

August 2018

TaxTalk Monthly

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



Corporate Tax Update

Concession and transitional arrangements for stapled structures

Under the proposed tax changes to stapled structures outlined in the Treasurer's [press release](#) of 27 March 2018, existing staples and approved new infrastructure staples can access concessional Managed Investment Trust (MIT) withholding tax rates on cross-staple rental arrangements for periods of either seven years (generally) or 15 years (economic infrastructure). To support this framework, Treasury has released a [proposal paper](#) which outlines the conditions that stapled entities must comply with to access the proposed infrastructure concession and transitional arrangements. The conditions include:

- The extension of existing integrity rules that apply to MITs to ensure that all staples are required to set their rent at market prices.
- The introduction of statutory caps on the amount of cross-staple rent to access the concessional rate of withholding tax available under the MIT regime for new and existing infrastructure projects during the transition or concession period.

Treasury is currently preparing exposure draft legislation on the proposed rules outlined in the paper. See also the Government's [media release](#). Comments were due on 12 July 2018.

Second tranche of draft law on Corporate Collective Investment Vehicles

Treasury has [released](#) the second tranche of draft law and explanatory materials for the Corporate Collective Investment Vehicle (CCIV) regime. The CCIV aims to offer an internationally recognisable investment vehicle which can be readily marketed to foreign investors, including through the Asia Region Funds Passport. This second tranche exposure draft law covers:

- External administration of a CCIV in a winding up situation
- The application of the Chapter 7 financial services regime to CCIVs, and
- The liability of the corporate director of a CCIV for contraventions of the law by the CCIV.

The explanatory materials also include a detailed description of the proposed penalties framework for

CCIVs and the proposed approach to takeovers, compulsory acquisitions and buy-outs of a CCIV. The provisions for these aspects of the Bill are under development. Comments are due on 10 August 2018. See also the Government's [media release](#).

Deemed dividends and interposed entity rules

The Australian Taxation Office (ATO) has released taxation determination [TD 2018/13](#) which considers the application of the deemed dividend rules (Division 7A) to certain interposed entity payments and loans. The Determination indicates that section 109T of the *Income Taxation Assessment Act 1936* (Cth) can apply to a payment or loan made by a private company to another entity (the 'first interposed entity') where that payment or loan is an ordinary commercial transaction. Where the Commissioner considers a reasonable person would conclude (having regard to all the circumstances) that the payment or loan to the first interposed entity is made solely or mainly as part of an arrangement involving a payment or loan to a shareholder or shareholder's associate (the 'target entity'), Division 7A operates as if the private company made a payment or loan to the target entity.

Government's Enterprise Tax Plan

The Treasurer Scott Morrison in an [address](#) to the CEDA State of the Nation Conference has renewed the Government's commitment to legislating the full implementation of the Enterprise Tax Plan which would extend the legislated tax cuts to all companies. The Treasurer cited Treasury's economy-wide modelling which suggests that taking the company tax rate from 30 per cent to 25 per cent would generate a permanent increase in the level of GDP of just over one per cent, and also highlighted the risks in maintaining our current tax rate which is one of the highest in the OECD.

The Minister for Finance, Mathias Cormann, has also published an [opinion piece](#) outlining the benefits of the Government's Enterprise Tax Plan.

Labor's position on company tax cuts

The Shadow Treasurer Chris Bowen has [stated](#) the Australian Labor Party will not reverse the legislated company tax rate of 27.5 per cent for small and medium business up to AUD50 million turnover a year. However, Labor will not support the Government's Enterprise Tax Plan which would see

the tax rate for all companies progressively reduced to 25 per cent.

The future of Special Purpose Financial Statements?

While it is a current requirement that some significant global entities (SGEs) have to lodge general purpose financial statements (GPFS) with the ATO, the Australian Accounting Standards Board (AASB) has issued a [consultation paper](#) proposing to remove entities' ability to lodge special purpose financial statements (SPFS) with ASIC and other regulators. This will affect an entity that is required to prepare and lodge a financial report with a regulator that complies with the Australian accounting standards, but which has regarded itself as a non-reporting entity that can lodge SPFS. For more detail, refer to this [PwC Straight Away Alert](#).

Draft law for Research and Development incentive reforms

Treasury has [released](#) a consultation paper and draft legislation which seek to give effect to the Government's 2018-19 Federal Budget proposal to

reform the research and development (R&D) Tax Incentive. Among other things, the proposed law seeks to impose a cap of AUD4 million on the amount of the refundable R&D offset which will be set by reference to the claimant's corporate tax rate plus a 13.5 per cent premium, and limit the amount of the non-refundable R&D offset to the claimant's corporate tax rate plus a premium based on the level of their incremental R&D intensity for their R&D expenditure. The new measures are proposed to apply for income years starting on or after 1 July 2018. Comments were due on 26 July 2018. See also the Government's [media release](#).

Changes to the R&D tax incentive compliance process

On 1 July 2018, the Department of Industry, Innovation and Science implemented [changes to the R&D tax incentive compliance process](#), changing the way the department will interact with claimants and their R&D Tax Incentive advisors. The changes are intended to reduce the compliance burden for companies who are chosen for [examination of registrations](#).

Let's talk

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Employment Taxes Update

Draft law on new measures affecting contractors and employers

Treasury has released draft legislation for public comment in relation to the following 2018-19 Federal Budget announcements which are seeking to address the potential for the black economy:

- [expansion of the taxable payment reporting system \(TPRS\)](#) to include the road freight, information technology, and security industries, and
- [removal of tax deductions for certain wage and contract payments](#) if the payer fails to comply with its obligations to withhold and report information to the Commissioner of Taxation.

The TPRS is a transparency measure that was first applied to the building and construction industry and later expanded to include the courier and cleaning industries. It requires businesses to report payments they make to contractors for services to the Australian Taxation Office (ATO). The proposal to further expand application of the TPRS to the road freight, information technology, and security industries is scheduled to apply to consideration that is provided on or after 1 July 2019, whether under an existing ongoing arrangement or otherwise, and regardless of the time the supply occurred or the service is provided.

The proposed amendments to remove the tax deductibility of certain wage and contract payments will apply to income years commencing on or after 1 July 2019 and will apply to payments:

- of salary, wages, commissions, bonuses or allowances to an employee
- of directors' fees
- to a religious practitioner
- under a labour hire arrangement, or
- for a supply of services (excluding supplies of goods and supplies of real property) where the payee has not quoted its ABN if the PAYG Withholding regime applied to the payment, and the payer did not withhold the amount from the payment as required or did not notify the Commissioner.

Comments can be made on the draft laws by 17 August 2018. See also the Government's [media release](#).

ATO guidelines on private use of certain exempt vehicle benefits

The ATO has released finalised practical compliance guidelines [PCG 2018/3](#) which provides the ATO's compliance approach to determining for Fringe Benefit Tax (FBT) purposes, the private use of certain exempt vehicle benefits provided in the 2019 and later FBT years. Importantly, the PCG will allow taxpayers to benefit from reduced FBT record keeping and reduced FBT audit risk for vehicles such as single cab and dual cab utes, panel vans and some four-wheel drives, in certain circumstances. Refer to this [TaxTalk Alert](#) which discusses the implications of the new guidance.

Draft ruling on fringe benefits provided to religious practitioners

The ATO has released draft taxation ruling [TR 2018/D2: Fringe benefits tax: benefits provided to religious practitioners](#). The draft Ruling explains when certain benefits provided by registered religious institutions to religious practitioners will be exempt from FBT. Comments are due on 24 August 2018.

Some employment related tax thresholds and figures for 2018-19

The ATO has released the following employment related tax thresholds and figures for 2018-19:

- Taxation determination [TD 2018/11](#) which provides the reasonable travel and overtime meal allowances expense amounts for the 2018-19 income year.
- [MVE 2018/1- Cents per Kilometre Deduction Rate for Car Expenses 2018](#) which sets the rate at which work-related car expense deductions may be calculated using the cents per kilometre method as 68 cents per kilometre for the income year commencing 1 July 2018.
- [Taxation Administration Act Withholding Schedules 2018](#) which specify the amount, formulas and procedures to be used for calculating the amount required to be withheld by an entity under the Pay-As-You-Go system.

New payroll tax measures

Further to our previous reports on various State and Territory Budgets which had announced payroll tax changes, the following have since been enacted:

- The NSW [State Revenue Legislation Amendment Act 2018](#) which, among other things, amended the *Payroll Tax Act 2007* to increase the payroll tax thresholds over four years as follows:
 - from 1 July 2018 – AUD850,000
 - from 1 July 2019 – AUD900,000
 - from 1 July 2020 – AUD950,000
 - from 1 July 2021 – AUD1,000,000
- The Tasmanian [Taxation Related Legislation \(Housing Availability and Payroll Relief\) Act 2018](#), which, among other things, implements:
 - the extension of the Payroll Tax Rebate Scheme for apprentices and trainees in areas of skills shortages

- a reduced rate of payroll tax (4 per cent) from 1 July 2018 for wages between AUD1.25 million and AUD2 million and,
- a three-year payroll tax exemption for wages paid to employees in regional Tasmania, where a mainland business relocates and establishes operations in a regional area between 1 July 2018 and 30 June 2021.
- The Northern Territory *Revenue Legislation Amendment Act 2018* which, among other things, amends the *Payroll Tax Act (NT)* to provide a payroll tax rebate to businesses that take on either a new employee who is resident in the NT, or a current employee who becomes, or is replaced by, a NT resident – provided the new hiring or residency occurs by 30 June 2020.

New Visa - Global Talent Scheme pilot

From 1 July 2018, all businesses will be able to sponsor highly skilled and specialised workers under the [Global Talent Scheme](#). The pilot will run for 12 months and provide businesses with a streamlined process to sponsor overseas workers with cutting edge skills, where there are no suitable Australians available to fill the vacancies. The scheme includes two streams – one for established businesses and one for start-ups. See also the Government's [media release](#).

Changes to the skilled migration points test

The Government has [announced](#) that it is changing the Skilled Migration Points Test to 65 points from 60 points from 1 July 2018. The changes will apply to the following unsponsored permanent residence visas:

- Subclass 189 – Independent skilled

- Subclass 190 – Skilled nominated visa, and
- Subclass 489 – Skilled regional (Provisional) visa.

Board of Taxation review of FBT compliance costs

The Minister for Revenue and Financial Services has requested that the Board of Taxation undertake a review of compliance costs associated with FBT. In order to understand the sources of compliance costs, the Board is conducting focus groups, online surveys and case study interviews.

The Board is currently seeking employers who provide fringe benefits to participate in focus groups (to help with the survey design) and case study interviews (to explore their FBT compliance experience in some detail). These processes will provide invaluable assistance to the Board in understanding the time and money organisations spend complying with their FBT obligations and the drivers of those costs, and help the Board make recommendations on how compliance costs could best be reduced. Businesses can register their interest by sending an email to research@taxboard.gov.au.

Further details on the focus groups and case study interviews are available on the [Board of Taxation website](#). A link to the survey (which will be open to tax advisors and employers) will be posted on the website when it opens in late August or early September 2018. You can also [subscribe](#) to receive email notifications about Board of Taxation updates.

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Global Tax Update

Latest news from international tax and transfer pricing

Draft law to extend the definition of Significant Global Entity

Treasury has released [exposure draft legislation](#) which seeks to give effect to the 2018-19 Federal Budget announcement to extend the definition of a Significant Global Entity (SGE). Broadly, an SGE is an entity which has annual global income of AUD1 billion or more, or which is part of a group of entities consolidated for accounting purposes that has annual global income of AUD1 billion or more. In summary, once the measures are enacted, for income years commencing on or after 1 July 2018, the concept of SGE will no longer solely depend on the preparation of actual consolidated financial statements.

Instead, an entity can also be an SGE if it is a member of a group (a 'notional listed company group') that would be required to prepare consolidated financial statements if it was assumed that it was headed by a listed company, even though it is, for example, privately owned. In addition, exceptions under relevant accounting principles to consolidate as a single accounting group (e.g. investment entities or due to materiality) will be disregarded.

As a consequence of the amendments, the amount of the annual global income of an entity that does not have global financial statements or is a member of a notional listed company group will be the amount a reasonable person in the position of the entity would believe its annual global income would be were such global financial statements prepared for the period.

The expanded definition will mean that the following entities may now qualify as an SGE:

- subsidiaries of privately held companies, partnerships or trusts where the global parent entity is not currently required to prepare consolidated financial statements
- subsidiaries of investment entities where the investment entity qualifies as an SGE, or will qualify once the subsidiaries are included in a 'de facto' consolidated accounting group (e.g. including superannuation funds)
- subsidiaries that are not consolidated in the financial statements of a global parent entity because they are immaterial.

The proposed law also distinguishes those SGEs that will be subject to country-by-country reporting. Under the proposed amendments, an entity will be a "country-by-country reporting entity" if the entity would be an SGE, assuming that:

- it was a global parent entity (even though it may be controlled by another entity), and
- exceptions from accounting consolidation (but not materiality) were taken into account in working out whether an entity was part of a notional listed company group.

The amendments also make changes to the information required in statements that must be provided by country-by-country reporting entities. Specifically, the statements provided will need to include information on the other members of notional listed company groups of which the entity is a member for the purposes of the country-by-country reporting provisions.

All of the other rules currently applicable to SGEs will also apply to those entities covered by the extended SGE definition – i.e. increased penalties, requirement for corporate tax entities to lodge general purpose financial statements (GPFS), diverted profits tax (DPT) and the multinational anti-avoidance law (MAAL). Refer to PwC's [TaxTalk Alert](#) dated 3 July 2018 for further information about SGEs.

Comments on the draft legislation are due 17 August 2018. See also the Government's [media release](#).

Thin capitalisation valuation of assets Budget measure

Treasury has released a [statement of policy intent](#) in relation to the 2018-19 Federal Budget measure which will tighten the thin capitalisation rules by requiring entities to align the value of their assets for thin capitalisation purposes with the value included in their financial statements. The policy principles that will be used to develop the law include:

- For income years commencing on or after 1 July 2019, all entities will be required to align the value of their assets for thin capitalisation purposes with the value contained in their financial statements.
- Valuations that were made prior to 7:30PM (AEST) on 8 May 2018 may be relied on until the beginning of an entity's first income year commencing on or

after 1 July 2019. That is, for the period between 8 May 2018 and the last day before the start of the income year commencing on or after 1 July 2019, entities may use the value reflected in their most recently completed compliant valuation for thin capitalisation purposes (or can revert to using the relevant financial statement value). The value of affected assets will effectively be ‘frozen’ at the value reflected in their most recently completed compliant valuation, for thin capitalisation purposes, prior to 7:30 PM (AEST) on 8 May 2018.

- A valuation will be regarded as completed and compliant if it satisfies the requirements of Subdivision 820-G of the *Income Tax Assessment Act 1997* (Cth) before 7:30PM (AEST) on 8 May 2018.
- This measure will not affect the application of the accounting standards. That is, there will be no changes to an entity’s ability to revalue assets in their financial statements in accordance with the accounting standards.

In addition, until the relevant amending law is enacted, the Australian Taxation Office (ATO) has [stated](#) that it will accept income tax returns as lodged according to current law. Assessments for impacted income years will not be reviewed until the outcome of the proposed law change is known.

MAAL and the “directly in connection with” test

The ATO has issued a final Taxation Determination [TD 2018/12](#) that provides guidance on when activities undertaken in Australia will be ‘directly in connection with’ a supply by a foreign entity for purposes of the Multinational Anti-Avoidance Law (MAAL). The Determination is relevant to schemes that are designed to limit a taxable presence in Australia under section 177DA of the *Income Tax Assessment Act 1936* (Cth).

According to the Determination, the phrase ‘directly in connection with’ is intended to be construed broadly. The ‘directly in connection with’ test will be satisfied by more than just activities connected with the process of executing a supply contract. Whether the requisite connection exists between activities undertaken in Australia and a supply to an Australian customer will depend on the facts and circumstances of each particular case.

ATO draft guidelines on transfer pricing issues related to non-core procurement hubs

The ATO has released for comment a new Schedule to its Practical Compliance Guideline [PCG 2017/1](#) which discusses the ATO’s compliance approach to transfer pricing issues related to centralised

operating models involving procurement, marketing, sales and distribution functions. Specifically, the draft Schedule sets out the ATO’s risk assessment framework, including the low risk benchmark for non-core procurement hubs. That is, offshore procurement hubs that supply ‘indirect’ or ‘non-core’ goods or services (‘non-core product’) to an Australian entity. Non-core products are goods and services that support the operations of a business and are not converted into a finished item or resold (for example, office equipment, consumables, packaging, fuel, advertising, travel management and professional services). The draft PCG indicates that non-core procurement hub arrangements will be assessed as low risk and in the green zone where the hub profit is less than or equal to a 25 per cent mark-up of hub costs. The Schedule is to have effect for income tax years commencing on or after 1 January 2018. Comments were due on the draft PCG Schedule by 27 July 2018.

Draft Regulations to support Asia Region Funds Passport

Treasury has [released](#) draft Asia Region Funds Passport Regulations for consultation. The regulations provide additional detail on the operation of the *Corporations Amendment (Asia Region Funds Passport) Act 2018* (Cth). The Passport is a common framework of coordinated regulatory oversight to facilitate cross-border issuing of managed investment funds. Australia, Japan, Korea, New Zealand and Thailand are current signatories to the Passport’s Memorandum of Cooperation (MoC).

The proposed regulations:

- require an operator of a notified foreign passport fund to lodge copies of documents in the prescribed form and set out other requirements regarding lodging documents with ASIC
- list the particulars which are to be included on the new register of passport funds and give the public a right to search the register
- extend many of the disclosure requirements and exemptions that currently apply to managed investment products to foreign passport fund products, and
- amend various fee regulations to prescribe new fees for certain matters relating to notified foreign passport funds.

Comments were due on 13 July 2018. See also the Government’s [media release](#).

International tax enforcement on offshore tax crime

Australia has [joined](#) a new international tax enforcement alliance to target those who seek to commit transnational tax crime. Representatives from the ATO and Australian Criminal Intelligence Commission (ACIC) signed up to the membership of the Joint Chiefs of Global Tax Enforcement alliance (known as the J5). Other members include Canada, the US, UK and the Netherlands. The J5 will be focused on three global tax enforcement initiatives: cybercrime and virtual currencies, enablers of offshore tax crime, and data platforms.

US tax reform developments

To keep up to date with the latest developments, news and implications of tax reform in the United States (US), visit [PwC's dedicated website](#). Updated regularly to provide response to developments as they occur, it brings together insights from business specialists across the globe for US inbound and outbound organisations navigating change. Some recent updates to note include:

- [Tax reform readiness: Transfer pricing strategy in the new world order](#)
- [Tax reform readiness – Six months in ... looking back and looking ahead](#)
- [Taxpayers may be able to reduce base erosion and anti-abuse tax \(BEAT\) liability by increasing cost of goods sold](#)

Impacts of US Supreme Court 'Wayfair' decision

The United States (US) Supreme Court in *South Dakota v Wayfair* overruled prior Court decisions that had precluded a state in the US from imposing a sales and use tax collection obligation on sellers unless they had a physical presence in the state. Constitutional nexus standards require that a state tax can apply only to an activity with a 'substantial nexus' with the state. In *Wayfair*, the Court found a 'substantial nexus' existed between out-of-state retailers and South Dakota by virtue of economic and virtual contacts with the state. For further information refer to PwC's Global Tax Insights which provides a consideration of the [implications of the case](#) and the [US state tax and accounting impacts](#).

G20 Finance Ministers and Central Bank Governors Meeting

The [report](#) of the Secretary General to the Organisation for Economic Cooperation and Development (OECD) has been released to the G20 Finance Ministers and Central Bank Governors. The

report contains two parts. Part I details the activities and achievements of the OECD's tax agenda, and is made of two subparts: looking back at significant achievements, and looking ahead at the further progress needed – in particular, through the OECD/G20 Inclusive Framework on BEPS. Part II is a Progress Report to the G20 by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

In addition, the following reports were published as annexures:

- [OECD/G20 Inclusive Framework on BEPS: Progress Report July 2017-June 2018](#) outlines major developments in dealing with the tax challenges of the digitalised economy and the entry into force of the MLI, and shows how countries are progressing in the implementation of the BEPS package.
- [OECD/IMF Report on Tax Certainty – 2018 Update](#)

The Federal Treasurer, Scott Morrison, [attended](#) the G20 Finance Ministers and Central Bank Governors Meeting in Argentina. Discussions covered the future of work in the face of technological change, crypto-assets and technological innovation in the financial sector, and how to ensure a fair and modern international tax system. The Treasurer indicated that he would use the tax session to call for continued discussions on a multilateral solution to the tax challenges of the digital economy, stating that "*The G20 needs to work together to ensure that large digital multinationals pay their fair share of tax*".

OECD and BEPS developments

The OECD has [released](#) new Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles (under Base Erosion and Profit Shifting (BEPS) Action 8), and Revised Guidance on the Application of the Transactional Profit Split Method, under BEPS Action 10.

The OECD has also [released](#) the BEPS discussion draft on the transfer pricing aspects of financial transactions which deals with follow-up work in relation to Actions 8-10 of the BEPS Action Plan. Comments are due on 7 September 2018. For further information, refer to PwC's [Global Tax Insights](#).

In addition, the OECD has [released](#) public comments it received on the scope of the future revisions of Chapter IV (Administrative Approaches) and Chapter VII (Intra-group services) of the Transfer Pricing Guidelines.

In other developments:

- The OECD has [published](#) tax transparency compliance ratings for peer review reports assessing compliance with the international standard on tax transparency and exchange of information on request. Two jurisdictions – Guernsey and San Marino – received an overall rating of “Compliant.” Four others – Indonesia, Japan, the Philippines and the United States were rated “Largely Compliant.” Kazakhstan was rated “Partially Compliant.”
- The OECD has [published](#) a new set of bilateral exchange relationships established under the Common Reporting Standard Multilateral Competent Authority Agreement (CRS MCAA). In total, the network will allow over 100 committed jurisdictions to exchange CRS information in September 2018 under more than 3,200 bilateral relationships that are now in place.
- The OECD has [announced](#) that Estonia has joined the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the Multilateral Instrument) and the United Kingdom has deposited the Multilateral Instrument ratification instrument.
- Vanuatu has [signed](#) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

OECD model on Corporate Effective Tax Rates

The OECD has [released](#) a working paper which presents the new OECD model for the calculation of forward-looking effective tax rates and provides the first empirical results based on a 2016 OECD survey. The paper presents forward-looking effective tax rates (ETRs) for 36 OECD and Selected Partner Economies taking into account a wide range of corporate tax provisions. Empirical results confirm that corporate tax bases vary considerably across countries and asset categories; since tax bases are typically narrower in countries with higher statutory tax rates (STRs), ETRs tend to be less dispersed across countries than STRs.

OECD’s Global Revenue Statistics Database

The OECD has [launched](#) the [Global Revenue Statistics Database](#) which provides comparable tax revenue information for 80 countries. A [working paper](#), drawing on the new database, shows that in the 21st century countries have made strong progress towards mobilising domestic financing for development. Levels of tax revenues are now higher and more even across countries than at the turn of the century, and countries with the lowest revenues

have experienced the largest increases in their tax-to-GDP ratios.

Luxembourg to implement EU anti-tax avoidance directive measures

The Luxembourg government introduced a draft Bill to implement the European Union (EU) Anti-tax Avoidance Directive measures into Luxembourg domestic law. This move indicates Luxembourg’s willingness to comply fully with the EU tax initiatives and to adapt to the ‘post-BEPS’ international tax environment. Assuming final approval by the Luxembourg Parliament, the Draft Law will come into force on 1 January 2019 with respect to the interest limitation rules, controlled foreign company (CFC) rules, intra-EU anti-hybrid rule and general anti-abuse rule (GAAR). The exit tax rules will come into force on 1 January 2020. For further information, refer to PwC’s [Global Tax Insights](#).

European Commission treats certain Luxembourg tax rulings as ‘State aid’

The European Commission (EC) issued a press release concerning its final decision in the State aid investigation into tax rulings granted by the Luxembourg tax authorities in relation to the treatment of certain financing transactions. The EC considered that the relevant taxpayer group received an undue advantage and requested recovery of up to EUR120 million of tax. The Commission considered that the two sets of tax rulings governing the treatment of the instruments incorrectly lowered the tax basis of the Luxembourg companies and constituted State aid. For further information, refer to PwC’s [Global Tax Insights](#).

EU Court of Justice considers German ‘restructuring clause’ was not unlawful State aid

The Court of Justice of the European Union (EU) has annulled the European Commission’s decision that a provision of German tax law enacted after the 2009 financial crisis (the ‘restructuring clause’) was unlawful State aid. The applicable ‘restructuring clause’ was that loss carry forwards could be retained if shares were transferred for purposes of restructuring the corporate entity. The decision by the Court of Justice affects German corporate income taxpayers that were obliged to repay tax benefits resulting from the restructuring clause under the recovery order in EC decision 2011/527/EU. For further information, refer to PwC’s [Global Tax Insights](#).

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Indirect Tax Update

GST on offshore hotel bookings

Treasury has [released](#) for comment draft legislation proposing to give effect to the Australian Government's 2018-19 Federal Budget commitment to extend the Australian goods and services tax (GST) by ensuring that offshore sellers of hotel accommodation in Australia calculate their GST turnover in the same way as local sellers. The current exemption that allows offshore sellers to not count sales of hotel bookings in Australia towards their AUD75,000 GST turnover threshold will be removed. The amendments apply to online service providers that acquire rights or options to use commercial accommodation in Australia and onsell those rights to a customer in its own right. The amendments do not apply to where the offshore online service provider is acting as agent on behalf of a hotel. Under these circumstances the hotel is the supplier to the customer and has the obligation to account for GST on the total amount paid by the customer.

The measure will apply to sales made on or after 1 July 2019. Sales that occur (i.e. consideration or invoice is provided) before 1 July 2019 will be excluded, even if the stay at the hotel occurs after this date.

Comments on the draft law are due on 9 August 2018. For further information, please refer to the Government's [media release](#).

ATO ruling on purchaser's obligation to pay GST on property

The Australian Taxation Office (ATO) has released law companion ruling [LCR 2018/4](#) which provides binding guidance on the new GST notification and withholding requirements that apply from 1 July 2018 for vendors and purchasers of residential premises and potential residential land. Specifically, the Ruling explains how the Commissioner of Taxation will apply the new rules including:

- the types of supplies for which purchasers are required to pay
- when a purchaser is required to pay
- the amount the purchaser is required to pay
- the requirement for a vendor to provide a notice to the purchaser, and
- the penalties that may apply to vendors and purchasers.

Draft amendments on GST ruling dealing with improvements to land

The ATO has released draft amendments to a GST Ruling, [GSTR 2006/6](#), which discusses the meaning of the phrase 'improvements on the land' in the context of the phrases 'improvements on the land' or 'no improvements on the land' or equivalent phrases in Subdivision 38-N and Division 75 of the *A New*

Tax System (Goods and Services Tax) Act 1999.
Comments are due on 10 August 2018.

Addenda to GST industry issues to reflect treatment of digital currency

The ATO has released the following addenda to GST industry issues to reflect the legislative amendments to deal with the GST treatment of digital currency:

- [GST II II10A1](#): Recoveries and adjustment events.
- [GST II II13A3](#): Insurance Excesses – Safe Harbour Arrangements.

Wine equalisation rulings

The ATO has issued addenda to the following wine equalisation tax (WET) rulings:

- [WETR 2006/1](#) to update the changes made to the producer rebate for producers of wine in New Zealand.
- [WETR 2009/1](#) to update the changes made to quoting and WET credit rules.
- [WETR 2009/2](#) to update the changes made to the producer rebate for other than New Zealand participants.

Federal Court rules on timing of entitlement to interest on overpaid GST

The Federal Court considered in [Travelex Limited v Commissioner of Taxation \[2018\] FCA 1051](#) the calculation of interest payable by the Commissioner of Taxation 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 for the taxpayer and granted a declaration that interest was payable by the Commissioner from the fourteenth day after the day on which the relevant surplus arose (i.e. when it lodged the applicable Business Activity Statement (BAS)) and not the much later date as the Commissioner had contended.

Firstly, it is relevant to note that the case concerned the application of the relevant provisions for the application of the GST before it was subject to a self-assessment regime, i.e. the applicable events in question occurred prior to those amendments taking effect from 1 July 2012, and the relevant statutory scheme that was considered by the Court was the scheme that was in place before those amendments.

In the relevant facts of this case, determining the time from which the interest was payable hinged on whether, for the purposes of paragraph (b) of the definition of ‘RBA interest day’ in s12AF of the

Taxation (Interest on Overpayments and Early Payments) Act 1983 (Cth), a ‘notification ... [was] required for the refund under section 8AAZLG of the [*Taxation Administration Act 1953* (Cth)]’ before Travelex was entitled to receive it. That in turn was dependent on whether Travelex was required ‘under any of the BAS provisions’ to give the Commissioner a notification relating to the refund. If no such notification was required, paragraph (b) of the definition did not apply and the RBA interest day was the day ascertained by reference to paragraph (a)(i) of the definition – that day being 14 days after the date on which the RBA surplus arose.

The taxpayer had contended that it was not required by any provision to notify the Commissioner of its entitlement to the refund of overpaid GST. The Commissioner contended that to obtain the refund, Travelex was required to revise or amend its GST returns (i.e. its BAS).

The Court held that a letter to the Commissioner was not an amended BAS and was not a notification that was required to be given under s31-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any of the other BAS provisions. It followed that the letter was not a notification that was required for the refund such that paragraph (b) of the definition of ‘RBA interest day’ in s12AF of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* (Cth) was not engaged, and therefore the RBA interest day could not be deferred as the Commissioner proposed.

Tribunal finds taxpayer not liable for luxury car tax

The Administrative Appeals Tribunal (AAT) in [Mavris and Commissioner of Taxation \[2018\] AATA 1825](#) has found that the taxpayer who was a sole trader selling new and used cars was not liable for luxury car tax (LCT) in relation to certain luxury cars, as he was able to produce the requisite LCT quotes given by the respective recipients. The Tribunal did however find the taxpayer was liable for LCT in respect of a luxury car where he failed to persuade the Tribunal that an LCT quote had been obtained.

GST Revenue Sharing Determination

The [Determination of the GST Revenue Sharing Relativities for 2018-19](#) in accordance with the *Federal Financial Relations Act 2009* instrument has been published. This instrument determines the GST Revenue Sharing Relativities for each State for the 2018-19 payment year.

Horizontal Fiscal Equalisation

The Productivity Commission has released its [final report](#) into the economic impact of Horizontal Fiscal Equalisation (HFE) which underpins the distribution of GST revenue to the States and Territories. The report assesses the influence of the current system of HFE on productivity, efficiency, and economic growth; the incentives for the States to undertake reforms that improve the operation of their jurisdictions; and on the States' abilities to prepare and deliver annual budgets. The report made recommendations to improve the system, including its governance arrangements.

The Government in turn released its [interim response](#) to the Commission's report and has broadly accepted all the findings, however it has chosen not to proceed with the recommendation to equalise to the standard of the average of all States and Territories. The Government is proposing a plan to update the way the GST is distributed to reflect changes to the economy since the GST was introduced. The plan involves transitioning to a new HFE system over eight years from 2019-20 in a way that is fair, reasonable and sustainable, and that would ensure all States are better off. In addition, the Government will implement a floor of 70 cents per person, per dollar of GST, below which no State's relativity can fall, from 2022-23, rising to 75 cents from 2024-25. For further information, refer to the Government's [media release](#).

The Treasurer has also, in an [opinion piece](#), outlined the Government's approach to distributing the GST and, in particular, how this would impact Western Australia.

Negotiations on Pacific Alliance-Australia FTA

The Minister for Trade, Tourism and Investment has [announced](#) that he will meet with his Mexican counterparts to advance negotiations on the Pacific Alliance-Australia Free Trade Agreement (FTA). The Pacific Alliance brings together four Latin American countries – Mexico, Chile, Colombia and Peru.

Investment opportunities in China

The Australian Government has [welcomed](#) new Chinese Government reforms to remove barriers for investment in priority sectors. China's Ministry of Commerce and National Development and Reform Commission eased rules for foreign investment in a range of sectors such as finance, energy, resources, agriculture, professional services, transportation and infrastructure.

WTO Government Procurement Agreement accession

Australia has [received support](#) to join the World Trade Organisation (WTO) Agreement on Government Procurement (GPA). Once GPA members formally agree to Australia's accession, expected by the end of 2018, Australia will begin domestic treaty-making processes to join the GPA.

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Personal Tax Update

ATO releases individual tax gap

The Australian Taxation Office (ATO) has published the income tax gap for individuals not in business, which is estimated to be AUD\$8.7 billion. The tax gap is an estimate of the difference between the tax the ATO collects and the amount that would have been collected if every taxpayer was fully compliant with the law. In comparison to the gap for individuals not in business, the net income tax gap for large corporates was estimated at AUD\$2.5 billion in 2014–15 (the most recently-published gap).

The ATO reports that the tax gap for individuals is primarily driven by incorrectly claimed work-related expenses and other areas of concern including high rates of incorrect claims for rental property expenses and non-reporting of cash wages.

The ATO will increasingly use data and technology, tailor advice and guidance products, auto-correct mistakes, streamline reporting and substantiation processes, access third party data to verify claims, and provide pre-fill information in tax returns. Additional funding was provided in the 2018-19 Federal Budget to support such activity.

Board of Taxation review on residency rules for individuals

The Board of Taxation has released its report into its review of the current individual tax residency rules. The Board's core finding is that the current individual tax residency rules are no longer appropriate and require modernisation and simplification. The Board also considered integrity concerns, the reasons for an increase in litigation relating to the residency rules since 2009, and any changes that could be adopted to improve the residency rules. The Board has recommended replacing the current legislative rule for determining an individual's tax residency with an improved and simplified residency test. The Board's preferred approach, detailed in the report, is a two-step model, as follows:

- a a primary 'days count' bright line test that automatically determines the residency status of most individuals, and
- b secondary test taking into account individual circumstances, which leverages some existing case law, as well as international practices.

The Government has requested the Board to further consult on key recommendations, including how Australia could draw on residency tests in other countries, before it takes a position on the matters. The Board will be undertaking this consultation in

the coming months, including developing options for:

- a two-step model for individual tax residency, and
- addressing the integrity risk posed by 'residents of nowhere' and related schemes to circumvent the tax residency rules.

Board of Tax report into sharing economy

The Board of Taxation has released its final report into its self-initiated review to consider tax issues related to the sharing economy. For purposes of its review, the 'sharing economy' is a term that describes people using internet applications to rent out their property, resources, time and skills. The Board focused on looking at the issues surrounding the point at which sharing economy activities transition from a 'hobby' to a business, and taking a holistic look at the current income tax system to consider if it adequately addresses existing and potential future sharing economy enterprises. The Board made the following recommendations in its report:

- Additional advice and guidance, and a communication strategy to raise community awareness of tax obligations associated with sharing economy participation.
- An information reporting regime requiring sharing economy platforms that operate in Australia to provide information on income derived by participants to the ATO on a once-a-year basis.
- The information reporting regime be implemented from a whole-of-Government perspective so that information is reported once and used as often as necessary.
- The Government conduct further consultation on options to simplify the tax consequences on disposal of assets used to produce small amounts of income.

Taxpayer not entitled to deductions for share losses and legal fees

The Federal Court in Greig v Commissioner of Taxation [2018] FCA 1084 has dismissed the taxpayer's appeal against an objection decision of the Commissioner concerning the deductibility of losses on shares that was incurred by reason of the compulsory transfer and cancellation of the

taxpayer's shareholding, and legal fees under section 8-1 of the *Income Tax Assessment Act 1997* (Cth). The Court held that the share losses and legal fees were not deductible as relevant shares were not acquired in a "business operation or commercial transaction" within the *Myer* principle, and consequently the share losses were not "incurred in gaining or producing ... assessable income". The Court also held that the taxpayer was not engaged in a business of "dealing" with the relevant shares.

Taxpayer fails to discharge onus of proof

The Federal Court in *Bosanac v Commissioner of Taxation [2018] FCA 946* has dismissed the taxpayer's appeal against objection decisions for

assessments raised for a number of income years. The Court held that the taxpayer had failed to discharge the onus of proving that the issued assessments were excessive and also failed in seeking judicial review challenging the Commissioner's decision to exclude them from Project DO IT. In addition, the Court affirmed the imposition of penalties for making false and misleading statements levied at 75 per cent because of "intentional disregard".

ATO pre-filing for 2018

The ATO has [announced](#) that its pre-filing service for 2018 tax returns includes capital proceeds from disposals of shares and units, and government grants information.

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State Taxes Update

Revenue NSW guidance

Revenue NSW has issued the following guidance:

- [Commissioner's Practice Note No. CPN 004](#) outlines how the New South Wales (NSW) surcharge purchaser duty and surcharge land tax will be applied in certain situations where land is held by a discretionary trust.
- [Revenue Ruling No. DUT 012 Version 2](#) outlines the circumstances in which evidence of value will be required when the Chief Commissioner requires a person who is liable to NSW duty to provide a declaration by a suitably qualified person as to the unencumbered value of the property or to provide such other evidence of that value as the Chief Commissioner thinks fit.

In addition, Revenue NSW has simplified the process for taxpayers lodging [requests for private rulings](#) in relation to the application of NSW taxes and duties. Taxpayers can now complete and submit an online form and also attach submissions and documents.

Duty decisions

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

- The New South Wales Civil and Administrative Tribunal in [Rubino Investments Pty Ltd as trustee for the Rubino Family Trust v Chief Commissioner of State Revenue \[2018\] NSWCATAD 133](#) has confirmed the NSW Chief Commissioner's assessments of ad valorem duty on the transfer of properties. The Tribunal rejected the taxpayer's claim that the transfer should be liable to nominal duty pursuant to s54(3) of the *Duties Act 1997* (NSW), which deals with transfers to a new trustee on the retirement of a trustee, or the appointment of a new trustee. The Tribunal also rejected the alternative claim that the transfer should be exempt from duty under s65(24)(a) of the *Duties Act 1997* (NSW), which deals with transfers to rectify the consequences of fraudulent conduct or to reverse a transfer where a court has declared the transfer to be void or voidable.

- The Victorian Civil and Administrative Tribunal in *Lincara Pty Ltd v Commissioner of State Revenue [2018] VCAT 1060* has confirmed duty assessments issued by the Victorian Commissioner of State Revenue, finding that the transfer of properties were not exempt from duty under s36B of the *Duties Act 2000* (VIC), which applies to property passing to unitholders in a unit trust scheme, as the taxpayer was not a unitholder of the Trust at the ‘relevant time’.

Land tax decisions

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

- The NSW Civil and Administrative Tribunal in *Australia Avenue Developments Pty Ltd as trustee for the SOP Site 3 Partner Trust v Chief Commissioner of State Revenue [2018] NSWCATAD 144* has confirmed land tax assessments issued by the NSW Chief Commissioner. The Tribunal rejected the various arguments raised by the taxpayer and specifically found that the taxpayer was a lessee of land from the Crown for the purposes of section 21C of the *Land Tax Management Act 1956* (NSW).
- The Victorian Civil and Administrative Tribunal in *Vantere Pty Ltd v Commissioner of State Revenue [2018] VCAT 901* has affirmed land tax assessments issued by the Victorian Commissioner of State Revenue as the taxpayer failed to produce sufficient evidence to demonstrate that they did not own the relevant properties as trustee of a trust. As such, they were subject to a higher rate of land tax applicable to land held on trust.

State legislative developments

The following state legislative developments have occurred since the July 2018 edition of TaxTalk Monthly:

- The NSW *State Revenue Legislation Amendment Act 2018* which, among other things, amended the *Payroll Tax Act 2007* to progressively raise the tax-free threshold for payroll tax to AUD1million, has received assent.
- The Tasmanian *Taxation Related Legislation (Housing Availability and Payroll Relief) Act 2018*, which gives effect to various Tasmanian 2018-19 Budget commitments including, among other things, a new foreign investor duty surcharge, certain payroll tax concessions for wages, and land tax exemptions for certain newly built housing, has received assent (see the July 2018 edition of [TaxTalk Monthly](#) for details).
- The Northern Territory *Revenue Legislation Amendment Act 2018* which amends the *Mineral Royalty Act* (NT), the *Payroll Tax Act* (NT), the *Petroleum (Submerged Lands) Act* (NT), the *Revenue Units Act* (NT), the *Stamp Duty Act* (NT) and the *Gaming Machine Regulations*, to implement the Territory 2018-19 Budget measures, has received assent (see the June edition of [TaxTalk Monthly](#) for details).

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Superannuation Update

Extending use of SuperStream to self-managed superannuation funds

Treasury has [released](#) draft regulations which amend the *Superannuation Industry (Supervision) Regulations 1994* to extend the operation of SuperStream to cover self-managed superannuation funds (SMSFs). To date, only rollovers between two APRA funds can be transferred electronically using SuperStream. The regulations apply to transfers and rollovers requested on or after 30 November 2019. Comments are due on 3 August 2018. See also the Government's [media release](#).

Revised Superannuation Guarantee (Administration) Regulations

Treasury has [released](#) draft Regulations to replace the *Superannuation Guarantee (Administration) Regulations 1993* which are due to sunset on 1 October 2018. Minor technical changes have been made to adopt current drafting practices, remove redundant references, and to make consequential amendments. No alteration to the substantive meaning or operation of the existing Regulations have been made. Comments are due on 15 August 2018.

Three-year audit cycle for some self-managed superannuation funds

Treasury has released a [consultation paper](#) on the Government's 2018-19 Federal Budget

announcement to change the annual audit requirement to a three-yearly requirement from 1 July 2019 for SMSFs with a history of good record-keeping and compliance. The paper seeks views on eligibility criteria, key events which may require more frequent auditing and possible transitional arrangements. See also the Government's [media release](#). Comments are due on 31 August 2018.

Superannuation (Resolution of Complaints) Regulations 2018

The [Superannuation \(Resolution of Complaints\) Regulations 2018](#) remakes the *Superannuation (Resolution of Complaints) Regulations 1994* which is due to sunset on 1 October 2018. The new Regulations make minor formatting changes to bring the provisions into line with current drafting conventions.

Member Account Transaction Service regulation for superannuation providers

The Australian Taxation Office (ATO) has released an [instrument](#) which sets out the timeframe for which superannuation providers in relation to superannuation plans (excluding self-managed superannuation funds) and life insurance companies, are required to give statements to the Commissioner of Taxation in relation to an individual's superannuation account transactions. The Member Account Transaction Service (MATS) form is the approved form for the giving of such a statement to the Commissioner.

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Legislative Update

With Federal Parliament in recess since the last issue of TaxTalk, no new tax or superannuation Bills have been introduced to Parliament. Parliament resumes for the Spring sittings which will commence on 13 August 2018.

Commonwealth revenue measures registered as legislative instruments or regulations since the July edition of TaxTalk include:

- [Customs Amendment \(Duty Deferral for Australian Trusted Traders\) Regulations 2018](#) amends the *Customs Regulation 2015* to provide that import duty on goods imported by an entity must be paid on or before the 21st day after the end of the month in which the goods were entered for home consumption.
- [Treasury Laws Amendment \(2018 Measures No. 1\) Regulations 2018](#), which amends the *Taxation Administration Regulations 2017* to allow taxation officers to disclose protected

information to a taskforce officer of the Black Economy Standing Taskforce or the Illicit Tobacco Taskforce. In addition, the regulation amends the application fees set out in the *Tax Agent Services Regulations 2009* and updates the list of approved stock exchanges in the *Income Tax Assessment Regulations 1997*.

- [Taxation Administration Act Withholding Schedules 2018](#) makes the withholding schedules, specifying the amount, formulas and procedures to be used for working out the amount required to be withheld by an entity under the Pay As You Go (PAYG) system.

In addition, [Notice under subsection 30-85\(2\) and 30-85\(4\) – World Vision Australia Overseas Aid Fund](#) declares that the World Vision Australia Overseas Aid Fund is a developing country relief fund.

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Other News

Reminder about annual vacancy fee return for foreign owners of Australian residential property

Foreign owners of residential dwellings in Australia are required to lodge an [annual vacancy fee return](#) with the Australian Taxation Office (ATO). For

dwellings not residentially occupied or genuinely available on the rental market for more than 183 days each year, foreign owners may be liable to pay a vacancy fee.

The vacancy fee return must be lodged within 30 days of the end of each 'vacancy year' by foreign owners of residential dwellings who:

- made a foreign investment application for residential property after 7.30pm AEST on 9 May 2017, or
- purchased the property under a New Dwelling Exemption Certificate that a developer applied for after 7:30pm AEST on 9 May 2017.

The vacancy year is usually the 12 month period from the anniversary of the settlement date for the property.

To lodge, foreign owners will need a copy of their Land and Water Register reference number. A registration number can be obtained by registering the property details on the ATO's [Land and Water Register](#).

For further details about these rules, refer to our [TaxTalk Insights](#).

The ATO is also hosting two live webinars to provide information about the annual vacancy fee on 8 August and 5 September 2018. For more information or to register, visit ato.gov.au/webinars.

ATO's draft guidance for property and construction industry

The ATO has released [draft guidance](#) which outlines real cases and decisions being made by the ATO in relation to property development cases. The consultation paper is intended to provide a transparent view into the decisions the ATO is making on fact-driven cases where a more technical product is not suited. Topics discussed include factors the ATO takes into account in making the following decisions:

- Whether the agreement to develop and sell land is a mere realisation or a disposal, either in the course of a business or as part of a profit making undertaking or plan
- Capital vs revenue characterisation
- Property development agreements
- Timing of return of income and deductions, and
- Land banking entities with associated development entities.

Comments can be made by 3 August 2018.

ATO releases draft determination on trust splitting

The ATO has released draft tax determination [TD 2018/D3](#) on trust splitting. The draft determination considers an arrangement where the parties to an existing trust functionally split the operation of the

trust so that some trust assets are controlled by and held for the benefit of one class of beneficiaries, and other trust assets are controlled and held for the benefit of others. The Commissioner considers that this will result in the creation of a trust by declaration or settlement as the trustee has new personal obligations and new rights have been annexed to property with the consequence that Capital Gains Tax event E1 happens. Comments are due on 10 August 2018.

Requirements for certain deductible gift recipients and income tax exempt entities

The ATO has released draft taxation ruling [TR 2018/D1](#) which provides guidance on the 'in Australia' requirement for certain deductible gift recipients and income tax exempt entities. The draft Ruling provides the Commissioner's view on various conditions in the *Income Tax Assessment Act 1997* (Cth) dealing with deductible gift recipients and exempt entities. Comments are due on 10 August 2018.

Tax treatment of cryptocurrency

The ATO has updated its [web guidance](#) for the tax treatment of cryptocurrencies. The guidance now includes information on loss or theft of cryptocurrency and chain splits.

Reforms to ABN system

Treasury has [released](#) a consultation paper on the best way to strengthen and modernise the Australian Business Number (ABN) system (following the announcement in the 2018-19 Federal Budget). Action to reform the ABN system responds to Black Economy Taskforce findings (see [Final Report](#)) that participants in the black economy are using the ABN system to facilitate their fraudulent activity. Possible changes to the ABN system include adjusting ABN entitlement rules, imposing conditions on ABN holders, and introducing a renewal process including a renewal fee. Stakeholders are also welcome to make comments or provide insights on other aspects of the ABN system that are not raised in the paper. Submissions are due on 31 August 2018. See also the Government's [media release](#).

Modernising business registers

Treasury has [released](#) a discussion paper which follows on from prior consultation and feedback to modernise business registers. The paper focuses on the following areas:

- Legislation – What legislative changes are required to allow for the modernising of business registers?
- Registry Service Enhancements – How can the services offered be enhanced and the user experience improved?
- Funding registry infrastructure – How should business registers be funded in the future?
- Director Identification Numbers (DIN) – What is the best way to implement a DIN?

Submissions are due on 17 August 2018.

Black Economy Advisory Board

The Government has established the Black Economy Advisory Board which will be chaired by Mr Michael Andrew AO. The Advisory Board will include members of the private and public sector who will provide strategic advice on trends and risks in the black economy. The Advisory Board will also advise the Treasury about implementation of the Government's decisions attacking the black economy and contribute to a Government report every five years about new threats emerging in the black economy.

Targeting Phoenix Activity

The Minister of Revenue and Financial Services has announced the establishment of a new Phoenix Hotline to combat the phoenixing activity of dishonest directors and their companies. Employees, creditors, competing businesses and the general public can confidentially provide information or report their concerns about possible phoenix behaviour by calling the Phoenix Hotline on 1800 807 875 or online at the ATO website. Disclosures will be protected by privacy laws and the Government's legislative action in protecting whistleblowers. In response to the announcement, the Small Business and Family Enterprises Ombudsman noted that the hotline will not protect small businesses.

The announcement of the hotline comes in light of an ATO report which estimates the economic annual direct impact of illegal phoenix activity on business, employees and government to be between AUD2.85 billion and AUD5.13 billion.

IGT will not seek third term

The Inspector-General of Taxation (IGT), Mr Ali Noroozi, has confirmed that he will not be seeking reappointment for a third term.

Illicit Tobacco Taskforce

The Government has announced that the Illicit Tobacco Taskforce will now have the combined operational, investigative and intelligence capabilities of the Australian Border Force, Department of Home Affairs, Australian Criminal Intelligence Commission, Australian Transaction Reports and Analysis Centre, Commonwealth Director of Public Prosecutions and the ATO.

Tribunal finds taxpayer not entitled to CGT small business

The Administrative Appeals Tribunal (AAT) in Rus v Commissioner of Taxation [2018] AATA 1854 has affirmed the Commissioner's decision and found that the taxpayer was not entitled to the capital gains tax (CGT) small business 15 year exemption in relation to a property. The Tribunal found that the property was not an "active asset" as only a very small part of it was used in carrying on a business. Having regard to the nature of the CGT asset, the nature of the company's business and the relationship between the CGT asset and that business, it did not consider that the property was used in the course of carrying on the company's business. Unlike a business of primary production or an agricultural pursuit, the company's business did not involve the exploitation of vacant land. The nature of the company's business did not call for any greater level of activity on the land than the use of a very small proportion of it.

Some tax thresholds and figures for 2018-19

The ATO has released the following which provides certain tax thresholds and figures for 2018-19:

- Taxation ruling TR 2018/4 which provides the effective life of depreciating assets (applicable from 1 July 2018) (see also Income Tax (Effective Life of Depreciating Assets) Amendment Determination 2018 (No 1) which provides taxpayers in specific industries and for specific assets, the new effective life determinations made by the Commissioner).
- Taxation determination TD 2018/10: Income tax: value of goods taken from stock for private use for the 2017-18 income year.

Effective life review of assets used in aged care industry

The ATO is reviewing the assets used in the aged care industry with a view to making new effective life determinations. The review is anticipated to cover the aged care operation sector of the 'Health care and social assistance' industry and is expected to be completed within 12 months, with the new

effective life determinations expected to apply from 1 July 2019.

Australian Energy Regulator – review of regulatory tax approach

The Australian Energy Regulator (AER) has released an [initial report](#) on its review of its approach to estimating tax for regulated energy networks. The initial report summarises and responds to stakeholder submissions to the issues paper released in May 2018. The final report will be published by December 2018.

Trends affecting the sustainability of Commonwealth taxes

The Parliamentary Budget Office has released a [report](#) which examines the broad trends within the Commonwealth tax system since 2001-02 and the risks they present. The report shows that the most significant overall changes in tax receipts as share of Gross Domestic Product (GDP) have been:

- a fall in fuel excise, driven by the previous freeze to indexation arrangements and ongoing improvements in fuel efficiency
- a fall in customs receipts as free trade agreements and other tariff changes have come into effect, and
- a fall in company tax receipts as investment has become more concentrated in capital intensive industries, which have higher losses that are carried forward.

Based on recent trends and current policy, report notes that the coming decade is likely to see further changes to tax receipts, including:

- a decrease in company tax receipts due to policy changes, though there could be a counteracting positive effect as losses carried forward in the resources industry are exhausted
- an increase in personal income tax receipts due to ongoing bracket creep, notwithstanding the Personal Income Tax Plan in the 2018-19 Federal Budget, and
- ongoing decreases in various consumption tax receipts, driven by consumer behaviour and technological change.

Let's talk

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