countries.

## Other OECD developments

In other OECD developments, the Global Forum on Transparency and Exchange of Information for Tax Purposes has [released](#) peer review reports for each of Anguilla, Chile, China, Gibraltar, Greece, Korea, Malta, Papua New Guinea and Uruguay which assesses their compliance with the international standard on transparency and exchange of information on request (EOIR).

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# Indirect Tax Update

## Applying the actual decline in turnover test for extended JobKeeper access

Under the extended JobKeeper program (see Employment Taxes section), which applies from 28 September 2020 through to 28 March 2021, there is a requirement for employers to retest eligibility based on their actual decline in their goods and services tax (GST) turnover. This means that to continue to access JobKeeper payments for the three months after 27 September 2020, it will be important for businesses to make this assessment as soon as possible.

Specifically, businesses and not-for-profits are required to apply the "actual decline in turnover" test as follows to continue to access the JobKeeper payment for eligible employees:

- For the period 28 September 2020 to 3 January 2021 - demonstrate that their actual GST turnover has fallen by the requisite percentage (i.e 15, 30 or 50 per cent as relevant to the organisation) for the September 2020 quarter relative to the comparable period in 2019.
- For the period 4 January 2021 to 28 March 2021 – demonstrate that their actual GST turnover has fallen by the requisite percentage for the December 2020 quarter relative to the comparable period in 2019.

To support the practical application of the actual decline in turnover test, the Commissioner has made a [legislative instrument](#) that sets out the time(s) a supply is treated as being made for the purposes of calculating an entity's current GST turnover in a test period. Specifically, this instrument aligns the calculation of current GST turnover for the actual decline in turnover test with how entities would attribute GST payable on supplies to a tax period under the GST law. This effectively requires businesses to follow the same timing basis for recognising supplies as used when completing their business activity statement (BAS). However, businesses will still need to assess whether any items reported in their BAS should be excluded (for example, input taxed supplies and certain GST adjustments) or additional items should be included (for example, intra-GST group supplies) for the purposes of their actual decline in turnover test.

There are also [alternative modifications](#) in applying the decline in turnover test where there is not an appropriate relevant comparison period in 2019.

You can read about the latest JobKeeper Payment Update in our [one-page summary](#) and more detailed guidance on the JobKeeper program on our dedicated [JobKeeper payments webpage](#).

## Ensuring GST-free status for cars for disabled persons

The Australian Taxation Office (ATO) has made a determination ([Taxation Administration \(Remedial Power — Certificate for GST-free supplies of Cars for Disabled People\) Determination 2020](#)) to ensure continued access to GST-free supplies of cars and car parts for eligible disabled individuals for their personal transportation to or from gainful employment since the Medibank Health Solutions (MHS), a government owned corporation, can no longer issue disability certificates. Specifically, the Commissioner has exercised his remedial power to amend the relevant provision in the GST law to allow a person who is a medically qualified practitioner to certify that an individual has lost the use of one or more limbs to such an extent that he or she is unable to use public transport meets the medical requirement in paragraph 38-510(1)(a) of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (GST Act).

## Corporate credit cards and tax invoice requirement

The ATO has released [Draft Goods and Services Tax: Waiver of Tax Invoice Requirement \(Corporate Card Statements\) No. 2 Determination 2020](#) which specifies the circumstances when corporate cardholders can claim input tax credits without holding a tax invoice for the purposes of attributing an input tax credit for a creditable acquisition to a tax period. Comments are due on 2 October 2020. The draft determination is substantially the same as the [revoked instrument](#) which this new one will replace. Once finalised, the determination applies to net amounts for tax periods that start on or after 10 February 2020.

## Casino operator's commission and rebates

The Federal Court in [Crown Melbourne Limited v Commissioner of Taxation \[2020\] FCA 1295](#) has held that the taxpayer, who owned and operated casinos in Melbourne and Perth, which paid commission and rebates in accordance with junket program agreements between the taxpayer and junket tour operators, was required to take these into account in calculating the respective global GST amounts under s126-10 of the GST Act. The Court

found the commission and rebates were “consideration” for, or in connection with, the taxpayer’s gambling supplies or monetary prizes that it was liable to pay on the outcome of gambling events as applicable in applying the special rules in Division 126 of the GST Act that apply to the calculation of GST on “gambling supplies”. The Court rejected the Commissioner’s contention that the commissions and rebates were the consideration for the supply by junket tour operators to the applicants of the services of marketing, promoting and arranging junkets to the casinos, to which the basic rules for the GST contained in Chapter 2 of the GST Act apply.

## Structural trends in GST

The Parliamentary Budget Office (PBO) has released a [report](#) which examines the trends in GST relative to the size of the Australian economy over the last twenty years, including the impact of demographic change, and possible trajectories for future GST collections. It is reported that since 2000, overall GST revenue has increased from AUD28.5 billion in 2000-01 to AUD64.6 billion in 2018-19, a rise of around 130 per cent, while the size of the economy (as measured by gross domestic product (GDP)) has increased by almost 180 per cent in that period.

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## Personal Tax Update

### STP data matching program with Services Australia

The Australian Taxation Office (ATO) will commence a [new data matching program](#) with Services Australia in relation to the use of Single Touch Payroll (STP) data. The data matching program involves the exchange of STP data from the ATO for individuals who have a relationship with Services Australia. The STP data will be matched against Services Australia records.

### Taxpayer assessable on trust distribution

The Administrative Appeals Tribunal (AAT) in [The Beneficiary v Commissioner of Taxation \[2020\] AATA 3136](#) has held that the taxpayer, a primary beneficiary of a discretionary trust, did not effectively disclaim a distribution of net income of trust. As such, the taxpayer’s share of net trust income formed part of the taxpayer’s assessable income. The Tribunal found that the taxpayer did not discharge the burden of proving that she had not accepted the distribution before she signed a

document entitled “Disclaimer of Trust Income” in 2018 which purported to disclaim the distribution. The taxpayer’s striking through of the distribution in her income tax return was insufficient to disclaim it.

### Court finds disclaimers made by beneficiaries were effective

The Full Federal Court in [Carter v Commissioner of Taxation \[2020\] FCAFC 150](#) has allowed the taxpayer’s appeal finding that the deeds executed by beneficiaries of a trust to disclaim default distributions were effective and operated retrospectively for the purposes of s97 of the *Income Tax Assessment Act 1936* (Cth). Specifically, the Court found that until disclaimer, a beneficiary’s entitlement to income under a trust is operative from the moment it arises but upon disclaimer, the general law extinguishes the entitlement to trust income ab initio. Accordingly, the effect of a disclaimer is that the beneficiary must be treated as never entitled to the income for the purposes of s97 in respect of the relevant income year.



## Dual resident of Australia

The Full Federal Court in [Commissioner of Taxation v Pike \[2020\] FCAFC 158](#) has upheld the [decision](#) of the Primary Judge which considered the tax residency of an individual. The Court agreed with the primary judge's finding that the taxpayer was a "resident" of Australia for the income years ended 30 June 2009 to 30 June 2016 within ordinary concepts. Furthermore, the Court agreed with the primary judge's consideration of the tie-breaker rule in the double tax agreement (DTA) between Thailand and Australia from 2009 to 2014. For further details of the facts refer to the [February 2020 edition](#) of our Monthly Tax update.

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## State Taxes Update

### COVID-19 and further tax relief measures

Since our last update, further COVID -19 support has been provided to assist businesses in relation to their applicable State taxes:

- The Victorian Government has [announced](#) the following for business and property owners affected by COVID-19:
  - waiver of vacant residential land tax for properties in Melbourne's inner and middle suburbs that are vacant for more than six months in 2020
  - 25 per cent waiver of this year's congestion levy, and
  - deferral of any outstanding congestion levy balances until next year.
- The South Australian Government has [announced](#) further land tax relief for non-residential and residential landlords, as well as relief for owner-occupier businesses.
  - Landlords providing eligible rent relief or unable to secure a tenant due to COVID-19 from 31 October 2020 to 30 April 2021 can receive a further 25 per cent reduction on the 2019-20 land tax liability for affected properties. The rent relief given to eligible tenants or rent forgone from an untenanted property must be equal to or greater than the value of the land tax relief to be eligible for the full value of relief. This is in addition to the existing 25 per cent reduction on 2019-20 land tax liabilities based on eligible rent relief provided or rent forgone from 30 March 2020 to 30 October 2020.
  - Commercial owner-occupiers will also be eligible to receive a 25 per cent reduction on their 2019-20 land tax liabilities where they are eligible for JobKeeper payments from 31 October 2020 and have an annual turnover less than AUD50m.

For this and the latest up-to-date information in relation to all States and Territories and COVID-19 relief measures, refer to our dedicated [State Tax COVID-19 updates webpage](#).

## Update on ACT's tax reform

The ACT has [released](#) its [Jobs and Economic Recovery Plan](#) as part of its Government's Budget update. The Plan explains how its tax reform program, which commenced in 2012, has changed the way tax is collected in the ACT creating a more reliable revenue source through general rates and reducing "inefficient and unfair taxes" such as stamp duty. Key findings of the analysis show that the ACT's tax reform has been revenue neutral to date, but what has changed is the tax mix, not the total taxes collected.

## QLD ruling on registration of statutory entities as charitable institutions

The QLD Commissioner of State Revenue has issued [Public Ruling TAA149C.3.1](#) which outlines an administrative arrangement that enables statutory entities to be registered as a charitable institution under the *Taxation Administration Act 2001* (Qld) even though their enabling legislation does not meet certain requirements under the Act (e.g provisions for dissolution, a statutory entity may not have members etc). Registration as a charitable institution is a pre-condition to access certain exemptions under the *Duties Act 2001*, *Land Tax Act 2010* and the *Payroll Tax Act 1971*.

## Victorian duty guidance

The following Victorian duties guidance has been issued since our last update:

- Draft ruling [DA-064](#) which sets out actions and activities that the Commissioner of State Revenue considers to constitute land development, as defined in s 3(1) of the *Duties Act 2000* (Vic). This is relevant in the context of the application of Foreign Purchaser Additional Duty and the definition of residential property that includes land on which a person has undertaken or intends to undertake land development to create residential property. Comments are due by 6 November 2020.
- The State Revenue Office of Victoria has issued [guidance](#) on how the acquisition of certain shares or units can result in the acquisition of an economic entitlement in relation to land under the *Duties Act 2000* (Vic).
- The State Revenue Office of Victoria has [clarified](#) the circumstances of the Commissioner's position on a number of common valuation practices such as where information may be required in addition to a letter of appraisal as evidence of value for duty purposes.

- The State Revenue Office of Victoria evidentiary requirements manual has been [updated](#) to clarify that physical or scanned full copies of original executed trust instruments will now meet the evidentiary requirements for the establishment of a trust relating to non-dutiable property.

## SA duty ruling

RevenueSA has issued Revenue Ruling [SDA011 \[V2\]](#) which provides the life tenant factors to be used where a transaction involves the creation or surrender of a life estate or a remainder estate, i.e. the value of the interest passing are determined with reference to tables produced by the Australian Government Actuary for stamp duty purposes.

## Duty cases

The following duty cases have been issued since our last update:

- The NSW Civil and Administrative Tribunal in [Gao v Chief Commissioner of State Revenue \[2020\] NSWCATAD 216](#) has held that the taxpayer, a permanent resident of Australia, which entered into a contract to purchase an apartment was liable for surcharge purchaser duty under the *Duties Act 1997* (NSW) as he was a 'foreign person' when he became the owner of the apartment. The Tribunal found that the taxpayer fell short of the 200 day requirement in s5(1) of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) by one day. As such, the taxpayer was a 'foreign person' for the purposes of the Duties Act at the time of transfer of the apartment. The Tribunal confirmed that the requirement to be actually in Australia captures land-based presence in Australia, and also presumably sea-based (in territorial waters) presence in Australia, but it does not capture presence in Australian airspace.
- The Supreme Court of Queensland in [Resolute Mining Ltd v Commissioner of State Revenue \[2020\] QSC 281](#) has allowed the taxpayer's appeal and held that duty on the transfer of land which occurred as part of a project for the expansion of a gold mine was applied to the unencumbered land value rather than the consideration. The Court found the highest consideration payable under s502(2)(a) of the *Duties Act 2001* (Qld) could not be ascertained on the date of the agreement because the amount of any increase for a Cost Overrun Payment could not be ascertained on that date, and as such, the unencumbered land value was the dutiable value for transfer of land.

## Let's talk

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## Legislative Update

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

- [Treasury Laws Amendment \(Self-Managed Superannuation Funds\) Bill 2020](#), which was introduced to the House of Representatives on 2 September 2020, amongst other things, proposes to increase the maximum number of allowable members in a self managed super fund (SMSF) from four to six.

The following key tax and superannuation related Bill completed its passage through Parliament and is now law:

- [Coronavirus Economic Response Package \(Jobkeeper Payments\) Amendment Bill 2020](#), which was introduced to the House of Representatives on 26 August 2020, makes various amendments to the JobKeeper framework.

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

- [Coronavirus Economic Response Package \(Payments and Benefits\) Higher Rate Determination 2020](#) which sets out when the higher JobKeeper payment rate can apply to an eligible employee, where the Commissioner of Taxation is satisfied that the employee's total hours in the reference period are not readily ascertainable.
- [Coronavirus Economic Response Package \(Payments and Benefits\) Alternative Reference Period Determination 2020](#) which sets out an alternative reference period for specific classes of individuals in determining whether the higher or lower rate of a JobKeeper payment amount applies if the Commissioner of Taxation considers that the period set out in the Rules may not be suitable.
- [Coronavirus Economic Response Package \(Payments and Benefits\) Alternative Decline in Turnover Test Rules \(No. 2\) 2020](#) which sets out alternative decline in turnover tests where there is not an appropriate relevant comparison period in 2019 for the purpose of satisfying both the actual

decline in turnover test and the decline in turnover test in the JobKeeper rules.

- [Coronavirus Economic Response Package \(Payments and Benefits\) \(Timing of Supplies Made and Decline in Turnover Test\) Rules 2020 \(No. 1\)](#) which sets out the time that a supply is treated as being made for the purposes of the new actual decline in turnover test which must be applied to access JobKeeper from 28 September 2020.
- [Corporations \(Coronavirus Economic Response\) Determination \(No. 3\) 2020](#) which ensures that for at least the rest of this year, companies can hold their Annual General Meeting and other meetings, using technology, and to also extend the timeframe for companies to use electronic signatures.
- [Corporations and Bankruptcy Legislation Amendment \(Extending Temporary Relief for Financially Distressed Businesses and Individuals\) Regulations 2020](#) which extends the temporary insolvency and bankruptcy protections until 31 December 2020 by helping businesses continue to operate during a temporary period of illiquidity, rather than entering voluntary administration or liquidation, and assisting individuals to manage debt and avoid bankruptcy.
- [Treasury Laws Amendment \(Release of Superannuation on Compassionate Grounds\) Regulations \(No 3\) 2020](#) extends the deadline by which applications must be made by eligible individuals for COVID-19 related early release from superannuation and retirement savings accounts until 31 December 2020 (beyond the initial deadline of 24 September 2020).
- [Excise \(Spirit blending exemptions\) Determination 2020 \(No.1\)](#) which identifies the circumstances in which spirits produced by blending spirits is not taken to constitute the manufacture of that spirit under the *Excise Act 1901* (Cth) and therefore excluded from goods described by item 3 of the Schedule to the *Excise Tariff Act 1921* (Cth).

Federal Parliament will next sit on Tuesday 6 October 2020, which is also the day that the 2020-21 Federal Budget will be delivered.

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## Other News

### Remaking of Income Tax Assessment Regulations

Treasury has [released](#) draft *Income Tax Assessment Regulations 2020* which remake and improve the operation of the existing *Income Tax Assessment Regulations 1997* which are scheduled to sunset on 1 April 2021. The Regulations are necessary to support the operation of the *Income Tax Assessment Act 1997* and include certain operational rules for income tax calculations and liabilities for individuals, companies, trusts, partnerships and superannuation funds. The new draft Regulations omit redundant provisions, simplify language and restructure provisions for ease of navigation. According to the Treasury, these changes do not affect the substantive meaning or operation of the provisions except in limited cases that are specifically identified in the draft explanatory material. Comments are due on 19 October 2020.

### Remaking of ABN Regulations

Treasury has [released](#) draft *A New Tax System (Australian Business Number) Regulations 2020* to repeal, remake and improve the operation of the *A New Tax System (Australian Business Number) Regulations 1999* which will sunset on 1 April 2021. Minor technical changes have been made in the draft regulations to reflect current drafting practice. According to the Treasury, the draft regulations do not alter the substantive meaning or operation of the existing regulations. Comments are due on 5 October 2020.

### Data matching for business employing apprentices

The Department of Education, Skills and Employment is undertaking a [data matching program](#) by acquiring data from the Australian Taxation Office to support administration of the Supporting Apprentices and Trainees (SAT) program. This data will include information about businesses currently employing apprentices, as well as information about apprentices contained in the Training and Youth Internet Management System (TYIMS) and SmartForms completed by employers. The objectives of the data matching program are to:

- confirm that the employer is eligible to receive the Supporting Apprentices and Trainees wage subsidy
- validate information provided by the employer claiming the Supporting Apprentices and Trainees wage subsidy; and
- confirm that employers are not claiming both the Supporting Apprentices and Trainees wage subsidy and JobKeeper Payment at the same time in respect of the same employee.

### Developing country relief funds

The Assistant Minister for Finance, Charities and Electoral Matters has given notice under subsection 30-85(2) of the *Income Tax Assessment Act 1997* (Cth) that the following aid organisations are developing country relief funds to which deductible gifts can be made:

- [Project Kindy Public Fund](#)
- [Y-GAP International Development Fund](#)



- [Bodhgaya Development Association Inc. Public Fund, and](#)
- [Children of Cambodia Public Fund.](#)

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