

March 2018

TaxTalk Monthly

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



Corporate Tax Update

Tax consolidation integrity measures introduced into Parliament

On 15 February 2018, the [Treasury Laws Amendment \(Income Tax Consolidation Integrity\) Bill 2018](#) was introduced into the House of Representatives to give effect to the long-awaited tax consolidation integrity measures. Specifically, the Bill includes the following previously announced integrity measures that impact the tax cost setting rules when an entity joins and/or leaves a tax consolidated or multiple entry consolidated (MEC) group:

- prevent a double benefit from arising in relation to certain deductible liabilities when an entity joins the group
- ensure that deferred tax liabilities are disregarded on entry or exit
- remove anomalies that arise when an entity holding securitised assets joins or leaves the group
- prevent unintended benefits from arising when a foreign resident ceases to hold membership interests in a joining entity in certain circumstances
- clarify the outcomes that arise when an entity holding an intra-group financial arrangement leaves the group, and
- clarify the treatment of intra-group liabilities when an entity leaves the group.

For further insights and analysis, refer to our [TaxTalk Alert](#), which was published on 16 February 2018.

Federal Court considers Australia's right to tax gains of foreign limited partnership

The Federal Court, in [Resource Capital Fund IV LP v Commissioner of Taxation \[2018\] FCA 41](#), has allowed the taxpayers' appeal in relation to the taxation of gains made on the sale of shares in an Australian mining company held by foreign limited partnership. A range of issues were dealt with in this case including:

- identity of the taxable entity in relation to the gains
- the application of the tax rules applicable to corporate limited partnerships (Division 5A of the *Income Tax Assessment Act 1936* (Cth))
- whether the gains were ordinary income from an Australian source
- the application of the relevant tax treaty to the gains made by the foreign limited partnership
- the application of Division 855 of the *Income Tax Assessment Act* (Cth) and its interaction with the relevant tax treaty, and
- the identification and value of the taxable Australian real property assets for the purposes of the principal asset test in Division 855 (relevant to determine if the shares were indirect Australian real property interests).

For further analysis and insights, refer to our [TaxTalk Alert](#), which was published on 9 February 2018.

Full Federal Court confirms treatment of Commonwealth grant as an assessable recoupment

The Full Federal Court, in [Denmark Community Windfarm Ltd v Commissioner of Taxation \[2018\] FCAFC 11](#), has dismissed the taxpayer's appeal and upheld the Federal Court's decision that a Commonwealth grant to fund the cost of construction of wind turbines was an assessable recoupment. For further insights and analysis, refer to our [TaxTalk Alert](#), which explores the Full Federal Court's decision.

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Employment Taxes Update

Fair Work Commission finds Uber driver not an employee

The question of whether Uber drivers are considered employees or independent contractors was recently considered by the Fair Work Commission (FWC) in *Kaseris v Rasier Pacific V.O.F [2017] FWC 6610 (Kaseris)*. This is one of the first Australian cases to consider the employment status of workers in the emerging gig economy. The case centred on whether an Uber driver was entitled to unfair dismissal remedies to the extent they could be considered to be an employee of Uber, rather than an independent contractor.

The FWC concluded that Mr Kaseris was not an 'employee', and was not entitled to unfair dismissal remedies after weighing up the totality of the relationship and considering the indicators of an employment relationship, established in earlier cases. Some of the key factors in reaching this decision were in the ability of Mr Kaseris to choose his hours of work and which jobs he accepted, and the fact he was required to provide his own vehicle, smart phone and wireless data plan.

In his decision, Deputy President Costencnik acknowledged that the traditional legal tests of employment may be outmoded:

"The notion that the work-wages bargain is the minimum mutual obligation necessary for an employment relationship to exist, as well as the multi-factorial approach to distinguish an employee from an independent contractor, developed and evolved at a time before the 'gig' or 'sharing' economy. It may be that these notions are outmoded in some senses and are no longer

reflective of our current economic circumstances. These notions take little or no account of revenue generation and revenue sharing as between participants, relative bargaining power, or the extent to which parties are captive to each other, in the sense of possessing realistic alternative pursuits or engaging in competition. Perhaps the law of employment will evolve to catch pace with the evolving nature of the digital economy. Perhaps the legislature will develop laws to refine traditional notions of employment or broaden protection to participants in the digital economy. But until then, the traditional available tests of employment will continue to be applied."

It is important to recognise that, depending on the circumstances of each case, application of the multi-factorial common law test of employment may lead to different conclusions. It is still unclear whether the conclusion that Uber drivers are independent contractors will apply more broadly in the context of workers compensation and taxation law.

The Senate-established Select Committee on the Future of Work and Workers is currently considering these issues. Their report is due by 21 June 2018.

Wages paid by, or to, third parties for payroll tax (NSW)

Revenue NSW released updated guidance during February in relation to its views on payroll tax obligations for wages paid by, or to, third parties. In particular, Revenue NSW has suggested that attention should be paid to the following arrangements:

- 1 The wages of an employee or director being paid to some other person, or
- 2 The wages of an employee or director being paid by someone other than their employer, and
- 3 The wages of an employee or director being paid to some other person by a person other than their employer.

Organisations need to keep this in mind when considering the application of payroll tax to services provided by employees, directors and consultants/contractors. The most common scenario in which these rules may apply would be where payments relating to the services of a company director are paid to another company or to a superannuation fund or other entity, instead of to the director personally. Under such circumstances, it is likely that the above rules would apply and a payroll tax liability would arise for the entity making the payment in respect of the company director's services.

Employment agency contracts (NSW)

In *Gabi Duta Pty Limited v Chief Commissioner of State Revenue*, the Civil and Administrative Tribunal has held that the taxpayer, who operated a labour hire business for farm hands, was liable for

payroll tax for the relevant years as an 'employment agent' under Division 8 of Part 3 of the *Payroll Tax Act 2007* (NSW). The Court found that the taxpayer failed to produce sufficient evidence to challenge the Notices of Assessments.

Tasmanian Government's re-election commitment on payroll taxes

The Tasmanian Treasurer has [announced](#) that if the current Tasmanian Government is re-elected at the forthcoming State election it will reduce Tasmanian payroll tax rates such that:

- businesses with total wages of less than AUD 1.25m will continue to pay no payroll tax
- businesses with total wages of between AUD 1.25m and AUD 2m will pay payroll tax at 4 per cent, and
- businesses will pay tax at 6.1 per cent on wages above AUD 2m.

Tribunal finds shares received under employee profit participation plan assessable

The Administrative Appeals Tribunal in *De Figueiredo and Commissioner of Taxation [2018] AATA 62* has held that shares received by a resident taxpayer as part of a corporate reorganisation and Initial Public Offering in exchange for his previous entitlements under an employee profit participation plan were assessable income.

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Global Tax Update

Latest news from international tax and transfer pricing

US tax reform developments

To keep up to date with the latest developments, news and implications of tax reform in the US, visit PwC's dedicated website at www.pwc.com.au/ustaxreform. The website is regularly updated, and brings together insights from business specialists across the globe for US inbound and outbound organisations navigating change.

Some recent PwC updates to note include:

- [Proposed US budget for the 2019 financial year.](#)
- [Accounting considerations of US tax reform.](#)
- [A look at important information on reporting and withholding changes.](#)
- [Tax reform readiness: Base erosion and anti-abuse tax.](#)
- [Tax reform legislation makes significant changes to business provisions.](#)
- [The impact of tax reform on non-US headquartered companies doing business in the US.](#)

PwC US is also hosting a tax reform readiness webcast series, covering everything from financial reporting implications to workforce strategies and business preparedness. You can view upcoming topics and register for webcasts by following this link: www.pwc.com.au/ustaxreform.

Draft law to give effect to BEPS Multilateral Instrument in Australia

The Australian Government has [released](#) for public consultation [exposure draft legislation](#) and an accompanying draft explanatory memorandum for the implementation of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the Convention). The proposed legislation is designed to give the force of law in Australia the measures developed as part of the Organisation for Economic Cooperation and Development (OECD)/G20 Base Erosion and Profit Shifting (BEPS) project. Pending the ratification of the Convention by Australia and its bilateral tax treaty partners, the Convention will modify the majority of Australia's bilateral tax treaties to implement the relevant BEPS outcomes aimed to prevent their exploitation for tax avoidance purposes and improve tax treaty-based dispute

resolution mechanisms. Submissions were due on 23 February 2018.

Draft legislative amendments to the MAAL

The Government has [released](#) for public consultation [exposure draft legislation](#) for amendments intended to strengthen the Multinational Anti Avoidance Law (MAAL). The proposed amendments, which were announced in the 2017-18 Federal Budget, seek to prevent large multinationals from using foreign trusts and partnerships in corporate structures to avoid the application of the MAAL. In broad terms, the MAAL is designed to target certain foreign entities that make supplies of goods or services to Australian customers without creating an Australian permanent establishment (PE). The amendments will apply from the original application date of the MAAL, i.e. on or after 1 January 2016. Comments on the draft law were due on 23 February 2018.

ATO releases draft Practical Compliance Guideline on DPT

The Australian Taxation Office (ATO) released Draft Practical Compliance Guideline [PCG 2018/D2](#), which discusses Australia's new Diverted Profits Tax (DPT). This ATO guideline, once finalised, will serve as a risk assessment tool for taxpayers considering their potential exposure to the DPT, and also act as a framework document for taxpayers in determining the manner in which they should engage with the ATO. Comments are due on 9 March 2018. For further insights, refer to our [TaxTalk Alert](#) which was released on 7 February 2018.

New law targets foreign investors

New tax law, [Treasury Laws Amendment \(Reducing Pressure on Housing Affordability Measures No. 2\) Bill 2018](#), has been introduced into Federal Parliament and includes measures to:

- remove the Capital Gains Tax (CGT) main residence exemption for foreign residents (refer to PwC's Global [Tax Insights](#) for further information), and
- provide an additional integrity rule in applying the principal asset test that is relevant to determining whether a capital gain or capital loss made by a foreign resident in respect of a

membership interest is disregarded because the interest is not taxable Australian property.

The Bill, in conjunction with the [Foreign Acquisitions and Takeovers Fees Imposition Amendment \(Near-new Dwelling Interests\) Bill 2018](#), also makes changes to the foreign acquisition and takeover rules, requiring developers who sell a near-new dwelling to foreign persons under a near-new dwelling exemption certificate to make reconciliation payments. Reconciliation payments are a necessary mechanism to ensure that developers pay the same fee as would be payable if a foreign person directly applied to the Foreign Investment Review Board for the acquisition.

Australia part of pilot International Compliance Assurance Program

Australia, Canada, Italy, Japan, the Netherlands, Spain, the United Kingdom and the United States (US) will participate in a pilot for an [International Compliance Assurance Program \(ICAP\)](#). The program will use CbC Reports and other information to facilitate multilateral engagements between multinational enterprise groups and tax administrations, with a view to providing early tax certainty and assurance.

[ICAP](#) is a voluntary process available to large multinational groups headquartered in any of the participating jurisdictions. The multilateral risk assessment conducted under ICAP will not cover all of a multinational group's tax issues, but will focus on those associated with transfer pricing, permanent establishments and any other material international issues agreed between the group and participating tax administrations.

OECD and BEPS developments

In relation to the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*, Barbados, Côte d'Ivoire, Jamaica, Malaysia, Panama and Tunisia have [signed](#) the Convention, bringing the total number of signatories to 78. In addition, Algeria, Kazakhstan, Oman and Swaziland have expressed their intent to sign the Convention, and a number of other jurisdictions are actively working towards signature by June 2018. So far, four jurisdictions – Austria, the Isle of Man, Jersey and Poland – have ratified the Convention, which will enter into force three months after a fifth jurisdiction deposits its instrument of ratification.

The OECD has [announced](#) further developments in BEPS implementation, including [further guidance on Country-by-Country \(CbC\) reporting](#), which addresses the definition of total consolidated group revenue and whether non-compliance with the

confidentiality, appropriate use and consistency conditions constitutes systemic failure. In addition, it has updated conclusions on [preferential tax regimes](#) conducted in connection with BEPS Action 5: Countering Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance.

In other BEPS-related developments:

- Serbia has [joined](#) the Inclusive Framework on BEPS.
- The Hong Kong Government has issued the *BEPS Actions Bill*, which proposes to implement the minimum standards under the OECD's BEPS Action Plan, together with a transfer pricing (TP) regulatory regime and a mandatory TP documentation requirement in Hong Kong (refer to PwC's Global [Tax Insights](#) for further information).

OECD report on taxing energy use

The OECD has [released](#) a report, *Taxing Energy Use 2018*, which describes patterns of energy taxation in 42 OECD and G20 countries (representing approximately 80 per cent of global energy use), by fuels and sectors over the 2012-15 period. According to the report, taxes are effective at cutting harmful emissions from energy use, but governments could make better use of them. The report indicates that greater reliance on energy taxation is needed to strengthen efforts to tackle the principal source of both greenhouse gas emissions and air pollution.

OECD working paper - statutory tax rates on dividends, interest and capital gains

The OECD has released a [working paper](#) on statutory tax rates on dividends, interest and capital gains. The paper updates the rates from an earlier tax working paper and extends the analysis to consider the debt-equity bias of the tax system when the personal level of taxation is considered.

OECD consultation on misuse of residence by investment schemes to circumvent CRS

The OECD has [released](#) a [consultation document](#) on the misuse of residence by investment schemes to circumvent the Common Reporting Standard (CRS). These schemes allow foreign individuals to obtain citizenship or temporary or permanent residence rights in exchange for local investments or against a flat fee. The document assesses how these schemes are used in an attempt to circumvent the CRS;

identifies the types of schemes that present a high risk of abuse; reminds stakeholders of the importance of correctly applying relevant CRS due diligence procedures in order to help prevent such abuse; and explains the next steps the OECD will undertake to further address the issue. Submissions are due by 19 March 2018.

India's 2018 budget impacts foreign investors and multinational enterprises

On 1 February 2018, the Indian Finance Minister presented the 2018 Union Budget. The Budget contains key proposals which affect foreign investors and multinational enterprises. Key measures include a corporate tax rate reduction, a new regime for taxing long-term capital gains on the sale of listed equity shares, and BEPS Action Plan initiatives. The Budget proposals will take effect after the Budget passes the Indian Parliament and obtains presidential assent. For further insight and analysis, refer to PwC's Global [Tax Insights](#).

French budget introduces corporate tax changes and incentives

The French Parliament has approved the budget which contains certain corporate tax measures designed to improve the competitiveness of the

French economy. Most of the measures will apply immediately and affect multinational enterprises with French operations or subsidiaries. The Budget also includes a number of other provisions affecting wealth tax, individual taxation, and value-added tax (VAT). Refer to PwC's Global [Tax Insights](#) for further information.

Chinese SAT issues guidance on beneficial ownership

The Chinese State Administration of Taxation (SAT) has issued important new guidance on beneficial ownership status of non-residents that derive dividends, interest and royalties from China for the purpose of claiming tax treaty benefits. For further information, refer to PwC's Global [Tax Insights](#).

Belgium corporate tax reform takes effect

The Belgian Parliament has approved major corporate tax reform. The key provision of the new law is a gradual decrease in the corporate income tax rate, from 33.99 per cent to 25 per cent. Other important provisions are a 100 per cent participation exemption, and the introduction of a grouping system. Refer to PwC's Global [Tax Insights](#) for further information.

 [Explore PwC's global tax research and insights](#)

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Indirect Tax Update

New GST obligations for parties to residential property transactions

New law introduced into Federal Parliament on 7 February 2018, the [Treasury Laws Amendment \(2018 Measures No. 1\) Bill 2018](#), proposes changes in respect of the collection of goods and services tax (GST) on residential real property transactions. Specifically, the proposed legislation will require purchasers of new residential premises and new subdivisions of potential residential land to withhold and remit to the Australian Taxation Office (ATO) an amount on account of GST.

The measure applies to certain supplies of real property for which any consideration is first provided on or after 1 July 2018, subject to transitional arrangements for existing arrangements. For example, there is a general exception for a contract for supply that was entered into before 1 July 2018, where consideration for the supply is first provided before 1 July 2020. For further information about the proposed changes, refer to our [TaxTalk Alert](#), which was released on 8 February 2018.

Update on Trusted Trader programme

Australian Trusted Trader businesses exporting to Hong Kong will benefit from a more streamlined customs process following the [signing](#) of a Mutual Recognition Arrangement (MRA) that will become fully operational on 1 March 2018.

Valuable Metals Market Value Determination

The ATO has issued the [Goods and Services Tax: Valuable Metals Market Value Determination 2018](#), which sets out the method to calculate the market value of valuable metal for the purposes of working out whether the market value of a taxable supply exceeds the valuable metal threshold.

GST administration annual performance report 2016-17

The ATO has released the [GST administration annual performance report 2016-17](#), which provides an account of the ATO's performance in administering the GST for the states and territories

during 2016-17. It reports that the ATO raised AUD 59.8 billion in GST cash (excluding non-general interest charge penalties), 4.3 per cent higher than last year.

Draft petroleum excise regulations

The Government has released [draft regulations](#) that will remake the current [Petroleum Excise \(Prices\) Regulations 1988](#), which are due to sunset on 1 April 2018. The new regulations will provide simpler language and ease of navigation. These changes are not intended to affect the substantive meaning or operation of the regulations. Comments were due on 23 February 2018.

New Trans-Pacific Partnership Agreement reached

The Australian Government has reached [agreement on the Trans-Pacific Partnership \(TPP- 11\)](#) at an officials-level meeting in Tokyo. Eleven countries have now agreed to the TPP; Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The TPP will eliminate more than 98 per cent of tariffs in the trade zone. The text of the [Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(TPP-11\)](#) has also been released. Detailed information on the [TPP 11 outcomes](#), including background documents, are also available. For further information, please refer to the Government's [media release](#). It is expected the agreement will be signed in March 2018.

Australia – Peru Free Trade Agreement

The Governments of Australia and Peru have [signed](#) the Peru – Australia Free Trade Agreement (PAFTA). The PAFTA will eliminate tariffs on 99 per cent of Australian goods within five years of the Agreement's entry into force. For example, Australian exports of sugar, dairy, rice, sorghum, sheep meat, wine, kangaroo, almonds, pharmaceuticals, medical devices, paper products and machinery will have immediate tariff free access, while beef will be tariff free within five years.

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State Taxes Update

ACT to impose additional land tax surcharge on foreign investors

The Australian Capital Territory (ACT) Government has [announced](#) that, from 1 July 2018, foreign investors in the ACT will pay an additional annual land tax surcharge of 0.75 per cent on the average unimproved value of their residential properties in the ACT. The surcharge is one of a suite of measures introduced by the ACT Government designed to assist local home buyers enter the market.

Revenue SA guidance on foreign ownership surcharge

Revenue SA has provided [guidance](#) on the new foreign ownership surcharge of 7 per cent that is applied to the conveyance or transfer of an interest in South Australian residential property to a foreign person, corporation or trust, from 1 January 2018.

NSW Treasurer's guidelines for certain land tax exemptions/reductions

Revenue NSW has issued the following rulings containing the Treasurer's guidelines for certain land tax exemptions/reductions in taxable land value for 2018 and subsequent years:

- [Revenue Ruling No. LT 102](#) Exemption – Land Used and Occupied Primarily for a Boarding House – 2018 Tax Year.
- [Revenue Ruling No. LT 103](#) Exemption – Land Used and Occupied Primarily for Low Cost Accommodation – 2018 Tax Year.

High Court grants special leave to appeal in WA mining valuation case

The Commissioner of State Revenue in Western Australia (WA) has been granted special leave to appeal to the High Court against the Supreme Court of WA Court of Appeal's decision in [Placer Dome Inc v Commissioner of State Revenue](#). For further details, refer to the [High Court's transcript](#). This case primarily concerns the valuation of a gold mining company for the purpose of determining if it is was a 'listed land-holder corporation' for WA stamp duty purposes, and appropriate the valuation methodology to be used. Refer to our [TaxTalk Alert](#), which considered the Supreme Court's decision in further detail.

Stamp duty decisions

The following decisions relevant to stamp duties were handed down:

- The Supreme Court of NSW in [The Salvation Army \(New South Wales\) Property Trust v Chief Commissioner of State Revenue \[2018\] NSWSC 128](#) has held that the taxpayer (a body corporate established by statute which acted in its capacity as trustee) was exempt from stamp duty on the purchase of a property by virtue of it being an exempt charitable or benevolent body within the meaning of section 275(3)(c), read with section 275(3)(a), of the *Duties Act 1997* (NSW). As part of this decision, the Court held that the requirement that the taxpayer's resources were used 'wholly or predominantly' for the relevant charitable purposes was satisfied in this case, where approximately 75 per cent of

the financial and personnel resources were devoted to these purposes.

- The Supreme Court of Victoria in *Central Park Estate (Vic) Pty Ltd v Commissioner of State Revenue [2018] VSC 1* has held that the transfer of wine making equipment as part of a transaction also involving the transfer of land was not exempt from duty as the equipment was not ‘goods held or used in connection with primary production’, as required by section 10(1)(d)(iv) of the *Duties Act 2000* (Vic).

NSW land tax decisions

The following decisions relevant to land taxes in NSW were handed down:

- The NSW Civil and Administrative Tribunal in *Banting (as Executor of the Estate of the Late KC Banting) v Chief Commissioner of State Revenue [2018] NSWCATAD 38* has held that land was not exempt from land tax as the

taxpayer failed to prove that the dominant use of the land was ‘for the maintenance of animals ... for the purpose of selling them or their natural increase or bodily produce’, as required under the primary production exemption in section 10AA(3)(b) of the *Land Tax Management Act 1956* (NSW).

- The Appeal Panel of the NSW Civil and Administrative Tribunal in *Triston Pty Limited v Chief Commissioner of State Revenue [2018] NSWCATAP 37* has held that the Tribunal, at first instance, did not make an error in law in concluding that the relevant land that was ‘dually-zoned’ (i.e. zoned both as ‘rural landscape’ and ‘low density residential’), and was not ‘rural land’ for the purposes of the land tax exemption for land used for primary production in section 10AA of the *Land Tax Management Act 1956* (NSW).

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Superannuation Update

Regulations supporting transfer of early release of superannuation function to the ATO

The Government has released [draft regulations](#) on the transfer of the early release of superannuation benefits on compassionate grounds to the Australian Taxation Office (ATO). The amendments to be made by the regulations aim to improve the integrity of the processes under which benefits are released, and expedite the release of funds to successful applicants. These regulations provide the necessary administrative changes to reflect the transfer of responsibility for early release on compassionate grounds from the Department of Human Services to the Commissioner of Taxation (under the changes proposed by [Treasury Laws Amendment \(2018 Measures No. 1\) Bill 2018](#)). For further information, refer to the Government's [media release](#). Comments are due by 23 March 2018.

Treatment of reversionary transition to retirement income streams

The Government has [released](#) for public consultation [exposure draft legislation](#) to ensure that a reversionary Transition to Retirement Income Stream (TRIS) will always be allowed to automatically transfer to eligible dependants upon the death of the primary recipient. Submissions were due on 23 February 2018.

Comprehensive Income Products for Retirement – advisory group

The Minister for Revenue and Financial Services has [announced](#) the establishment of a consumer and industry advisory group to assist in the next phase of development for a framework for Comprehensive Income Products for Retirement (CIPRs). The central task of the reference group is to provide feedback and advice to Treasury on possible options and scope of a retirement covenant in the *Superannuation Industry Supervision Act 1993* (Cth). This would require superannuation trustees to design and offer appropriate retirement income solutions for their members.

Draft superannuation legislative instrument for certain ATO reporting

The ATO has released draft legislative instrument [SPR 2018/D1](#). The draft legislative instrument sets out the timeframe for which superannuation providers (excluding self-managed superannuation funds) and life insurance companies are required to report superannuation account phases and attributes to the ATO in a Member Account Attribute Service (MAAS) form. It will mean that any events which occur on or after 1 April 2018 will need to be reported within five business days of when the event occurred. Comments are due by 2 March 2018.

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Legislative Update

Federal Parliament resumed on 5 February 2018. A number of new tax-related Bills were introduced during the Autumn session, including:

- [Treasury Laws Amendment \(2018 Measures No. 1\) Bill 2018](#), which was introduced into Parliament on 7 February 2018. The Bill proposes the following tax and superannuation measures:
 - extend the loss relief and asset roll-over, which expired on 1 July 2017, for merging superannuation funds until 1 July 2020
 - transfer the regulator role for early release of superannuation on compassionate grounds from the Chief Executive Medicare (Department of Human Services) to the Commissioner of Taxation
 - enable the Government to recover the ongoing cost of the governance of the superannuation transaction network from the superannuation supervisory levy, and
 - from 1 July 2018, require purchasers of new residential premises and new subdivisions of potential residential land to make a payment of part of the purchase price representing the goods and services tax directly to the Australian Taxation Office (refer to the Indirect Tax Update for further insight).
- [Treasury Laws Amendment \(Black Economy Taskforce Measures No. 1\) Bill 2018](#), which was introduced into Parliament on 7 February 2018. The Bill proposes measures to:
 - prohibit the production, distribution and possession of sales suppression tools in relation to entities that have Australian tax obligations, and the use of such tools to incorrectly keep tax records, and
 - expand the third party reporting regime to payments made in relation to contractors for courier and cleaning services from 1 July 2018.
- [Treasury Laws Amendment \(2018 Measures No. 2\) Bill 2018](#), which was introduced into Parliament on 8 February 2018. The Bill includes measures relating to FinTech regulatory licensing exemptions, and also makes minor changes to venture capital and early stage investor tax concessions to ensure they operate as intended.
- [Treasury Laws Amendment \(Reducing Pressure on Housing Affordability Measures No. 2\) Bill 2018](#), in conjunction with the [Foreign Acquisitions and Takeovers Fees Imposition Amendment \(Near-new Dwelling Interests\) Bill 2018](#), which was introduced into Federal Parliament on 8 February 2018. The Bill includes measures to:
 - remove the Capital Gains Tax (CGT) main residence exemption for foreign residents
 - provide an additional integrity rule in applying the principal asset test, applicable in working out, for foreign resident CGT purposes, whether a membership interest is an indirect Australian real property interest
 - make changes to the foreign acquisition and takeover rules by creating a reconciliation mechanism to ensure that, where a near-new dwelling is sold by a developer to a foreign person, the developer provides a reconciliation payment in respect of that sale, and
 - provide an additional ‘affordable housing’ capital gains discount of up to 10 per cent for individuals in respect of CGT events occurring on or after 1 January 2018 for affordable housing tenancies that start before, on or after 1 January 2018.
- [Treasury Laws Amendment \(Income Tax Consolidation Integrity\) Bill 2018](#), which was introduced into Parliament on 15 February 2018. The Bill includes changes to improve the integrity and operation of the tax consolidation regime by implementing a range of measures relating to deductible liabilities, deferred tax liabilities, securitised assets, cost setting for foreign owned groups, application of the taxation of financial arrangement rules and intra-group assets and liabilities, and value shifting (refer to the Corporate Tax Update for further insight).

Other Commonwealth revenue measures that were registered as legislative instruments or regulations since the February edition of TaxTalk Monthly, include:

- [Notice of Substituted Rates of Excise Duty – Notice No. 1 \(2018\)](#) for certain alcohol and fuel products, which is applicable from 5 February 2018.
- [Draft Exemption of Eligible Community Housing Providers from Providing Third Party Reports for the 2017/18 Year Determination 2018](#), which proposes to exempt eligible community housing providers from having to provide information to

the Commissioner of Taxation in relation to affordable housing certificates issued before 1 July 2018.

- The following guidelines and instruments in relation to Export Market Development Grants:
 - [Export Market Development Grants \(Approved Joint Ventures\) Guidelines 2018.](#)
 - [Export Market Development Grants \(Genuinely Carrying on a Business\) Guidelines 2018.](#)
 - [Export Market Development Grants \(Approved Bodies\) Guidelines 2018.](#)
 - [Export Market Development Grants Legislation Repeal Instrument 2018.](#)

- [Export Market Development Grants \(Australian Net Benefit Requirements\) Determination 2018.](#)
- The following legislative instruments provide the frameworks for companies to apply for certificates for the producer offset, post, digital and visual effects (PDV) offset, and location offset rules under Division 376 of the *Income Tax Assessment Act 1997* (Cth):
 - [Producer Offset Rules 2018.](#)
 - [PDV Offset rules 2018.](#)
 - [Location Offset Rules 2018.](#)

Let's talk

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

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Other News

Draft law for integrity measures for small business CGT concessions

Treasury has released [exposure draft legislation and explanatory material](#) for public consultation regarding proposed integrity amendments to the small business capital gains tax (CGT) concessions. The proposed measures were previously announced in the 2017-18 Federal Budget to ensure that the concessions can only be accessed for assets used in a small business, or for ownership interests in a small business entity.

The proposed amendments broadly include three additional 'basic conditions' to be satisfied for a taxpayer to apply the small business CGT concessions to a capital gain arising in *relation to a share in a company or an interest in a trust*. These conditions are:

- a requirement for the vendor to be carrying on a business, where the AUD 6 million 'maximum net asset value' test is not satisfied
- additional small business conditions relating to the sale entity, including that it be carrying on a business just before the relevant CGT event, and either it is a 'small business entity' for the relevant income year or it satisfies the AUD 6 million 'maximum net asset value' test; and
- a modified 'active asset' test that looks through shares in companies and interests in trusts to the activities and assets of the underlying entities.

Importantly, a modified 'control test', based on a 20 per cent threshold when considering connected entities, will mean that more entities will be 'connected with' one another for the purpose of the revised rules, and therefore the assets and turnover of more entities may need to be taken into account

when determining if the qualifying small business thresholds have been met.

The measures are proposed to apply to CGT events happening on or after 1 July 2017. Comments on the exposure draft were due by 28 February 2018.

For further information and advice regarding how the proposed measures might affect your business, please contact Kel Fitzalan (kel.fitzalan@pwc.com) or Glen Frost (glen.frost@pwc.com).

Board of Taxation review of tax treatment of bare trusts

The Board of Taxation has released a report on its [review of the tax treatment of bare trusts and similar arrangements](#). The review was conducted to consider whether, and how, to legislate in respect of the current widespread practice of disregarding or looking through bare trusts for income tax purposes. The Board has recommended that, given the magnitude of the arrangements and ongoing uncertainty, it is now appropriate to legislate to enable certain bare trusts and arrangements with similar characteristics to be looked through for most income tax purposes.

The Board observed that, where the terms of the trust are in substance equivalent to direct ownership of the assets by the beneficiary, the tax consequences should be analogous. This would require a person to furnish their income tax return as though any income, gains and losses, were made or derived personally.

In response to the Board's review, the Government has [announced](#) that it will look to progress the Board's recommendations to streamline arrangements for bare trusts as part of its regulatory reform program.

IGT review into PAYG instalments system

The Inspector-General of Taxation (IGT) has released a [report](#) following the review of aspects of the Pay As You Go (PAYG) instalments system. A key focus of the review was individual taxpayers' awareness and understanding of the PAYG instalments system. The review found that individual taxpayers were unclear as to why they had been entered into the system, its requirements and exemptions, its interaction with the annual income tax system and the support tools available to them.

The IGT has recommended a number of improvements to the Australian Taxation Office's (ATO) taxpayer communication and guidance materials, as well as internal staff education and support. Overall, the report made seven recommendations, of which the ATO has agreed in

full to six, and in part to one. Full agreement was not reached in relation to the provision of a general information brochure to new entrants into the system when the ATO issues a PAYG welcome letter, because of the digital based approach that the ATO is taking. However, the ATO has committed to considering alternatives, such as improvements to website guidance.

ATO rebrands Law Companion Guidelines

The ATO has rebranded the Law Companion Guidelines (LCGs) which are now called [Law Companion Rulings \(LCRs\)](#). LCRs are a type of public ruling and provide the ATO's view on how recently enacted law applies. LCRs are usually developed at the same time as the drafting of the Bill that results in legislative change.

Record keeping in electronic form

Taxation Ruling [TR 2018/2](#) explains the ATO's view on record keeping in electronic form. The ruling discusses how taxpayers must retain and, when required, provide access to electronic records, including encrypted records, records created from e-commerce and records stored in the cloud.

Importantly, as noted in the ruling, any electronic records including encrypted records, e-commerce records and records stored in the cloud, are subject to the same record keeping requirements as paper records. Failure to keep or retain records as required by the ATO may result in a penalty being issued. The ruling applies to individuals and companies carrying on a business.

Who might be required to lodge a 2018 income tax return?

The ATO has released the following draft legislative instruments, setting out which persons and entities might be required to lodge an income tax return for the year ending 30 June 2018.

- Draft legislative instrument [LODG 2018/D1](#), which sets out which persons are required, and which persons are exempt, from the requirement to lodge an income tax return for the income year ended 30 June 2018, and
- Draft legislative instrument [LODG 2018/D2](#), which provides notice to a liable parent or a parent receiving child support under a child support assessment of their obligation to lodge an income tax return for the income year ended 30 June 2018.

Comments are due by 5 March 2018.

ANAO audit report on unscheduled ATO system outages

The Australian National Audit Office (ANAO) has released a [report](#) on its audit assessment of whether the ATO had effectively responded to recent unscheduled IT system outages. The ANAO concluded that the ATO's responses to the system failures and unscheduled outages were largely effective, despite inadequacies in business continuity management planning relating to critical infrastructure. The ATO has accepted all the recommendations contained in the report.

Innovation and Science Australia – 2030 plan

Innovation and Science Australia has [released](#) its [Australia 2030: Prosperity through Innovation Plan](#). The Plan makes 30 recommendations to the Government, actionable within five core policy imperatives for: education, industry, Government, research and development (R&D), and culture and ambition. Some of the key recommendations are measures to stimulate higher levels of R&D expenditure by the business sector, which the Plan says lags behind that seen in competitor nations, including introducing a collaboration premium in the R&D tax incentive, and implementing the other recommendations of the 2016 Review of the R&D Tax Incentive.

For further information, contact PwC's Incentives & Innovation Leader, Richard Gregg, via email at richard.gregg@pwc.com.

Federal Government's 2017 Tax Expenditures

Treasury has released the [2017 Tax Expenditures Statement \(TES\)](#) which supplements other Federal Government publications by providing information on Australian Government tax expenditures and reflects Government policy up to, and including, the 2017-18 Mid-Year Economic and Fiscal Outlook.

Tax expenditures typically involve tax exemptions, deductions or offsets, concessional tax rates and deferrals of tax liability. The TES lists provisions in the tax system that provide a concessional (or punitive) treatment of particular taxpayers or forms of economic activity and, where possible, estimates the loss (or gain) in revenue as a result.

Government to prioritise corporate and personal income tax cuts

The Prime Minister, in a [speech](#), has reiterated the Government's commitment to reducing the corporate tax rate, and also highlighted the Government's next tax priority to provide tax relief for middle income earners.

The Minister for Finance, Mathias Cormann, has also published an [opinion piece](#) outlining the case for the Government's Enterprise Tax Plan, which would see the tax rate for all companies progressively reduced to 25 per cent.

Leader of the Opposition's address to National Press Club

In an [address](#) to the National Press Club, the Leader of the Opposition, Bill Shorten, has restated that the Australian Labor Party will not support corporate tax cuts or an increase to the Medicare Levy for individuals earning up to AUD 87,000, and will stop income-splitting through discretionary trusts and unlimited deductions for costs of managing tax affairs.

Tribunal directs Commissioner to produce internal legal advice

The Administrative Appeals Tribunal (AAT) in [ACN 154 520 199 Pty Ltd and Commissioner of Taxation \[2018\] AATA 33](#) directed the Commissioner of Taxation to produce any internal legal advice produced by officers of the ATO in relation the application of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) to supplies of gold bullion. The Tribunal considered the ATO's internal legal advice was relevant to the review of the objection decision by the Tribunal, as it goes to the issue of whether the Applicant's position was reasonably arguable which is relevant to the issue of remission of penalties.

Deduction for acquiring gaming machine entitlements

The AAT in [Sharpean Pty Ltd and Commissioner of Taxation \[2017\] AATA 2948](#) has held that a trustee was entitled to claim deductions for amounts paid in acquiring Victorian gaming machine entitlements under section 8-1 of the *Income Tax Assessment Act 1997*. The Tribunal held that the outgoing for the gaming machine entitlements in the trustee's business was akin to a fee paid for the regular conduct of a business rather than the acquisition of a permanent or enduring asset, and as such the outgoing was not capital in nature.

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