

August 2017

TaxTalk Monthly

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



Corporate Tax Update

Guidance on deemed dividend rules for private companies

The Australian Taxation Office (ATO) has issued the following in relation to the application of the deemed dividend rules (Division 7A), which apply to private companies:

- Practical Compliance Guideline [PCG 2017/13](#), issued on 19 July 2017, deals with the repayment of Unpaid Present Entitlements (UPEs) owing from a trust to a private company beneficiary, which have been 'invested' under an interest only seven-year loan and are due to mature on or before 30 June 2018. The ATO has confirmed that if the principal of the loan is not repaid on or before the date of maturity, a seven-year Division 7A complying loan agreement may be put in place between the trust and the private company beneficiary. For further information, refer to [PwC Australia's TaxTalk Alert](#).
- Tax Determination [TD 2017/D3](#), issued on 28 June 2017, indicates the ATO's preliminary view that the interposed entity rules can apply to a payment or loan made by a private company to another entity where that payment or loan is an ordinary commercial transaction. Comments were due on the draft determination by 26 July 2017.
- Tax Determination [TD 2017/17](#), issued on 28 June 2017, confirms the Division 7A benchmark interest rate is 5.30 per cent per annum for the income year commencing on 1 July 2017. This benchmark interest rate is relevant to determine if a loan made in the 2016-17 income year is taken to be a dividend, and to calculate the amount of the minimum yearly repayment for the 2017-18 income year on an amalgamated loan taken to have been made prior to 1 July 2017.

The ATO has also identified [unpaid present entitlement \(UPE\) unitisation arrangements](#) as an area which attracts its attention for privately owned and wealthy groups. A 'UPE unitisation arrangements' is where a private group seeks to avoid Division 7A obligations by implementing an arrangement where a private company subscribes for units in a unit trust. The unit trust may then provide payments or loans to other entities within the private group.

Confusion over small business company tax cuts

The Minister for Revenue and Financial Services issued a [media release](#) in response to media reports that the ATO has broadened the scope of the small business company tax cuts to companies that carry on a passive investment business. The Minister indicated that the policy decision made by the Government to cut the tax rate for small companies was not meant to apply to passive investment companies. Refer to [PwC Australia's TaxTalk Alert](#) for further information.

Guidance on proposed similar business test for accessing losses

The ATO released Draft Law Companion Guideline [LCG 2017/D6](#) on 21 July 2017, which provides guidance on the new similar business test currently proposed by *Treasury Laws Amendment (2017 Enterprise Incentives No. 1) Bill 2017*. Under this new test, a company will be able to utilise tax losses made from carrying on a business against income derived from carrying on a similar business following a change in ownership or control.

The Draft Guideline provides guidance on what carrying on a similar business means and includes various examples to demonstrate the approach the ATO will take in assessing whether a company satisfies the similar business test and by reference to the four legislative factors to be taken into account. In summary, the Draft Guideline indicates that it will be more difficult to satisfy the similar business test if substantial new business activities and transactions do not evolve from, and complement, the business carried on before the test time. This is contrasted with the case where a company might develop a new product or function from the business activities already carried on, and this development opens up a new business opportunity or allows the company to fill an existing gap in the market.

Comments are due by 21 August 2017.

Taxation of rights and retail premiums under renounceable rights offers

The ATO issued Tax Ruling [TR 2017/4](#) on 5 July 2017, which sets out the Commissioner's view about the taxation of rights granted and retail premiums paid to retail shareholders in connection with renounceable rights offers where shares are held on capital account. It covers the tax treatment of Australian resident eligible retail shareholders and foreign resident ineligible shareholders.

The difference between a renounceable and a non-renounceable rights offer is that the former allows the eligible shareholder to sell their entitlements. The tax treatment of retail premiums paid in respect of non-renounceable right offers is dealt with in Tax Ruling [TR 2012/1](#).

Shareholders that are covered by TR 2017/4 are not required to include anything in their assessable income upon the grant of the entitlement. Any retail premium received is treated as the realisation of a CGT asset. The Ruling does not cover the application of Australia's tax treaties. The Ruling applies to years of income both before and after its date of issue.

Accounting for uncertain tax positions

The Australian Accounting Standards Board (AASB) has stated in a [media release](#) that more Australian companies could be recognising amounts in dispute with the ATO in financial reports, under new guidance from the International Financial Reporting Standards (IFRS) Interpretations Committee on IFRIC 23. Refer to this [Straight Away IFRS Bulletin](#), which clarifies how the recognition and measurement requirements of *IAS 12 Income taxes* are applied where there is uncertainty over income tax treatments. [Income Tax: Uncertainty over income tax treatments](#) discusses the IFRIC Interpretation of IAS 12 in further detail and sets out a timeline and suggested action plan to consider for a December year end entity.

Director penalty notice had been properly given

The Supreme Court of NSW Court of Appeal in [Fitzgerald v Deputy Commissioner of Taxation \[2017\]](#) has upheld the decision of the primary judge that a director penalty notice had been properly 'given' in the manner required by section 269-50 of Schedule 1 to the *Taxation Administration Act 1953* (Cth), as the evidence established that it had been posted to the appellant's address derived from a search of the relevant company in Australian Securities and Investment Commission's records.

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Employment Taxes Update

Draft Tax Ruling dealing with deductibility of employee travel expenses

As reported in [PwC Australia's TaxTalk Alert](#), the Australian Taxation Office (ATO) released Draft Tax Ruling 2017/D6: *Income tax and fringe benefits tax: when are deductions allowed for employees' travel expenses*. This Draft Ruling outlines the ATO's current interpretation in relation to determining when an employee's travel expenses (including transport and accommodation) are deductible for income tax and fringe benefits tax (FBT) purposes. This ruling also includes a significant number of practical examples which demonstrate the ATO's view on the various circumstances under which travel expenses will be considered either deductible or non-deductible for tax purposes.

Following the release of TR 2017/D6, the ATO has withdrawn a number of other existing rulings which also relate to the deductibility of travel expenses, on the basis that these issues are now considered to be addressed in TR 2017/D6. The most significant withdrawal is *Miscellaneous Taxation Ruling MT 2030*, which, up until the release of TR 2017/D6, was the primary authority in relation to the ATO's view on the distinction between living-away-from-home allowances (LAFHAs) and travel allowances. The ATO has indicated that the withdrawal of MT 2030 in favour of the release of TR 2017/D6 is primarily in response to ongoing taxpayer confusion in relation to the application of '21 day' rule which appears in MT 2030. The latest ATO views on this issue are now incorporated into TR 2017/D6.

Comments on the Draft Ruling are due by 11 August 2017.

Federal Government takes action to address Superannuation Guarantee non-compliance

The Minister for Revenue and Financial Services has [announced](#) that the Federal Government will introduce a Bill into Parliament this year to legislate a key recommendation in the [report](#) of the Superannuation Guarantee Cross-Agency Working Group. The intention of this legislation will be to

close an existing loophole and ensure that an individual's salary sacrificed superannuation contributions do not reduce their employer's superannuation guarantee obligation.

Under the current rules, salary sacrificed superannuation contributions reduce the base amount on which superannuation guarantee may be paid by the employer to meet their obligations.

Key superannuation rates and thresholds for 2017-18

The ATO has released [updated superannuation rates and thresholds](#) for the 2017-18 financial year. While there has been no change to the superannuation guarantee rate of 9.5 per cent from the 2016-17 financial year, the maximum super quarterly contribution base has increased from AUD51,620 to AUD52,760 per quarter.

Single Touch Payroll update

The ATO has provided an update on the roll-out of Single Touch Payroll, after a limited release from 1 July 2017 for a small number of digital service providers and their clients.

In September 2017, the ATO plans to write to all employers with 20 or more employees to inform them of their reporting obligations under Single Touch Payroll. This will be followed by an increase in the release of Single Touch Payroll solutions by digital service providers to employers.

From 1 July 2018, Single Touch Payroll reporting will be mandatory for employers with 20 or more employees.

New payroll tax measures for South Australia

The following key payroll tax measures were announced as part of the 2017-18 South Australian State Budget:

- Job Accelerator Grant payments will increase by up to AUD5,000 per employee for businesses that hire apprentices or trainees (backdated to 1 July 2016), bringing the total value of grants when combined with existing grants to as much as AUD15,000 per employee, and

- The South Australian payroll tax rate for small businesses is reduced to 2.5 per cent from 1 July 2017. This rate will apply to businesses with payrolls between AUD600,000 and AUD1 million, phasing up to the general rate of 4.95 per cent for payrolls above AUD1.5 million.

For details of other measures announced in the South Australian Budget, refer to [TaxTalk Monthly: July](#).

NSW payroll tax on employment agency contract payments made to sub-contractors

In [Knight Watch Security Services Pty Ltd v Chief Commissioner of State Revenue \[2017\]](#), the NSW Civil and Administrative Tribunal held that the applicant ('Knight Watch') was liable for payroll tax on payments made to its sub-contractors under the employment agency contract provisions. This case involved the supply of sub-contracted security guards by Knight Watch to its client.

In reaching its decision, the Tribunal dismissed a number of arguments by Knight Watch including their submission that only the entity paying the individual who provides the services should be subject to payroll tax under the employment agency provisions. In addition, while section 41 of the *Payroll Tax Act 2007* (NSW) was intended to prevent double taxation under the employment agency contract provisions where service providers were engaged under a 'chain of on-hire' arrangement (i.e. multiple entities sitting between the individual service provider and the end client), the Tribunal found no evidence of any other entity having paid payroll tax in respect of payments made to the individual service providers. Instead, in being found to be the employment agent closest to the ultimate client, the Tribunal agreed with the Chief Commissioner that Knight Watch was prima facie liable to payroll tax on payments made to its sub-contractors under the employment agency contract provisions, in accordance with the Chief Commissioner's chain of on-hire ruling (Revenue Ruling No. PTA 027).

The Tribunal considered a number of recent employment agency contract decisions, however, as specific submissions on the application of these decisions to the applicant's own circumstances were not provided, none were found by the Tribunal to be complementary to the position taken by Knight Watch. In particular, the Tribunal found that the procurement of a service provider for a client of the employment agent could reasonably mean 'on behalf

of or 'in respect of the business interests of the client. This effectively meant that security guards provided to related corporations of the client were still considered to have been engaged under employment agency contracts, with Knight Watch being deemed to be the employment agent. Further, the recent decision in [UNSW Global Pty Ltd v Chief Commissioner of State Revenue \[2016\]](#), which held that employment agency contracts are limited to those involving the procurement of service providers to carry out the client's business rather than for the benefit of the client's business, was found not to be helpful to Knight Watch. This was on the basis that the security guards procured by Knight Watch were stationed at the client's site, wore uniforms supplied by the client, performed their duties in accordance with the instructions given by the manager of the site and performed equivalent duties to employees of the client – all of which were considered to be indicators of service being carried out in the course of the client's business.

This decision further highlights the risks associated with employment agency contract provisions.

NSW Office of State Revenue to change its name

Under the recently announced [Administrative Arrangements \(Administrative Changes—Revenue NSW\) Order 2017](#), the name of the NSW Office of State Revenue is changed to Revenue NSW from 31 July 2017.

Update of skilled visa occupations lists

The Minister of Immigration and Border Protection has announced the Government has [updated](#) the approved occupations lists for a range of temporary and permanent skilled visas, effective from 1 July 2017. The Federal Government will update the lists on a six monthly basis as part of its reforms to skilled migration, announced earlier this year.

Changes to taxation of departing Australia superannuation payments for working holiday makers

From 1 July 2017, a new tax rate of 65 per cent applies to both the taxed and untaxed elements of a departing Australia superannuation payment (DASP) for working holiday makers, if the payment includes amounts attributable to superannuation contributions made while a person held a subclass 417 (Working Holiday) visa, subclass 462 (Work and Holiday) visa and/or an associated bridging visa.

This represents an increase from the previous tax rates of 35 per cent (taxed element) and 45 per cent (untaxed element) applied to DASP for temporary residents.

In order to determine whether to apply the higher rate of tax to any DASP applications received, super funds will need additional details from DASP applicants (that is, visa information).

ATO releases FAQs for those affected by recent payroll company issues

The ATO has updated its [guidance](#) to include Frequently Asked Questions for employees and employers impacted by the alleged actions of Plutus payroll and associated companies, which is currently under the joint Australian Federal Police and ATO investigation, Operation Elbrus.

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Global Tax Update

Latest news from international tax and transfer pricing

Applying the participation test to foreign distributions

Tax Ruling [TR 2017/3](#), issued on 28 June 2017, sets out the Commissioner of Taxation's view on the meaning of the term 'at the time the distribution is made' when applying the participation test (in Subdivision 768-A of the *Income Tax Assessment Act 1997*), which is relevant to determine if an equity distribution received by an Australian corporate tax entity from a foreign company is not assessable and not exempt (NANE) income.

According to the ruling, for the purposes of Subdivision 768-A:

- to have a participation interest in the foreign company, an entity must be a registered member of the foreign company at the start of the day the distribution is made
- where the distribution is a dividend or non-share dividend, the distribution is made on the day that the foreign company pays or credits the distribution

- where the distribution is a deemed dividend, the distribution is made on the day the tax law deems the dividend to have been taken to be paid.

Several examples provided in the Tax Ruling illustrate the application of the participation test and the meaning of 'at the time the distribution is made' in Subdivision 768-A.

Housing affordability package – foreign residents and indirect real property interests

The Government has released [draft legislation](#) in line with the housing affordability package announced in the 2017-18 Federal Budget. The draft legislation seeks to modify the capital gains tax (CGT) principal asset test applicable in determining whether an entity's underlying value is principally derived from taxable Australian real property (TARP). Specifically, the principal asset test will be applied on an associate inclusive basis. This will ensure that foreign tax residents cannot avoid a CGT

liability by disaggregating indirect interests in Australian real property. These amendments will apply in relation to CGT events happening at or after 7:30 pm, by legal time in the Australian Capital Territory, on 9 May 2017.

This same draft legislation also seeks to remove the main residence CGT exemption for foreign residents, also announced in the 2017-18 Federal Budget (see the Personal Taxes Update for further details).

Comments on the draft legislation are due by 15 August 2017.

Australian foreign investment changes effective from 1 July 2017

Changes to the foreign investment framework announced in the 2017-18 Federal Budget and additional technical amendments take effect from 1 July 2017. The changes include clarifications to the treatment of land used for commercial purposes or as a solar or wind farm, removal of routine and low-risk transactions from 'low threshold' non-vacant commercial land, a streamlined and simplified commercial fee framework and improvements to the operation of the exemption for small interests in unlisted land entities and streamlined consortium rules.

G20 Leaders' Declaration

The G20 Leaders' Declaration, which was released following the Leaders' meeting in Hamburg on 7-8 July 2017, highlights a number of issues discussed at the meeting, including trade and investment, and international tax cooperation and financial transparency. The G20 Leaders reiterated their commitment to the implementation of the Organisation of Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) package and encouraged all jurisdictions to join the Inclusive Framework. It was also noted that the Leaders will be provided with an update on jurisdictions that have not made satisfactory progress on implementation of the agreed international standards on tax transparency at the next G20 Summit, and will consider defensive measures against those jurisdictions.

OECD Transfer Pricing Guidelines 2017 edition

The OECD has released the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 edition. The latest edition of the Guidelines mainly reflects a consolidation of the

changes resulting from the OECD/G20 BEPS Project. It incorporates, among other things, the substantial revisions introduced by the 2015 BEPS Reports on Actions 8-10 Aligning Transfer Pricing Outcomes with Value Creation and Action 13 Transfer Pricing Documentation and Country-by-Country (CbC) Reporting.

Draft contents of 2017 update to OECD Model Tax Convention

The OECD has released the draft contents of the 2017 update to the OECD Model Tax Convention. The content has not yet been approved by the Committee on Fiscal Affairs or by the OECD Council, although significant parts of the 2017 update were previously approved as part of the BEPS Package. Comments are currently requested by 10 August 2017 in respect of certain parts of the 2017 update that have not previously been released for comment.

OECD Global Forum on Transparency and Exchange of Information for Tax Purposes

The OECD-hosted Global Forum on Transparency and Exchange of Information for Tax Purposes has been working to enhance global tax transparency, end banking secrecy and protect public finances by curtailing tax evasion since 2008. The Global Forum established a Fast-Track review process to evaluate continuing efforts by some jurisdictions to meet transparency standards in the run-up to the G20 Leaders' Summit in Hamburg in July 2017. The Fast-Track review's latest results show that progress has been made by most jurisdictions in meeting the international tax transparency standards.

Other OECD BEPS development

The OECD has released BEPS discussion drafts on Additional Guidance on Attribution of Profits to Permanent Establishments (Action 7) and Revised Guidance on transactional profit splits (Action 10). Refer to PwC Global's Tax Policy Bulletin for further information.

The OECD has also released further guidance on CbC reporting (BEPS Action 13), including how to treat an entity owned and/or operated by two or more unrelated multinational enterprise groups, and confirming that aggregated data for each jurisdiction is to be reported in Table 1 of the CbC report regardless of whether the transactions occurred cross-border or within the jurisdiction, or between related or unrelated parties (an exception is where the parent jurisdiction has a tax consolidation

regime, such as Australia, where consolidated data at the jurisdictional level can be reported).

In other developments:

- The OECD has [announced](#) the Platform for Collaboration on Tax – a joint initiative of the International Monetary Fund, OECD, United Nations (UN) and World Bank Group – has published a [toolkit](#) to provide practical guidance to developing countries to better protect their tax bases in relation to transfer pricing. Refer to [PwC Global's Tax Policy Bulletin](#) for further information.
- On 3-5 July 2017, fifty delegates representing 10 countries gathered in Cotonou (Benin) for the Second [regional meeting of the Inclusive Framework on BEPS](#) for French speaking countries. Participants discussed various topics, including the latest developments on the implementation of the BEPS Project and a workshop on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS.
- On 21-22 June 2017, at the [third meeting of the Inclusive Framework on BEPS](#), it was reported that the United States (US) concluded a further set of bilateral competent authority arrangements for the automatic exchange of CbC Reports and that Belize, the Cayman Islands, Colombia, Haiti, Pakistan, Singapore and the Turks and Caicos Islands had signed the [Multilateral Competent Authority Agreement for CbC Reporting](#) and that Singapore had signed the [Multilateral Competent Authority Agreement for the Common Reporting Standard](#).
- [Montserrat](#) and [Barbados](#) has [joined](#) the Inclusive Framework on BEPS and Bahrain has joined the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#).
- [Mauritius](#) has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS.

New Zealand and Hong Kong DTA updated

A new tax protocol between New Zealand and Hong Kong was signed on 28 June 2017, which updates the current double tax agreement (DTA) between the two jurisdictions to allow full exchange of tax information. For further information, refer to the [media statement](#) issued by the New Zealand Minister for Revenue.

Options for Corporate Tax Simplification in the UK

The United Kingdom's (UK) Office of Tax Simplification has issued its [report](#) calling for UK corporation tax to be modernised and simplified. This report responds to calls to make the calculation of UK corporation tax simpler, with fewer changes and more time to plan, and also recognises the importance of keeping the UK an attractive destination in a post-Brexit world. The report considers the following broad themes:

- simpler tax for smaller companies
- aligning tax rules more closely with accounting rules where appropriate
- simplifying tax relief for capital investment, and
- a range of issues affecting larger companies.

European Commission proposed mandatory disclosure

The European Commission has proposed a draft Directive that would impose mandatory disclosure obligations on tax advisers or, in certain circumstances, on taxpayers. The Directive would provide for mandatory disclosure of certain cross-border arrangements and automatic exchange of such information between Member States. The Directive is proposed to apply effective 1 January 2019. For further details, refer to [PwC Global's Tax Insights](#).

Government response to proposed TPP

The Government has [responded](#) to the recommendations of the Foreign Affairs, Defence and Trade Report on the proposed Trans-Pacific Partnership (TPP) Agreement. The Government noted the Committee's recommendation that it should defer undertaking binding treaty action until the future of the TPP is clarified through further negotiations with Australia's major trading partners, stating that it is actively engaging with TPP signatories on pathways for giving effect to the TPP.

US Treasury to review debt reclassification, international and partnership regulations

The US Treasury Department has identified eight regulations, including debt reclassification, international and partnership regulations that it states will be modified or repealed to implement an Executive Order issued by President Trump that calls for reducing tax regulatory burdens. Refer to [PwC US' Tax Insights](#) for further information.

US Tax Court supports position that foreign partner's gain from partnership interest not effectively connected income

On 13 July 2017, the US Tax Court held that a gain from the sale of an interest in a partnership by a foreign partner did not constitute effectively connected income with a US trade or business where

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the partnership was engaged in a US trade or business. Refer to [PwC US' Tax Insights](#) for further information.

Netherlands seeks comments on implementing minimum measures from ATAD1

The Netherlands has launched a consultation to implement the first European Union (EU) Anti-Tax Avoidance Directive (ATAD1), which the EU agreed upon in 2016. The consultation document proposes an earnings stripping rule, measures for controlled foreign companies and additional measures for exit taxation. Refer to [PwC US' Tax Insights](#).

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Indirect tax update

Removing the double taxation of digital currency

The Government has [released](#) exposure draft legislation to remove the double taxation of digital currency under the goods and services tax (GST) law. Under these proposed amendments, which give effect to the Government's 2017-18 Federal Budget announcement, digital currency will be treated like money for GST purposes from 1 July 2017. Comments were due on the draft materials by 26 July 2017.

GST determination on the treatment of the supply of a credit card facility

GST Determination [GSTD 2017/1](#), issued on 12 July 2017, sets out the Commissioner's view on when the supply of a credit card facility is GST-free under paragraph (a) of Item 4 in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*. According to the Determination, the supply of a credit card facility is GST-free to the extent that it is anticipated that the credit card facility will be used by the cardholder to undertake transactions while the cardholder is physically

outside Australia. The fact that a credit card facility allows overseas use is not sufficient evidence in itself that the facility will be used by cardholders physically outside Australia.

Following industry consultation, the Australian Taxation Office's (ATO) original view, released in draft form in 2014 ([GSTD 2014/D1](#)), has changed. Specifically, the ATO no longer requires the cardholder's location outside Australia to be integral to the relevant use of the credit card facility. The final Determination applies from 12 July 2017.

ATO GST administration mid-year performance report 2016-17

The ATO has released its [GST administration mid-year performance report 2016-17](#). Prepared in accordance with the ATO's reporting obligations under the GST Administration Performance Agreement, the report provides an account of the ATO's performance in administering the GST for the States and Territories during the period 1 July to 31 December 2016. It reports that by 31 December 2016, the ATO had collected AUD29.63 billion in net GST cash (excluding non-general interest charge penalties), as well as raising AUD1.76 billion in GST liabilities from compliance activities.

GST legislative instruments

The following GST legislative instruments have been issued:

- Draft GST Legislative Instrument [WTI 2017/D5](#): Waiver of Tax Invoice Requirement (Corporate Card Statements) Legislative Instrument allows corporate card holders to claim input tax credits without holding a tax invoice in certain circumstances. Comments were due by 6 July 2017.
- Draft GST Legislative Instrument [VM 2017/D1](#): Valuable Metals Market Value Determination 2017 sets out the method to calculate the market value of valuable metal for the purposes of determining whether the market value of a taxable supply exceeds the valuable metal threshold. Comments were due by 26 July 2017.
- [Goods and Services Tax: Foreign Currency Conversion Determination \(No. 1\) 2017](#), which

applies from 1 July 2017, sets out the method to convert amounts of consideration that are expressed in foreign currency into Australian currency for the purposes of working out the value of a taxable supply.

- [GST-free Supply \(National Disability Insurance Scheme Supports\) Amendment Determination 2017](#) makes the supply of Specialist Disability Accommodation GST-free for participants in the National Disability Insurance Scheme (NDIS) from 1 July 2016. A replacement determination will also make supplies of specialist disability accommodation and accommodation and tenancy assistance GST-free from 1 July 2017.
- [GST-free Supply \(National Disability Insurance Scheme Supports\) Determination 2017](#) specifies which kinds of supplies to a participant of the NDIS can be GST-free. The Determination applies to supplies made between 1 July 2017 and 30 June 2021.

New international trade facilitation arrangements

The Minister for Immigration and Border Protection has [announced](#) that Australia has entered into several new international trade facilitation arrangements. Mutual Recognition Arrangements (MRAs) have been signed with Korea's Customs Service, Canada's Border Services Agency and the Customs and Excise Department of Hong Kong. Refer to [PwC Australia's TaxTalk Alert](#) for further information about the new MRA and an update on the Australian Trusted Trader program.

Excise refund scheme for distillers

The Minister for Revenue and Financial Services and the Minister for Small Business in a [joint media statement](#) have announced that from 1 July 2017, distillers can access a refund of 60 per cent of excise paid up to AUD30,000 per financial year. The excise must have been paid on or after 1 July 2017 in order to access the refund. The scheme will not be extended to alcopop producers who merely purchase the spirits and add the soda and other flavours, or to wine producers who benefit from the Wine Equalisation Tax rebate.

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Personal Tax Update

Housing affordability package – foreign residents and main residence exemption

The Government has released [draft legislation](#) for its housing affordability package, announced in the 2017-18 Federal Budget, which seeks to make capital gains tax (CGT) changes for foreign residents. Specifically, the proposed law includes the measure to remove the main residence exemption for foreign residents when they sell property in Australia from 9 May 2017. Transitional relief will apply to allow foreign tax residents who hold property at 7:30 pm (by legal time in the Australian Capital Territory) on 9 May 2017 to continue to claim the exemption until 30 June 2019.

Importantly, the law does not affect individuals, including temporary residents who are Australian residents for taxation purposes at the time a CGT event occurs to a dwelling. Note that the original Federal Budget announcement had proposed that both foreign residents and temporary residents would be denied access to the exemption.

This same draft legislation also seeks to modify the CGT principal asset that applies when determining whether an entity's underlying value is principally derived from taxable Australian real property (TARP) (See Global Tax Update for details).

Comments on the draft law are due by 15 August 2017.

For further information, refer to the [joint media release](#) from the Treasurer and the Assistant Minister to the Treasurer.

Housing tax integrity – disallowing travel deductions and limiting depreciation deductions

The Government has released [exposure draft materials](#) to give effect to the 2017-18 Federal Budget announcement to disallow travel expense deductions and limit depreciation deductions for plant and equipment in relation to 'residential' investment properties of certain taxpayers. Companies, super funds (other than a self-managed super fund) and certain large trusts can continue to claim these deductions, as can taxpayers who incur the costs in the course of carrying on a business such as property investment or a business of providing retirement living, aged care, student accommodation or property management services.

For affected taxpayers, the proposed amendments mean that from 1 July 2017:

- All travel expenditure relating to residential investment properties will no longer be deductible. This includes travel undertaken to inspect and maintain the property, attend an owner's corporation meeting or to visit a real estate agent to discuss the property. However, investors can continue to claim deductions for costs of engaging third parties such as real estate agents to provide property management services for their investment properties. Any disallowed travel expenditure will also be prevented from forming part of the cost base of the property for CGT purposes.

- Depreciation deductions for items of plant and equipment (e.g. dishwashers, ceiling fans, hot water systems) in residential investment properties will be limited to those assets not previously used. The amendments do not affect the entitlement to depreciation on an asset installed in new residential premises (including substantially renovated premises) if no entity has previously been entitled to any deduction for the decline in value of the asset and no one has resided in the premises in which the asset has been used. Transitional relief is provided for depreciable items used or installed in residential investment properties as of 9 May 2017 (or acquired under contracts already entered into at 7:30PM (AEST) on 9 May 2017) which will continue to be eligible for depreciation deductions. Depreciation amounts that cannot be deducted will be able to be recognised as a capital loss (or in certain circumstances a capital gain) when the asset ceases to be used.

Comments on the exposure draft law are due by 10 August 2017. For further information, refer to the [media release](#) from the Minister for Revenue and Financial Services.

ATO guidance on payments for use and exploitation of professional sportsperson's 'public fame' or 'image'

On 19 July 2017, the Australian Taxation Office (ATO) released Draft Practical Compliance Guideline [PCG 2017/D11](#), which sets out a 'safe harbour' for apportioning lump sum payments for the provision of a professional sportsperson's services and the use and exploitation of their 'public fame' or 'image' under licence.

A professional sportsperson may receive payments pursuant to their playing contract and/or collective bargaining agreement where those agreements mandate their participation in appearances for the development and promotion of their sport or the use and exploitation of their 'public fame' or 'image' for the development and promotion of their sport.

Payments may also be made pursuant to an agreement to provide additional services where those services are provided in conjunction with the use and exploitation of their 'public fame' or 'image'.

Under the proposed safe harbour, the ATO will accept that up to 10 per cent of such payments can be treated as referable to the use and exploitation of the professional sportsperson's 'public fame' or 'image' and treated as the income of an associated tax resident third-party. This will apply where the professional sportsperson has granted the associated resident third-party a non-exclusive licence to use and exploit their 'public fame' or 'image' and under which the resident third-party is contractually entitled to receive the resulting income. It is a further condition that the payment is not referable to the use or exploitation of rights which are recognised and specifically protected under Australian law, such as copyright, trademarks or registered design rights.

Comments are due on the Draft Guideline by 1 September 2017.

Liability of a legal personal representative of tax debts of a deceased person

The ATO's Draft Practical Compliance Guideline [PCG 2017/D12](#), issued on 5 July 2017, is intended to provide the legal personal representative (LPR) of a deceased person with certainty about the extent of the deceased's outstanding tax liabilities for the period up to the time of their death.

This Draft Guideline is intended for smaller and less complex estates to enable the LPR to wind up such an estate without concern that they may have to fund any of the deceased's liabilities from their own assets. It outlines when an LPR will be treated as having notice of a claim or potential claim by the ATO.

Comments are due by 2 August 2017.

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State Taxes Update

NSW Office of State Revenue to change its name

Under [*Administrative Arrangements \(Administrative Changes—Revenue NSW\) Order 2017, with effect from 31 July 2017*](#), the NSW Office of State Revenue's name will change to Revenue NSW.

State and Territory Budget measures now law

With all 2017-18 State and Territory Budgets now handed down, with the exception of Western Australia, the following legislation to give effect to many of the Budget measures has been enacted:

- The Queensland [*Revenue Legislation Amendment Bill 2017*](#) was assented to on 22 June 2017. The Bill amends the *First Home Owner Grant Act 2000* (QLD) and the *Land Tax Act 2010* (QLD) to implement the 2017-18 QLD Budget measures.
- The NSW [*State Revenue Amendment \(Budget Measures\) Bill 2017*](#) was assented on 27 June 2017, and makes various amendments to the *Duties Act 1997* (NSW), the *Land Tax Act 1956* (NSW) and the *Land Tax Management Act 1956* (NSW) to implement the NSW 2017-18 State Budget measures.
- The Victorian [*State Taxation Acts Amendment Bill 2017*](#) was assented on 27 June 2017 and gives effect to the various measures in the 2017-18 Victorian State Budget, including the Homes for Victorians' strategy.
- The Northern Territory [*Revenue and Other Legislation Amendment Bill 2017*](#) was assented on 27 June 2017 and gives effect to revenue measures as part of the 2017-18 Northern Territory Budget, including the increase in stamp duty rate on high value transactions.
- The Tasmanian [*Taxation and Grants Legislation \(Housing Construction Amendments\) Bill 2017*](#) was assented on 30 June 2017 and changes the way stamp duty on house and land packages is charged, and to extend the first home buyers

grant, as announced in the 2017-18 Tasmanian Budget.

Latest land tax decisions

The following recent decisions were made in relation to land tax and rating issues:

The NSW Civil and Administrative Tribunal in [*Strathavon Resort Pty Ltd v Chief Commissioner of State Revenue \[2017\]*](#) held that the land tax exemption for low cost accommodation (under section 10Q of the *Land Tax Management Act 1956* (NSW)) was unavailable because the dwelling on the land was not registered as a boarding house as required.

The Supreme Court of WA Court of Appeal in [*Caratti and Commissioner of State Revenue \[2017\]*](#) has dismissed an appeal from a decision of the State Administrative Tribunal, finding that the Appellant's son had no right under the terms of a will to use the property as his place of residence, and hence the land was not eligible for land tax primary residence exemption.

The NSW Land and Environment Court in [*Karimbla Properties v Council of the City of Sydney; Bayside City Council; and North Sydney Council \[2017\]*](#) has held that land on which preparatory works for residential development was underway was incorrectly categorised for council rate purposes as 'business', and should have been 'residential' according to the *Local Government Act 1993* (NSW).

The Supreme Court of Queensland in [*WB Rural Pty Limited v Commissioner of State Revenue \[2017\]*](#) has held that there was no jurisdictional error in the Commissioner's objection decision that a trust was not eligible for the primary production exemption from land tax as the trust had failed to provide evidence that no beneficiaries were 'absentees' as required by section 53 of the *Land Tax Act 2010* (QLD). The Court also rejected the Applicant's argument that section 69(1)(b) of the *Taxation Administration Act 2001* (QLD), which requires a taxpayer to pay the whole amount of the disputed tax before appealing the decision, was not constitutionally valid.

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Superannuation update

Asset roll over relief for mandatory transfers within a superannuation fund

On 22 June 2017, *Treasury Laws Amendment (2017 Measures No. 4) Bill 2017* was introduced into Parliament. The Bill provides asset roll over relief for mandatory transfers within a superannuation fund in the transition to a MySuper product.

The transferring entity can be a super fund, a life company, a PST or an interposed trust.

The rollover relief is available for transfers that occur between 29 June 2015 and 1 July 2017.

Super funds that are relying on the roll over provisions should evaluate whether the necessary conditions for roll-over have been satisfied.

Superannuation and retirement income stream products: Treasury Laws Amendment (2017 Measures No. 1) Regulations 2017

The abovementioned Regulations were registered on 21 June 2017. The amended regulations change a number of superannuation regulations to enable the offering of new innovative retirement income stream products from 1 July 2017. In addition, the amendments expand the definition of capped defined benefit income stream to cover additional defined benefit pensions that permit commutation or are subject to other restrictions that fall outside

the scope of sub-regulation 1.06(2) of the *Superannuation Industry Supervisory Regulations 1994*.

Housing affordability package – superannuation

The Government has released [draft legislation and other materials](#) in relation to its housing affordability package announced in the 2017-18 Federal Budget in respect of the following superannuation measures:

- establishing the First Home Super Saver Scheme (FHSSS). The FHSSS will provide direct assistance to those individuals saving for a first home by allowing them to save in their superannuation accounts. First home savers will be able to voluntarily contribute up to AUD15,000 per year (and a total of AUD30,000), and be able to withdraw the contributions along with deemed earnings in order to help fund a deposit on their first home. Voluntary contributions made from 1 July 2017 will be eligible for withdrawal (provided all criteria are met) from 1 July 2018, and
- allowing Australians aged over 65 years to make an exempt contribution to their superannuation after downsizing their family home which has been held for a minimum of ten years. The normal superannuation contribution caps and restrictions will not apply to this downsizer contribution at the time, but the AUD1.6 million transfer balance cap and Age Pension means test will continue to apply and it will count towards

total superannuation balance tests in later years (refer to this [fact sheet](#) for further details).

Both measures are proposed to commence on 1 July 2018. Comments are due on the draft law by 4 August 2017.

For further information, refer to the joint [media release](#) from the Treasurer and the Assistant Minister to the Treasurer.

Review into the efficiency and competitiveness of the superannuation system

The Treasurer and the Minister for Revenue and Financial Services have [released](#) the terms of reference for the third and final stage of the Productivity Commission's review of the superannuation system, which will assess the efficiency and competitiveness of the current system. The Government has asked the Commission to complete the review within 12 months, with a draft report to be provided to Government by the end of January 2018.

Competitiveness and efficiency of superannuation

The Productivity Commission has released an [issues paper](#) to assist in preparing submissions to its public inquiry on assessing the competitiveness and efficiency of superannuation. This inquiry is the third and final stage of the Commission's review of the superannuation system, flowing from the Australian Government's response to the 2014 *Financial System Inquiry*. Submissions to the inquiry can be made until Monday 21 August 2017.

ATO large super fund industry report

The Australian Taxation Office (ATO) has released its [large fund industry report](#), which summarises the collective outcomes from the 2015-16 risk differentiation framework and tailored diagnostic reports. It is designed to be used by super fund trustees, executives, administrators, and reporting and risk managers.

ATO guidance on tax changes to superannuation payments for working holiday makers

The ATO has released [guidance](#) in the form of frequently asked questions on the [recent tax changes](#) affecting the departing Australia superannuation payment (DASP) tax rate for working holiday makers (WHMs). From 1 July 2017, a new tax rate of 65 per cent applies to DASP for working holiday makers if the payment includes amounts attributable to superannuation contributions made while a person held a subclass 417 (Working Holiday) visa, subclass 462 (Work and Holiday) visa and/or an associated bridging visa.

AAT decision on excess non-concessional superannuation contributions

The Administrative Appeals Tribunal (AAT) in [Moore and Commissioner of Taxation \[2017\]](#) has held that there were no 'special circumstances' to allow for the exercise of the Commissioner's discretion to disregard, or allocate to another financial year, excess non-concessional superannuation contributions.

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Legislative update

Federal Parliament has been in recess since 23 June 2017 and will resume for the Spring session of Parliament on 8 August 2017. Commonwealth revenue measures registered as legislative instruments or regulations since our previous TaxTalk Monthly update include:

- [Income Tax \(Effective Life of Depreciating Assets\) Amendment Determination 2017 \(No 1\)](#), which amends the *Income Tax (Effective Life of Depreciating Assets) Determination 2015*, provides the Commissioner of Taxation's determination of effective life for certain depreciating assets, which can be used as a basis to calculate the decline in value (depreciation) of an asset for income tax purposes with effect from 1 July 2017.
 - [CRS committed jurisdiction list](#) declares jurisdictions committed to the Common Reporting Standard (CRS). This will temporarily relieve Australian Financial Institutions from applying required due diligence procedures under Australia's CRS law to accounts held by particular Investment Entities resident in the specific committed foreign jurisdictions during the period from 1 July 2017 to 31 December 2019.
 - [Foreign Acquisitions and Takeovers Amendment \(Exemption and Other Measures\) Regulations 2017, applicable from 1 July 2017](#), introduces a suite of changes to enhance and streamline the operation of the foreign investment framework, facilitating business investment and reducing red-tape. The changes include, among other things, introducing new exemption certificates for acquisitions of securities and residential land to avoid multiple approvals and recognising a greater range of commercial uses of land as acquisitions of commercial land. The Regulations
- also address a number of other unintended consequences of the significant reforms introduced in December 2015.
- [Classes of Government Related Entities Exempt from Providing Third Party Reports Determination 2017](#) (which replaces *Classes of Government Related Entities Exempt from providing Third Party Reports Determination 2016*) exempts specified classes of government related entities from having to prepare and lodge reports in relation to the provision of a grant to an entity that has an Australian Business Number (ABN) or the provision of consideration wholly or partly for the supply of services (the third party reporting regime) with effect from 1 July 2017.
 - [Customs Tariff Amendment Regulations 2017](#) amends the *Customs Tariff Regulations 2004* to prescribe the lists of countries and places that are eligible for preferential arrangements for customs duty. It also updates the preferential arrangements for certain countries to provide for Forum Island Countries to be subject to Developing Country rates of duty and removes redundant definitions and regulations from the *Customs Tariff Regulations 2004* that relate to the preferential rates of duty that were imposed on certain goods imported from the United States of America.
 - [Excise Amendment \(Refund Scheme for Alcohol Manufacturers\) Regulations 2017](#) amends the *Excise Regulation 2015* to extend the current brewery refund scheme to Australian-based distillers of beverages such as whisky, vodka, gin and liqueurs, and producers of low strength fermented beverages such as non-traditional cider with effect from 1 July 2017.

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Other news

Technical changes to IMR and MIT rules

The Minister for Revenue and Financial Services has [announced](#) technical changes that will improve the operation of the Investment Manager Regime (IMR) and tax rules for Managed Investment Trusts (MITs). These changes remove tax uncertainty that was threatening to limit the intended operation of the regimes and in turn, frustrate the Government's policy to position Australia as a regional financial centre.

In respect of the IMR, the Government has clarified that when a foreign investor invests in Australia through a foreign fund or an independent Australian fund manager, it will be in the same tax position as if it had invested directly. Consultation will be conducted on whether a legislative amendment is required to ensure that the engagement of an Australian independent fund manager will not cause a fund that is legitimately established and controlled offshore to be an Australian resident.

In relation to MITs, the proposed technical changes are to remove some barriers to entities seeking to opt into the regime and will clarify the operation of the law. They include measures affecting the application of the MIT withholding tax provisions and the interactive outcomes with the Capital Gains Tax (CGT) rules.

Refer to [PwC Australia's TaxTalk Alert for further details](#).

Foreign resident capital gains withholding

Following the enactment of the *Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Act 2017*, which increased the withholding rate to 12.5 per cent and reduce the withholding threshold for real property to AUD750 000 under the foreign resident capital gains withholding regime, the Australian Taxation Office (ATO) has issued the following updates to the Law Companion Guidelines:

- [LCG 2016/5A1 - Addendum](#): Foreign resident capital gains withholding regime: the Commissioner's variation power
- [LCG 2016/6A1 – Addendum](#): Foreign resident capital gains withholding regime: amount payable to the Commissioner, and

- [LCG 2016/7A1 – Addendum](#): Foreign resident capital gains withholding regime: options.

Some tax thresholds and figures for 2017-18

The ATO has issued the following updates to certain annual thresholds or 'safe harbour' amounts relevant for the 2017-18 financial year:

- [TD 2017/18](#) which states that the depreciation car limit is AUD57,581
- [TD 2017/19](#) which indicates the amounts that the Commissioner considers are reasonable for the substantiation exception for the 2017-18 income year in relation to claims made by employees for overtime meal expenses, domestic and overseas travel expenses for accommodation, food and drink, and incidentals when travelling away from home overnight, and
- [TR 2017/2](#) which sets out the Commissioner's determination of the effective life of depreciating assets from 1 July 2017.

Effective life reviews

The ATO is undertaking a review of the effective lives of assets used in the following industries:

- [gas and oil mining support services](#)
- [wholesaling](#)
- [banking industry](#)
- [scientific testing and analysis services](#)

The ATO expects to complete its review of these assets within 12 months, with the new effective life determinations applying from 1 July 2018.

IGT Review into ATO's Fraud Control Management

The Inspector General of Taxation (IGT) has [announced](#) that he has accepted the Senate Economics References Committee's request to examine how the ATO addresses the risk of fraud and associated issues. The Committee's request follows recent events including those relating to Operation Elbrus and allegations of tax fraud that may be linked to abuse of position by a public

official. For further information, refer to the review's [terms of reference](#). Submissions were due by 28 July 2017.

Review of the Petroleum Resource Rent Tax

The Government has released its [interim response](#) to the [Review of the Petroleum Resource Rent Tax \(PRRT\)](#), and requested Treasury undertake further consultation to inform its final response. To assist with the consultation process, Treasury has released a [consultation paper](#) which considers options to address the design issues raised in the review. Submission on that paper were due by Friday 28 July 2017. The information obtained through this latest consultation is planned to be used to develop options for reforming the PRRT. Treasury is

expected to report back to Government by the end of September 2017.

Productivity Commission research paper on Rising Protectionism

The Productivity Commission has released a [paper](#) which outlines a strategy that would help achieve better outcomes for all Australians and foster public confidence in open markets. The Paper models a set of scenarios based on possible new trade policies in the United States (US) (including increased US tariffs and border adjustments made under a new US corporate tax system) and seeks to identify their implications for Australia.

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