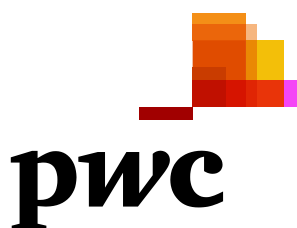


July 2017

TaxTalk Monthly

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



Corporate Tax Update

ATO Reportable Tax Position Schedule guide update

The Australian Taxation Office (ATO) has updated its [2017 Guide to Reportable Tax Positions](#) (RTP) to include:

- an updated list of Category C reportable transactions and arrangements (note this list is updated regularly throughout the year), and
- [additional clarification](#) on the application of penalties.

The ATO has also made changes to the exemption from lodging the RTP schedule for taxpayers in an Annual Compliance Agreement (ACA). To qualify for the exemption, taxpayers will now need to agree to provide full and true disclosure and engage in ongoing dialogue of all material tax matters, including any positions that fall within any RTP category as part of their ACA.

From 2018, the ATO also plans to extend the obligation to lodge a RTP Schedule to include all companies in economic groups with turnovers above AUD250 million.

ATO's Top 1,000 performance program

The ATO has released information on its [Top 1,000 Performance Program](#), which is one of several programs under the Tax Avoidance Taskforce. The program involves streamlined assurance reviews of the largest 1,000 multinational and public companies, focusing on the income tax affairs of taxpayers with turnover above AUD250 million. This program does not cover taxpayers regularly engaging with the ATO under Pre-lodgment Compliance Reviews or Annual Compliance Arrangements.

Under the program, the ATO indicates that it will work with the vast majority of large taxpayers to obtain additional evidence that they are paying the right amount of tax according to law, and will engage with each taxpayer using tailored compliance approaches.

Draft AASB guidance on effective tax rate for tax transparency code

In response to a request from the Board of Taxation, the Australian Accounting Standards Board (AASB) has [developed guidance](#) to assist businesses in meeting the tax transparency code (TTC) recommendations for the suggested tax reconciliation and calculation of the effective tax rate. The draft guidance, contained in a [Draft Appendix to the Tax Transparency Code](#), promotes consistency and comparability of key information about entities' tax positions (in particular, their effective tax rate (ETR) relative to the corporate tax rate), and aims to support entities in presenting income tax disclosures under the TTC for the 2017 tax year. For further information, refer to [PwC Australia's Straight Away IFRS bulletin](#).

ATO guidance on non-share equity interests issued by an ADI at or through a permanent establishment

The ATO has released Practical Compliance Guideline [PCG 2017/10](#) which provides guidance on the Commissioner's expectations on the application of the provisions regarding unfrankable non-share dividends paid by an Authorised Deposit-taking Institution (ADI) on certain Tier 1 capital raised at or through a foreign branch.

No franking credit entitlement under a dividend washing scheme

The Administrative Appeals Tribunal (AAT) in [David Lynton as trustee for the David Lynton Superannuation Fund \(Taxation\)](#) has affirmed the Commissioner's decision in relation to a dividend washing scheme. The Tribunal found that section 177EA of the *Income Tax Assessment Act 1936* was enlivened and the Commissioner correctly made determinations to deny imputation benefits that arose in respect of franked distributions received under the scheme. The Tribunal also determined that section 207-145 of the *Income Tax Assessment Act 1997* applied to the shares which were held for less than 45 days and as such, the taxpayer was not

entitled to a franking credit in respect of those franked dividends.

Interest income assessed on an accrual basis rather than a receipts basis

The Federal Court in *News Australia Holdings Pty Ltd v Commissioner of Taxation* dismissed the taxpayer's appeal and held that the Commissioner correctly included interest income originating under a loan agreement in the attributable income of a controlled foreign company (CFC) on an accrual basis rather than a receipts basis.

The taxpayer had contended that the CFC was not in the business of money lending and was to be assessed on its interest income upon a receipts basis. The taxpayer also argued that the Commissioner was bound to assess the interest income on a receipts basis in accordance with [Taxation Ruling TR 98/1: Income tax: determination of income; receipts versus earnings](#).

Justice Pagone found that an accruals basis of accounting for the interest accruing provided the correct reflex of the CFC's true income and the taxpayer was to be assessed on that basis. According

to his Honour, "income will ordinarily be derived when money has become due to a taxpayer if the accruals (or earnings) basis of tax accounting gives the substantially correct reflex of the true income of the particular taxpayer, but will ordinarily only be derived when received if the receipts (or cash) basis of tax accounting gives the substantially correct reflex of the true income of the taxpayer".

In finding that the accruals method applied, it was relevant that the CFC accounted for its interest income on an accruals basis and used and relied upon its funds upon accrual. The Court also found without deciding that the CFC did not carry on a business of investment or of lending money, its income earning activities included the lending of money on commercial terms for reward and the interest income had come home in a realised or immediately realisable form upon its accrual.

Finally, the Court held that TR 98/1 "was directed to giving general guidance concerning the application, in the context of interest income, of the general principle that the correct method of tax accounting to adopt was that which gave a substantially correct reflex of income", and as such, the Commissioner was not bound by the ruling based on the facts of the case.

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Employment Tax Update

Australia's largest ever payroll fraud

What happened - at a glance

Plutus Payroll Australia Pty Ltd and associated entities (Plutus) provided payroll services to

businesses, including responsibility for paying remuneration to their clients' employees, and remitting Pay As You Go Withholding (PAYGW) tax to the Australian Taxation Office (ATO) on a periodic basis. For these services, clients would generally pay to Plutus the gross remuneration required to fund payments to their employees.

A joint operation (Operation Elbrus) between the Australian Federal Police (AFP) and the ATO identified that Plutus had not been remitting the full amount of PAYGW tax due to the ATO, or superannuation contributions due to be paid into superannuation funds. It has been alleged by the AFP and ATO that the funds 'withheld' were inappropriately used by a number of individuals involved in the Plutus structure for personal purposes.

The future for payroll services - what happens next?

It is important to recognise that the alleged actions being investigated under Operation Elbrus are not viewed as being a result of any tax loop holes, or systemic poor governance across the industry. There is no suggestion that other payroll providers are guilty of similar actions.

In any case, the confidence of businesses that utilise the services of a payroll provider, or are considering outsourcing this vital organisational function, will have taken a hit. While most outsourced payroll providers will already have their processes under control – the industry will no doubt be challenged to demonstrate the robustness of their governance, and to offer sufficient transparency and even insurance to their clients as to how their funds have been appropriated.

It may also be that the revenue authorities will impose an additional level of reporting processes onto this industry – however, we are hopeful that any such reaction will be measured. It is worth noting that the forthcoming introduction of Single Touch Payroll will already provide an increase in transparency without requiring further reporting by taxpayers.

IGOT Review into the ATO's employer obligations compliance activities (Cth)

The Inspector General of Taxation (IGOT) has released his report in relation to the Review into the ATO's employer obligations compliance activities. The IGOT has made various recommendations including:

- two recommendations for the Government's consideration which are aimed at reducing compliance costs through a review of the Fringe Benefits Tax regime and expanding the Taxable Payments Reporting System to the engagement of contractors across all industries, and

- nine recommendations to the ATO which address the compliance burden and deal with a number of other important issues such as the classification of workers as contractors or employees, the ATO's capability framework and risk identification processes as well as the implementation of the Single Touch Payroll initiative. The ATO has agreed in full or in part with seven of the nine recommendations.

2017-18 QLD Budget

The Queensland Budget for the 2017-18 financial year was handed down during the month. Among other measures, the Budget extends the existing payroll tax rebate on the wages of apprentices and trainees at the rate of 50 per cent until 30 June 2018. This rebate was previously scheduled to end on 30 June 2017.

Tasmania Premier announces payroll tax relief for new trainees and apprentices

The Tasmanian Premier has [announced](#) that from 1 July 2017, if a business employs a new apprentice or trainee, payroll tax relief will be available on that new position for two years. Additionally, if a business employs a young Tasmanian aged between 15 and 24 who isn't a trainee or an apprentice, the employer will be eligible for payroll tax relief for up to 12 months.

This follows an earlier announcement of an AUD2 million pilot program to support small businesses below the payroll tax threshold to employ apprentices and trainees, with incentive payments of up to AUD4,000 for each job created.

Release of FY18 PAYG withholding tables (Cth)

The *Taxation Administration Act Withholding Schedules 2017* were released during the month and outlined the correct PAYG withholding rates to apply from 1 July 2017 to a number of payments including payments to employees, unused leave payments, bonuses and payments to working holiday makers.

Simplified approaching for calculating car fringe benefits on fleet cars (Cth)

Following the recent release of PCG 2016/10 by the ATO, a series of frequently asked questions have been made available to assist taxpayers in their interpretation of the application of PCG 2016/10

Fleet Cars: simplified approach for calculating car fringe benefits.

Any taxpayers currently using PCG 2016/10 or planning to use this practical compliance guideline in future Fringe Benefits Tax (FBT) years in calculating the taxable value of their fleet vehicles under the operating costs method should refer to this information when determining their eligibility to apply PCG 2016/10.

Changes to employee declarations for FBT

The ATO has updated five employee declaration forms for FBT to reflect changes to FBT laws starting 1 April 2016.

The employee's car declaration has changed to show that the '33 1/3%' method is no longer used. The other declarations have been updated to reflect the 'multiple cents per kilometre rates based on engine type and capacity' no longer applies.

The affected employee declarations include:

- employee's car declaration,
- employment interview or selection test declaration – transport in employee's care,
- declaration of car travel to work-related medical examination, medical screening, preventative health care, counselling or migrant language training,
- relocation transport declaration, and
- remote area holiday transport declaration.

State Revenue Office of Victoria replaces paper-based payroll tax forms

The State Revenue Office of Victoria has replaced following paper-based payroll tax forms with online SmartForms:

- Nomination of designated group employer – PTA-Form-02
- Employment agency contracts declaration by exempt client – PTA-Form-03
- Employment agency contracts chain of on-hire declaration – PTA-Form-04
- Application for exclusion from grouping – PTA-Form-05

Taxpayers that need to complete any of the above forms can now use the corresponding online SmartForm as an alternative to the existing paper form.

Supreme Court of Victoria rules on exemption from payroll tax

The Supreme Court of Victoria in Telecommunications Industry Ombudsman Ltd v Commissioner of State Revenue has held that wages paid by the Telecommunications Industry Ombudsman (TIO) are exempt from payroll tax pursuant to section 48(1) of the *Payroll Tax Act 2007* (VIC), as the TIO is a "non-profit organisation having as its ... dominant purpose a charitable ... purpose".

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Global Tax Update

Latest news from international tax and transfer pricing

ATO guidance materials on DPT coming soon

The Australian Taxation Office (ATO) plans to soon issue the following guidance materials to assist taxpayers understand how the Diverted Profits Tax (DPT) law (which applies from 1 July 2017) will be applied and administered:

- Law Companion Guidelines to explain how the new DPT law will apply and to clarify new concepts,
- Practical Compliance Guidelines to illustrate by way of examples the relative risk of adopting certain types of arrangements and in respect of different industry sectors, and
- Practice Statements setting out the ATO's internal oversight framework and the process for the issue of a DPT assessment.

ATO guidance on the use of internal derivatives by multinational banks

The ATO has published Practical Compliance Guideline [PCG 2017/8](#), which provides guidance on the use of internal derivatives by multinational banks. The Guideline discusses the Commissioner's views on the operation and application of Australia's permanent establishment attribution rules to certain funding activities of banks. (These attribution rules are set out in detail in TR 2001/11 and TR 2005/11).

This Guideline extends the Commissioner's practical approach to applying the arm's length principles to internal derivatives of multinational banks. It sets out the circumstances in which internal derivatives, that represent arm's length dealings, can be used as an appropriate proxy for the purposes of allocating or attributing a bank's income (gains), expenses (losses) or profit for the purposes of the transfer pricing rules. The Guideline also provides guidance on the Commissioner's compliance expectations for banks seeking to rely on it.

Multilateral BEPS convention signed

Australia was one of 76 [countries and jurisdictions](#) that signed, or formally expressed their intention to sign, the new [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting \(BEPS\)](#) (the Multilateral Instrument) as part of the Organisation of Economic Co-operation and Development (OECD)/G20 BEPS Project.

The Multilateral Instrument will modify existing bilateral tax treaties of those participating jurisdictions to quickly implement the tax treaty measures developed in the course of the BEPS Project. The Multilateral Instrument contains 26 Articles dealing with a range of issues in tax treaties, including the minimum standards – and various other recommendations – of Action 6 (treaty abuse) and Action 14 (dispute resolution) and some of the other best practices of Action 2 (hybrids) and Action 7 (permanent establishments), as well as a new optional standard on binding arbitration for cross-border treaty disputes. Further details of the Articles in the Instrument are set out in [PwC Global's Tax Policy Bulletin](#).

Modifications to existing tax treaties will depend on choices made by both participating jurisdictions, and will require ratification of the Multilateral Instrument by both jurisdictions. The first modifications to bilateral tax treaties are expected to enter into effect in early 2018.

Australia has indicated that the Multilateral Instrument should apply to all of its existing bilateral treaties with the exception of the recently renegotiated German treaty, which now includes extensive provisions to deal with BEPS. However, not all of Australia's treaty partners have yet signed the Multilateral Instrument (or indicated an intention to do so), or listed their treaty with Australia as one that would be covered by the Multilateral Instrument in their adoption choices. This means that, at least in the short to medium term, these treaties will not be impacted by the Multilateral Instrument. We anticipate that the

Multilateral Instrument could potentially take effect in Australia from 1 January 2019 (for rules relating to withholding taxes) and 1 July 2019 (for rules relating to other taxes), subject to its ratification by Australia's treaty partners that have also chosen to adopt the Multilateral Instrument.

For further information in relation to the issues arising from an Australian perspective, refer to [PwC Australia's TaxTalk Alert](#).

Other OECD BEPS developments

The OECD has [released](#) the [key document](#) which will form the basis of the peer review of the BEPS Action 6 minimum standard on preventing the granting of treaty benefits in inappropriate circumstances. Action 6 is one of the minimum BEPS standards which will be subject to peer review to ensure its timely and accurate implementation. The document includes the Terms of Reference, which sets out the criteria for assessing the implementation of the Action 6 minimum standard, and the Methodology which sets out the procedural mechanism by which the review will be conducted.

The OECD has also [released](#) a discussion draft on the [BEPS Action 8 – implementation guidance on hard-to-value intangibles](#) described in Chapter VI of the Transfer Pricing Guidelines for public comment. The [Final Report on Actions 8-10 of the BEPS Action Plan](#) ('Aligning Transfer Pricing Outcomes with Value Creation') mandated the development of such guidance. Refer to [PwC Global's Tax Insights](#) for further information.

In other developments:

- The OECD has [invited taxpayer input](#) on dispute resolution peer reviews of the Czech Republic, Denmark, Finland, Korea, Norway, Poland, Singapore and Spain. This stage of these peer reviews will evaluate the implementation of the BEPS Action 14 minimum standard by seeking taxpayer input on specific issues relating to access to the mutual agreement procedure (MAP), clarity and availability of MAP guidance and the timely implementation of MAP agreements.
- [Guatemala](#) has joined the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#), and the [Bahamas](#) has indicated its decision to sign the Convention.
- [Djibouti](#) (which has joined the [Inclusive Framework on BEPS](#)) and [Benin](#) have joined the

[Global Forum on Transparency and Exchange of Information for Tax Purposes](#).

NZ 2017 Budget

The New Zealand (NZ) 2017 Budget was delivered on 25 May 2017. The Budget contains various tax changes including a package of tax cuts for individuals and families and proposed changes to improve the tax treatment of black hole and feasibility expenditure for businesses. For further Budget insights and analysis, refer to [PwC NZ's Budget 2017 website](#). [PwC NZ's Tax Tips Alert](#) also discusses the key features of the proposed amendments to the deductibility of feasibility expenditure and black hole expenditure.

US Tax Court says foreign refunds affect foreign tax credits even if not yet finally adjudicated

In *Panagiota Pam Sotiropoulos v. Commissioner*, the United States (US) Tax Court held that a United Kingdom (UK) income tax refund the taxpayer had received but was subsequently challenged by the UK tax authority must nevertheless be treated as a refund, with the result that the Inland Revenue Service (IRS) could reduce the taxpayer's claimed foreign tax credits for the year in which the UK tax had originally been paid. The case may also be of broader interest because it arose from information that the IRS received under a tax information exchange agreement with the UK. For further information, refer to [PwC Global's Tax Insights](#).

Germany's new rules to limit the deductibility of related-party royalties

Germany has enacted rules limiting the deductibility of related-party royalties. This royalty limitation rule is focused on situations in which the royalty income is taxed as part of a special patent box regime that does not meet the OECD's 'nexus' approach. Refer to [PwC Global's Tax Insights](#) for further information.

Netherlands' dividend withholding tax proposal affecting cooperatives

The Netherlands Government has sought comments on a dividend withholding tax proposal affecting Dutch cooperatives. The Consultation Document seeks to align the dividend withholding tax treatment of holding cooperatives with that of Dutch

tax-resident entities with capital divided into shares. The Consultation Document also proposes introducing a more extensive unilateral dividend withholding tax exemption in conjunction with anti-abuse rules along the lines of Action 6 of the

OECD BEPS project. Refer to [PwC Global's Tax Insights](#) for further information.

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

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Personal Tax Update

Dividend equivalent payments made under an ESS

The Australian Taxation Office (ATO) has released guidance which deals with the tax treatment of 'dividend equivalent payments' made by a trustee under an Employee Share Scheme (ESS). For such purposes, the term 'dividend equivalent payment' refers to a cash payment paid by a trustee of a trust to an employee participant of an ESS (who is also a beneficiary of the trust) and that cash payment is funded from dividends (or income from other sources) that the trustee has been assessed on in previous income years because no beneficiary of the trust was presently entitled to the income. The amount of the dividend equivalent payment is ordinarily calculated by reference to the amount of the dividends (or other income) received by the trustee during a specified period, less the amount of tax paid by the trustee on that income.

Draft Taxation Determination [TD 2017/D2](#) concludes that a dividend equivalent payment is assessable as remuneration under section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) when the payment made to the employee under an ESS by a trustee of a trust has a sufficient connection with the employee's employment.

Draft Practical Compliance Guideline [PCG 2017/D9](#) sets out the safe harbour terms on which the Commissioner will accept, for income tax purposes, that a dividend equivalent payment made to an employee participant of an ESS is not connected with the employee's employment and accordingly not assessable to the employee under section 6-5 of the ITAA 1997.

When the tax determination and Guideline are finalised they will both apply to dividend equivalent payments paid under the terms and conditions attached to ESS interests issued on or after 1 October 2017.

AAT finds no entitlement to work-related deductions

In [Hamilton and Commissioner of Taxation](#), the Administrative Appeals Tribunal (AAT) has affirmed the Commissioner's decision and held that the taxpayer was not entitled to work-related deductions in relation to tool expenses, mobile phone expenses and overtime meal expenses, as the taxpayer failed to provide any evidence substantiating his claims.

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State Taxes Update

2017-18 SA Budget

On 22 June 2017, the [2017-2018 South Australian \(SA\) Budget](#) was handed down.

One of the key changes announced was a major bank levy for major banks offering services in SA, which will be introduced from 1 July 2017:

- This levy will apply to authorised-deposit-taking institutions that offer services in SA and are liable for the Commonwealth major bank levy.
- The SA bank levy will apply at a rate of 0.015 per cent of an 'SA share' of the total value of the bank liabilities subject to the Commonwealth Government levy. The SA share of the bank liabilities will be determined based on SA's gross state product (GSP) as a percentage of Australia's gross domestic product (GDP) for the financial year that is 2 years before the year of the particular levy (due to availability of relevant data). For the 2017-18 Financial Year, this will be 6.06 per cent (i.e. total bank liabilities subject to the Commonwealth levy x 6.06 per cent x 0.015 per cent).
- Payments of the levy will generally be required to be made quarterly on 21 March, June, September and December each year (for the previous quarter ended 31 December, 31 March, 30 June and 30 September respectively). However, the first payments for the quarters ended 30 September and 31 December 2017 will not be required to be made until 21 March 2018.

Like many other States, SA also introduced a number of measures focused on housing affordability:

- The key announcement was that SA is joining Victoria, New South Wales (NSW) and Queensland (QLD) in introducing a foreign

purchaser surcharge, announcing that a stamp duty surcharge of 4 per cent will apply to foreign purchasers of SA residential property from 1 January 2018.

- In addition, like many other States, the off-the-plan stamp duty concession was amended. In SA, this concession will be extended until 30 June 2018 but will be re-targeted so that it no longer applies to foreign purchasers.
- An AUD10,000 grant will be provided to eligible off-the-plan apartment purchasers where the contract is entered into between 22 June 2017 and 30 September 2017.
- A five year land tax exemption will apply to eligible apartments bought off-the-plan where the contract is entered into between 22 June 2017 and 30 June 2018.

Other measures included:

- Job Accelerator Grant payments increased by up to AUD5,000 for businesses that hire apprentices or trainees (backdated to 1 July 2016)
- Payroll tax rate for small businesses lowered to 2.5 per cent from 1 July 2017.

Importantly, SA did not announce any changes to its previously announced (and legislated) plan to continue the reduction of the general stamp duty rate. Accordingly, from 1 July 2017, the SA stamp duty rate for non-residential and non-primary production land will drop by a further third, to around 1.84 per cent.

The [Budget Measures Bill 2017 \(SA\)](#) proposed to implement the above changes was introduced to Parliament on 22 June 2017.

2017-18 NSW Budget

On 20 June 2017, the [2017-18 NSW Budget](#) was handed down. New tax measures announced include:

- As previously announced, from 1 July 2017, the foreign investor transfer duty surcharge will increase from 4 per cent to 8 per cent, and the current land tax surcharge of 0.75 per cent will increase to 2 per cent per annum from the 2018 land tax year.
- Australian-based foreign-owned developers will be granted a refund of surcharges paid, provided they sell newly developed homes within 5 years to persons not associated to the corporation, and satisfy certain other requirements.
- Commercial residential property will be exempt from the foreign purchaser surcharge, with retrospective effect from 21 June 2016. Guidelines will be issued to identify relevant classes of commercial residential property that will be exempt. The Budget papers give the example of purpose built student accommodation.
- From 1 July 2017, first home buyers will be exempt from transfer duty for both new and existing properties valued up to AUD650,000 and concessions on duty will apply for properties valued between AUD650,000 and AUD800,000.
- The current concession for residential off-the-plan purchases (which allows for the payment of duty to be delayed for up to 12 months) will be targeted to owner occupiers only.

In addition, there were a number of insurance duty changes, including:

- From 1 January 2018, small businesses with aggregate turnover of less than AUD2 million will be exempt from insurance on their premiums relating to commercial vehicle insurance, professional indemnity insurance, and product and public liability insurance.
- From 1 July 2017, insurance duty on lenders mortgage insurance will be abolished.
- From 1 January 2018, insurance duty on crop and livestock insurance will be abolished.

The [State Revenue Amendment \(Budget Measures\) Bill 2017](#) has been introduced into the NSW Parliament. The Bill proposes 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 measures discussed above.

2017-18 QLD Budget

On 13 June 2017, the [2017-18 QLD Budget](#) was handed down by the QLD Treasurer. The Budget contains the following key measures:

- from 1 July 2017, a 1.5 per cent surcharge for absentee payers of land tax,
- a temporary increase in the First Home Owners' Grant from AUD15,000 to AUD20,000 for a further six months,
- continuing the payroll tax rebate on the wages of apprentices and trainees at the increased rate of 50 per cent until 30 June 2018, and
- additional funding for the Office of State Revenue Transformation Program.

In addition, the [Revenue Legislation Amendment Bill 2017](#) completed its passage through Parliament on 16 June 2017 without amendment. The Bill amends the *First Home Owner Grant Act 2000* (QLD) and the *Land Tax Act 2010* (QLD) to implement the above measures.

2017-18 Tasmanian Budget

On 25 May 2017, the [2017-18 Tasmanian Budget](#) was handed down by the Tasmanian Treasurer. The Budget contained no new taxes or increases to taxes. Tax-related measures include:

- extension of the AUD20,000 first-home builders grant to June 2018,
- previously announced introduction of a payroll tax rebate scheme for a business that employ apprentices, trainees or youth employees, and
- changes to the *Duties Act 2001* (TAS) in relation to house and land packages.

Additional details are available on the [Tasmanian State Revenue Office's website](#).

2017-18 ACT Budget

On 6 June 2017, the Australian Capital Territory (ACT) Chief Minister and Treasurer handed down the [2017-18 ACT Budget](#). It includes the following revenue measures:

- from 1 July 2018, land tax will be extended to all residential dwellings that are not the owner's principal place of residence, whether they are rented or not,
- commencing in 2017-18, residential and commercial conveyance duty rates will be separated to allow levels of taxation to be adjusted, to better reflect the differences in each sector, as the process of phasing out conveyance duty continues,
- conveyance duty for commercial transactions below AUD1.5 million will be halved in 2017-18, before being fully phased out by 2018-19, and
- increases in the building levy, the fire and emergency services levy and car registration fees.

QLD tax rulings on transfer duty

The QLD Commissioner of State Revenue has issued the following public rulings:

- [DA228.1.1—Corporate trustee duty deduction—transfer duty for trust acquisition](#), which clarifies the meaning of 'the acquisition' as it appears in section 228(1)(b) of the *Duties Act 2001* (QLD) and outlines the circumstances in which the section applies.
- [DA115.1.1 — Transfer duty — cancelled agreements](#), which clarifies the Commissioner's application of the exemption for cancelled agreements under section 115 of the *Duties Act 2001* (QLD).

Information required when transferring real property in QLD

From 1 July 2017, [additional information](#) will be required when transferring real property in QLD as a result of new federal legislation requiring all states and territories to report information to the Australian Taxation Office.

WA tax ruling on when items will be excluded from the definition of chattel

The Western Australian (WA) Office of State Revenue has released *Revenue Ruling DA 21.0*, which sets out the Commissioner's interpretation of when items will be excluded from the definition of chattel in section 3 of the *Duties Act 2008* (WA).

QLD tax ruling on extended concession for dutiable transactions for family primary production businesses

The QLD Commissioner of State Revenue has issued Public Ruling [DA105.4.1: Extension of Concession for Dutiable Transactions for Family Businesses of Primary Production - Defined Relative](#). On 23 May 2017, an administrative arrangement was approved to enable the administration of the *Duties Act 2001* (QLD), for a 12-month period, on the basis that the definition of 'defined relative' in Schedule 6 of the Act includes a person's first cousin and the first cousin's spouse. All other conditions of the concession will continue to apply. This public ruling sets out the terms of the administrative arrangement.

All-in-one online duties form for land transfers in Victoria

The State Revenue Office (SRO) of Victoria has released an all-in-one [online duties form](#) for land transfers. From 1 July 2017, taxpayers and their representatives are required to use the online form for all contracts or agreements giving rise to land transfer duty entered into on or after that date. Additionally, from 1 July 2017, the SRO will collect immigration data for vendors and purchasers involved in land transfers in Victoria on behalf of the Commonwealth Government.

Revenue SA proposes changes relating to transfers of real property in SA

Revenue SA has announced [proposed changes](#) to third party reporting requirements, processes and systems relating to transfers of real property in SA over the coming year. These changes are necessary to help the State meet its reporting obligations for the Commonwealth Government's initiatives on third party reporting and the national register of foreign ownership of land titles. Comments on the proposed legislation changes can be made until 9 June 2017.

State legislative amendments

The [Revenue Legislation Amendment Act 2017 \(No 2\)](#) (ACT) received notification on 16 May 2017, and comes into effect on 1 July 2017. The Act amends the *Duties Act 1999*, *Land Tax Act 2004* and *Rates Act 2004*, to give effect to decisions arising from the 2015-16 and 2016-17 ACT Budget. These decisions include changes to the method for calculating rates

and land tax for residential unit subdivisions, and the repeal of insurance duty legislation.

The *State Taxation Acts Amendment Bill 2017* has been introduced into the Victorian State Parliament. The Bill gives effect to the various measures in the Victorian State Budget, which was delivered on 2 May 2017.

The *Taxation and Grants Legislation (Housing Construction Amendments) Bill 2017* has been introduced into the Tasmanian Parliament. The Bill proposes to amend:

- The *Duties Act 2001* (TAS): so that the consideration for a dutiable transfer of land will exclude building works or other improvements agreed to be made to the land, which are performed after the land transfer as part of an arrangement between associated persons. Furthermore, for single-dwelling house and land packages, the consideration for the land transfer will also exclude improvements that are performed on the property after the agreement for sale is entered into. Full duty will continue to apply to the purchase of spec homes, where the improvements have already been completed at the time of agreement and land transfer.
- The *First Home Owner Grant Act 2000* (TAS): to extend the AUD20,000 grant for eligible first home buyers who enter an eligible transaction for the purchase of a newly constructed home, those who have new homes constructed, and owner-builders. The grant will be available for eligible transactions entered into from 1 July 2017 to 30 June 2018 inclusive.

State cases update

- The NSW Civil and Administrative Tribunal in *Alexander v Chief Commissioner of State Revenue* has affirmed the duty assessments issued by the Chief Commissioner in relation to the transfer of property under a deceased estate. The duty was assessed in accordance with section 63(2) of the *Duties Act 1997* (NSW), which reduces the dutiable value of the property where the beneficiary had an entitlement to the property under the will. The Tribunal held that the application of section 63(2) is not restricted to commercial transactions, and that the Chief Commissioner's calculation of the reduction under section 63(2) was correct.
- The NSW Civil and Administrative Tribunal in *D W Tolson Management Pty Ltd v Chief*

Commissioner of State Revenue has affirmed the land tax assessments issued by the Chief Commissioner of State Revenue. The Tribunal found that the relevant land was not exempt from land tax as land used for primary production because the maintenance of cattle on the land for the purposes of disposing of mushroom waste from another property did not satisfy the conditions for the exemption, nor did activity involved in gaining approvals necessary for a new mushroom growing facility on the land.

- The NSW Civil and Administrative Tribunal in *Bisvic Pty Limited v Chief Commissioner of State Revenue* has affirmed the Chief Commissioner of State Revenue's earlier decision. The Tribunal upheld that land was not eligible for an unutilised value allowance in respect of relevant years in which the applicant was found not to be conducting the business of grazing. For the other years, the Tribunal set aside the Chief Commissioner of State Revenue's decision and held that the land was used for a grazing business.
- The NSW Civil and Administrative Tribunal in *Esplanade Wollongong Unit Trust v Chief Commissioner of State Revenue* has set aside the Chief Commissioner of State Revenue's decision regarding the application of stamp duty to a series of transactions involving land originally held by two parties as tenants in common and a subsequent transfer of a half interest to one party, settlement of a trust and a subsequent change in trustee. The Tribunal agreed with the Chief Commissioner of State Revenue on most aspects (except for the valuation of the property), including that, in respect of the second disputed transfer (which involved the transfer of the property to a new trustee), ad valorem duty was payable because a half interest in the property was held by the transferor in its own right and not as trustee. The Tribunal also held that the premium rate of duty applied because the property was used for residential purposes and was not used at the relevant time as trading stock.
- The Victorian Civil and Administrative Tribunal in *Fagridas v Commissioner of State Revenue* has affirmed the duty assessments issued by the Commissioner of State Revenue, finding that the transfer of land was not exempt from duty under section 36A of the *Duties Act 2000* (VIC). The Tribunal affirms that the land was transferred to the applicants as purchasers pursuant to a contract of sale and not as beneficiaries of the Trust.

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Superannuation update

Application of excess non-concessional contributions tax

In *Pitts v Commissioner of Taxation*, the Administrative Appeals Tribunal (AAT) considered the application of the excess non-concessional contributions tax in respect of a taxpayer that undertook a re-contribution strategy for AUD328,000 and where two years later, the taxpayer contributed an additional AUD325,000, thus breaching the non-concessional contribution cap. The AAT affirmed the Commissioner's objection decision and found there were no 'special circumstances' to allow for the exercise of discretion to disregard or allocate the excess non-concessional contributions to another financial year.

Guidance notes for super changes

The Australian Taxation Office (ATO) issued [guidance notes](#), which provide an explanation of the new superannuation changes and actions for taxpayers to undertake before and after 1 July 2017. The guidance notes also include practical examples to identify how the changes apply in different situations.

Addendum to Ruling on income tax deductions for superannuation funds

On 17 May 2017, the ATO issued an addendum to [TR 93/17](#), which deals with deductions available to superannuation funds, including the methodologies that can be applied in relation to the apportionment of certain expenses.

In the addendum, the ATO has included a number of new examples relating to the treatment and apportionment of expenses. These examples provide some insight into the ATO's view on the treatment of some expenses within a super fund.

The addendum contains subtle changes relating to expenses and the apportionment of expenses. Funds should take these into consideration in determining deductible expenses and how to apportion the expenses between different types of income.

Recent amendments to various superannuation related matters

The [Treasury Laws Amendment \(2017 Measures No 2\) Bill 2017](#) (which made changes to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*) was introduced into Parliament on 25 May 2017 and subsequently enacted. This Bill contains several amendments to the new superannuation laws, including changes to the transfer balance caps, capital gains tax relief for superannuation funds, and more.

Key superannuation rates and thresholds for 2017-18

The ATO has released the [key superannuation rates and thresholds](#) for the 2017-18 income year.

Retirement Income Streams Review

Treasury has released the [Retirement Income Streams Review](#), which examines the minimum drawdown rates for account-based pension and

regulatory barriers to retirement income stream products. Key points of the review include:

- The review found that the current minimum drawdown rates are 'about right', and recommended that the Australian Government Actuary review the rates every five years.
- Changes are recommended to the regulatory framework to allow for the development of annuity-style retirement income stream products.

Actuarial Certification Test for Comprehensive Income Products for Retirement

The Australian Government Actuary has released a [report](#) which outlines a proposed actuarial income efficiency test to certify that a retirement income product meets the standards required of a Comprehensive Income Product for Retirement (CIPR) (The standards were previously outlined in the Government's [discussion](#) paper released on 15 December 2016). The report also discusses the limitations and the key issues raised by the Actuarial Technical Expert Group during the consultation process.

Superannuation reform: commutation of a death benefit income stream before 1 July 2017

The ATO has released Practical Compliance Guideline [PCG 2017/6](#) which deals with the commutation of a death benefit income stream before 1 July 2017. The Guideline outlines the circumstances in which the ATO will not apply compliance resources to review whether a self-managed super fund (SMSF) has satisfied the requirement to cash out the death benefit where the commutation and roll-over occurred prior to 1 July 2017 and the member of the SMSF was the spouse of the deceased on the deceased's date of death and the superannuation lump sum paid from the commutation is a member benefit for income tax purposes.

SMSF statistical report: January-March 2017

The ATO has released its first quarterly self-managed super fund [statistical report](#) for 2017.

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Legislative update

Federal Parliament finished its Winter session in the early hours of Friday 23 June 2017. It will next resume sitting on Tuesday 8 August 2017.

Commonwealth tax and superannuation measures introduced into Parliament since our last TaxTalk include:

- The [Major Bank Levy Bill 2017](#) and [Treasury Laws Amendment \(Major Bank Levy\) Bill 2017](#), which was introduced into the House of Representatives on 30 May 2017 and since completed its passage through Parliament, proposes to implement the 2017-18 Federal Budget announcement to impose with effect from 1 July 2017 a new bank levy on certain authorised deposit-taking institutions (ADIs) with total liabilities of greater than AUD100 billion.
- [Treasury Laws Amendment \(Foreign Resident Capital Gains Withholding Payments\) Act 2017](#), introduced into the House of Representatives on 1 June 2017 and subsequently enacted, modifies the foreign resident capital gains withholding regime to increase the withholding rate from 10 per cent to 12.5 per cent and reduce the withholding threshold for real property from AUD2 million to AUD750 000.
- [Treasury Laws Amendment \(GST Integrity\) Bill 2017](#), which was introduced into the House of Representatives on 1 June 2017 and since completed its passage through Parliament, proposes to amend the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) to introduce integrity measures in relation to the goods and service tax treatment of precious metals.
- [Excise Tariff Amendment \(Tobacco Duty Harmonisation\) Bill 2017](#) and [Customs Tariff Amendment \(Tobacco Duty Harmonisation\) Bill 2017](#), which was introduced into the House of Representatives on 1 June 2017, proposes to amend the *Excise Tariff Act 1921* and *Customs Tariff Act 1995* (Cth) to harmonise the rates of excise and excise-equivalent customs duty applying to different tobacco products.
- [Commercial Broadcasting \(Tax\) Bill 2017](#), which was introduced into the House of Representatives on 15 June 2017, proposes to impose a new tax to apply from 1 July 2017 to certain transmitter licences that are associated with commercial broadcasting.
- [Customs Tariff Amendment \(Incorporation of Proposal and Other Measures\) Bill 2017](#), which was introduced into the House of Representatives on 21 June 2017, proposes to make a number of amendments to the *Customs Tariff Act 1995* (Cth).
- [Treasury Laws Amendment \(2017 Measures No 4\) Bill 2017](#), which was introduced into the House of Representatives on 22 June 2017, proposes to make amendments to the Wine Equalisation Tax (WET) producer rebate, and provide income tax relief for transfers within a fund to a MySuper product.

Other legislative instruments or regulations since our last TaxTalk publication include:

- [Income Tax Assessment \(1936 Act\) Amendment \(Defence Force Eligible Duty\) Regulations 2017](#) amended the *Income Tax (1936 Act) Regulation 2015* to update the list of defence force operations that are 'eligible duty', so members of the Australian Defence Force serving in certain operations overseas may receive their remuneration exempt from income tax.
- [Taxation Administration Act Withholding Schedules 2017](#) makes the schedules for withholding amounts under the pay as you go (PAYG) system from 1 July 2017, specifying the amount, formulas and procedures to be used for working out the amount required to be withheld by an entity.
- [Customs Tariff Amendment Regulations 2017](#) amends *Customs Tariff Regulations 2004* to ensure that the preferential rates of duty that are available to certain countries and places are maintained, and to make other related amendments including the removal of redundant provisions.
- [Classes of Electronic Payment System Transactions Exempt From Being Reported in Third Party Reports Determination 2017](#) and [Classes of Electronic Payment System Transactions Exempt In Certain Years From](#)

Being Reported In Third Party Reports Determination 2017 exempts administrators of a payment system (within the meaning of the *Payment Systems (Regulation) Act 1998*) from having to include specified classes of transactions in reports prepared and lodged in relation to

Item 9 in the table in section 396-55 of Schedule 1 to the *Taxation Administration Act 1953* relevant to certain transactions involving electronic payments and for certain years.

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Other news

When an amount is 'credited' by a Corporate Limited Partnership

On 17 May 2017, the Australian Taxation Office (ATO) issued Draft Taxation Ruling [TR 2017/D4](#) which deals with when an amount is taken to be credited to a limited partner in a corporate limited partnership (CLP). By way of background, an amount which a CLP pays or credits against the profits or anticipated profits of the partnership, or otherwise in anticipation of the profits of the partnership, to a partner will be a deemed dividend paid out of profits.

According to the draft ruling, an amount is credited to a partner when the following conditions are satisfied:

- a limited partnership applies or appropriates its resources to confer a benefit on the partner,
- the benefit is not subject to a condition precedent,
- the benefit is legally enforceable by the partner, and
- is separate and distinct from the partner's existing interest in the CLP and its assets.

A mere credit entry in a CLP's accounts is not a 'crediting', unless the above conditions are satisfied. The fact that an amount credited to the partner is repayable or relinquished does not prevent an amount from being credited if the conditions outlined above are satisfied. However, there must be an in substance appropriation or application of the resources of the CLP to confer a benefit on a partner.

Whilst the ATO's views in TR 2017/D4 provides some guidance on when a 'crediting' can occur, it requires an analysis of the relevant partnership documents to determine when and whether a 'crediting' occurs.

Submissions on the draft ruling were due to be provided by 30 June 2017. For further information, refer to [PwC Australia's TaxTalk Alert](#).

Some tax thresholds for 2017-18

The ATO has issued the following updates to certain annual thresholds relevant for the 2017-18 financial year:

- [Luxury Car Tax Determination 2017/1](#) which sets out the luxury car tax threshold as AUD65,094 and the fuel-efficient car limit as AUD75,526.

- [Taxation Determination 2017/16](#) which sets the Capital Gains Tax improvement threshold for the 2017-18 income year as AUD147,582.

ATO's focus areas for privately owned and wealthy groups

The ATO has updated its document, '[What attracts the ATO's attention for privately owned and wealthy groups?](#)', which consider the behaviours, characteristics and tax issues that attract its attention for privately owned and wealthy groups.

In addition to the usual areas for focus (such as losses, deemed dividends and profit shifting), the following are worth noting:

- tax outcomes relating to lifecycle assets,
- property and construction,
- Family Trust Distributions Tax,
- Fringe Benefits Tax and car parking valuation,
- non-lodgment of the International Dealings Schedule, and
- foreign resident capital gains withholding.

Potential reforms to Deductible Gift Recipients tax arrangements

The Government has [released](#) a [discussion paper](#) that considers potential reforms to Deductible Gift Recipient (DGR) tax arrangements. The paper outlines a number of proposals to strengthen the DGR governance arrangements, reduce administrative complexity and ensure that an organisation's eligibility for DGR status is up to date. Comments can be made until 14 July 2017.

Federal Court finds taxpayer was correctly assessed on trust amounts

The Federal Court in [Hart v Commissioner of Taxation \(No 4\)](#) has affirmed the Commissioner's decision regarding the assessability of amounts received from a trust under section 97, or alternatively under section 101, of the *Income Tax Assessment Act 1936* (ITAA 1936). The taxpayer failed to prove that the applicable amounts were received by way of a loan. The Court also held in the alternative, and also in respect of a second amount which was a portion of the income earned by a

group of trusts associated with the taxpayer, that the general anti-avoidance provision (Part IVA of the ITAA 1936) applied as the taxpayer had entered into the scheme with the dominant purpose of obtaining a tax benefit, rejecting the taxpayer's argument that the dominant purpose of the scheme was to achieve asset protection.

Distributions to non-beneficiaries of a trust

Draft Taxation Determination [TD 2017/D1](#) considers whether a person who is not a beneficiary of a trust is capable of receiving a distribution. According to TD 2017/D1, where a person who is not a beneficiary receives a benefit from a distribution transaction, that benefit is a distribution to the extent that its amount or value exceeds the amount or value of any consideration given in return. This determination is relevant in the context of family trust distribution tax (FTDT), which is imposed on a trustee of a family trust, or certain interposed entities (including companies or partnerships) that confer a present entitlement on, or distributes income or capital to, an entity that is not a member of the relevant family group. The final Determination will not apply to distribution transactions which have begun to be carried out before 7 June 2017.

Draft tax ruling on employee remuneration trusts

The ATO has released Draft Taxation Ruling [TR 2017/D5](#) which sets out the Commissioner's preliminary views on how the taxation laws apply to employee remuneration trust (ERT) arrangements that operate outside of Division 83A of the *Income Tax Assessment Act 1997* (ITAA 1997). An ERT arrangement involves the establishment of a trust to facilitate the provision of payments and/or other benefits to employees of an employer. The trustee provides the benefits at the direction of, or by arrangement with, the employer. TR 2017/D5, which replaces Draft Taxation Ruling [TR 2014/D1](#), covers the income tax, capital gains tax and fringe benefits tax consequences for the employer, employees and the trustee of the ERT trust associated with making a contribution to an ERT, investing the contribution, and providing benefits to employees from the ERT.

Subject to transitional arrangements, when the final Ruling is issued, it is proposed to apply both before and after its date of issue. Since the Commissioner has issued private rulings in the past which evidence a more favourable prior general administrative practice in respect of the deductibility to employers of contributions made to the trustee than some of

the views contained in this draft Ruling and the previous TR 2014/D1, the Commissioner will not undertake compliance activities to apply the views expressed in this Draft Ruling in this regard to those contributions made prior to 5 March 2014 that would have been accepted as being deductible under this prior practice.

Comments can be made on the Draft Ruling until 21 July 2017.

IGOT to review the future of the tax profession

The Inspector-General of Taxation (IGOT) has [announced](#) a review into the future of the tax profession. The review seeks to raise awareness about the risks, challenges and opportunities presented by technological, social, policy and regulatory changes, and will also look at the inter-relationship between members of the tax profession, the ATO and the Tax Practitioners Board. Refer to the [terms of reference](#) for further information. Submissions to the review can be made until 28 July 2017.

IGOT's report into the review of the ATO's employer obligations compliance activities

The IGOT has released his [report in relation to the Review into the ATO's employer obligations compliance activities](#). The IGOT has made various recommendations including:

- two recommendations for the Government's consideration which are aimed at reducing compliance costs through a review of the Fringe Benefits Tax regime and expanding the Taxable Payments Reporting System to the engagement of contractors across all industries, and
- nine recommendations to the ATO which address the compliance burden and a number of other important issues such as the classification of workers as contractors or employees, the ATO's capability framework and risk identification processes as well as the implementation of the Single Touch Payroll initiative. The ATO has agreed in full or in part with seven of the nine recommendations.

Judicial review of Commissioner's decision to rule

The Federal Court in [Hancon v Commissioner of Taxation](#) has quashed the Commissioner's decision to decline to make a private ruling and ordered that

that the matter be remitted to the Commissioner to deal with the ruling application. In considering the taxpayer's private ruling application, the Commissioner did not request further required information, despite being obligated to do so according to the relevant tax laws. Instead, the Commissioner declined to rule. The Court held that the failure to request the further information resulted in an error of law under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and a jurisdictional error for the purposes of the *Judiciary Act 1903* (Cth).

ATO updated data matching program for ride-sourcing

The ATO data matching program has been [amended](#) from the original version published in December 2016 to include ride-sourcing facilitators as additional data providers and to extend the financial years included in the program to cover the 2015-16 to 2018-19 financial years.

ATO report on its systems outages

The ATO has released its [report](#) into the systems outages experienced in December 2016 and February this year. The report incorporates findings from an ATO internal review and the technical advice and separate report prepared by independent expert reviewers. The report indicates that the ATO is committed to addressing each of the areas identified in the report for improvement.

ATO provides certainty for workers affected by Operation Elbrus

The ATO has issued [initial guidance](#) to assist taxpayers who may have been affected by the alleged actions of payroll services companies currently under the joint AFP and ATO investigation, Operation Elbrus. It has indicated that workers will not be penalised when the amount reported as being withheld have not actually paid to the ATO.

Parliamentary report on inquiry into tax deductibility

The House of Representatives Standing Committee on Economics tabled the [report](#) of its inquiry into Tax Deductibility on 15 June 2017. Although the Committee recommended that the Government maintain the current personal income tax framework that allows deductions for valid expenses, it has recommended the ATO review its compliance activity in relation to work related

expenses. It was also recommended that the ATO undertake a detailed review of tax deductions to identify areas that are open to systemic abuse and that it recommend amendments to law or policy where appropriate.

In relation to company income tax deductions (including the deductibility of interest), the Committee saw no evidence for change, and in relation to base erosion and profit shifting (BEPS), it recommended that the Government continue its work in this area.

Australia - Singapore Prime Ministerial statement and new visa

In a [joint press statement](#) released by the Prime Ministers of Australia and Singapore, various trade initiatives in the region were discussed including:

- Singapore and Australia's support for the Trans-Pacific Partnership with the remaining 11 members after the withdrawal of the United States, and
- the upgraded Singapore-Australia Free Trade Agreement, which will come into force this year.

During his visit to Singapore, the Australian Prime Minister also [announced](#) a new long-term, multiple entry visa option for Singaporeans visiting Australia, and a new reciprocal Work and Holiday maker program to commence from 1 August 2017.

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