

*July 2018*

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# TaxTalk Monthly

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



# Corporate Tax Update

## Update on corporate tax rate reduction

As at the end of the 2017-18 financial year, the Government's Enterprise Tax Plan which would see the tax rate for all companies progressively reduced to 25 per cent ([Treasury Laws Amendment \(Enterprise Tax Plan No. 2\) Bill 2017](#)) remains before Federal Parliament.

The Government has [indicated](#) that it needs more time to make the argument for the rate cut to the Senate crossbench and has decided to defer consideration of the legislation. The Bill will now not be considered until after Parliament resumes for the Spring sitting scheduled to commence on 13 August 2018.

The Minister for Finance, Mathias Cormann, published during June 2018 an [opinion piece](#) outlining the case for the Government's plan to reduce the tax rate for all companies.

The following table shows the currently enacted and proposed rates of tax applicable to corporate tax entities under the Government's plan. It should also be noted that proposed integrity rules are also before Parliament ([Treasury Laws Amendment \(Enterprise Tax Plan Base Rate Entities\) Bill 2017](#)) to ensure that from the 2017-18 income year, a corporate tax entity will not qualify for the lower corporate tax rate if more than 80 per cent of its assessable income for that income year is passive income.

**Table 1: Corporate tax rates applying under the enacted and proposed amendments (shaded area).**

Company with aggregated turnover up to...	Tax Rate (%)										
	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27+
\$10m	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27	26	25
\$25m	30	27.5	27.5	27.5	27.5	27.5	27.5	27.5	27	26	25
\$50m	30	30	27.5	27.5	27.5	27.5	27.5	27.5	27	26	25
\$100m	30	30	30	27.5	27.5	27.5	27.5	27.5	27	26	25
\$250m	30	30	30	30	27.5	27.5	27.5	27.5	27	26	25
\$500m	30	30	30	30	30	27.5	27.5	27.5	27	26	25
\$1b	30	30	30	30	30	30	27.5	27.5	27	26	25
All others	30	30	30	30	30	30	30	27.5	27	26	25

## Senate inquiry into Corporate Tax Avoidance

The Senate Economics Committee inquiry into Corporate Tax Avoidance has released its final report. Although the Committee recognises that considerable progress has been made over the last three years to address issues associated with multinational tax avoidance, it reports that further measures need to be taken to improve the integrity of the tax system so multinationals appropriately contribute to Australia's revenue base. In this context, the majority of the Committee has made the following key recommendations:

- The thin capitalisation rules be amended so that the worldwide gearing ratio is the only method

by which interest related deductions should be calculated.

- The Government undertake an independent review into the detriment to Australian tax revenue that arises from the current transfer pricing regime, and explore options to modify transfer pricing rules, or other tax laws, to ensure multinational enterprises make the appropriate contribution to Australian tax revenue.
- All companies with a total income equal to or exceeding AUD100 million for an income year be required to release tax information under the tax transparency measures.
- Companies, trusts and other corporate structures be required to disclose information regarding their beneficial ownership with a publicly

accessible, central register maintained by a suitable Government agency.

- All companies, trusts and other financial entities with income above a certain amount be required to lodge general purpose financial statements with the Australian Securities and Investments Commission (ASIC).
- Excerpts of Country-by-Country reports be made publicly available free of charge.
- The existing voluntary tax transparency code be converted, as soon as practicable, to a mandatory code for all large and medium corporations.
- The Australian Taxation Office (ATO) include a dedicated section on the number and value of significant tax settlements of AUD50 million or greater in its annual report.
- The Government finalise and release its response to the Callaghan report into the Review of the Petroleum Resource Rent Tax (PRRT); overhaul uplift rates for future PRRT eligible projects; the ordering of deductions be rationalised for future PRRT eligible projects so that those with the highest compounding rates are used first for tax deduction purposes, and the gas transfer pricing method for PRRT eligible projects be reformed to make it simpler and more transparent.

### **ASIC focus on financial reports**

ASIC has [announced](#) its areas of focus for 30 June 2018 financial reports of listed entities and other entities of public interest with many stakeholders. This reporting season, the regulator has identified as focus areas the application of the new accounting standards (including revenue recognition; financial instruments; lease accounting; accounting by insurers), the definition and recognition criteria for assets, liabilities, income and expenses, tax accounting, accounting policy choice and key disclosures. For further information, refer to this [Straight away alert](#).

### **Junior Mineral Exploration Incentive allocations**

Under the Junior Minerals Exploration Incentive (JMEI), a total allocation of AUD100 million over four years is to apply from 2017-18 to allow greenfields exploration programs to distribute their tax losses as a credit to Australian resident shareholders. Refer to our [TaxTalk Alert](#) for background information.

The ATO has [released](#) the report on the allocations of the JMEI for the 2017-18 and 2018-19 financial years. The report contains the name, ABN and the exploration credit allocation for successful applicants.

The Government has [announced](#) that more than AUD31 million has been allocated to 46 mining companies for 2018-19 and this latest round of applications was over-subscribed.

### **Government response to Innovation and Science Australia 2030 plan**

The Government has [released](#) its response to Innovation & Science Australia's Australia 2030 plan. The Government's response provides a strong endorsement of the 2030 Plan's recommendations. The Government notes the Plan's recommendation in relation to the strengthening of Government support for business research and development (R&D) and indicates that it is committed to creating an environment that enables and drives increases in business R&D expenditure. It further notes its 2018-19 Federal Budget package of reforms to the R&D Tax Incentive that will better target the program and improve its integrity and fiscal affordability. For further information, please refer to the Government's [media release](#).

### **Draft law on framework for corporate collective investment vehicles**

Treasury has released for consultation draft law for the [first tranche](#) of the framework for the Corporate Collective Investment Vehicle (CCIV). The CCIV aims to offer an internationally recognisable investment vehicle which can be readily marketed to foreign investors, including through the Asia Region Funds Passport. This exposure draft includes revisions from the consultation the Government undertook in September 2017 including:

- a revised draft of the new chapter in the Corporations Act, containing the core provisions establishing how the CCIV and its sub-funds will operate
- amendments to apply Chapters 2A to 2P of the Corporations Act (such as the meetings rules and members' rights and remedies) to CCIVs, and
- an outline in the explanatory materials of the proposed legislative approach to depository independence.

Submissions are due 11 July 2018.

The second tranche of consultations will cover the remaining substantive aspects of the regulatory framework for CCIVs, including external administration, consequential amendments, and penalty provisions.

## Draft tax determination on 'use' of a mining, quarrying or prospecting right

The ATO has issued draft tax determination [TD 2018/D2](#) which considers the ATO's preliminary views on what constitutes 'use' (and potentially first

use) of a mining, quarrying or prospecting right (MQPR), that is a depreciating asset, for the purposes of subsection 40-80(1) of the *Income Tax Assessment Act 1997*. In brief, the ATO concludes that merely holding, or meeting the conditions or requirements to hold, or retain, an MQPR does not constitute a 'use' of it. Comments can be made on the draft determination until 13 July 2018.

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## Employment Taxes Update

### Superannuation guarantee enforcement Bill still before Parliament

The [Treasury Laws Amendment \(2018 Superannuation Measures No. 1\) Bill 2018](#), which includes the Government's superannuation guarantee (SG) amnesty, is still before Federal Parliament as at 30 June 2018 (passed by the House of Representatives and introduced in the Senate).

The Bill contains the one-off 12-month amnesty to encourage employers to self-correct historical SG non-compliance for any period from 1 July 1992 up to 31 March 2018, without penalty. In addition it will allow employees to apply for an 'employer shortfall exemption certificate', which prevents their employer from having to make mandatory superannuation guarantee contributions if the employee has already met their concessional contributions cap with another employer during the same financial year.

With Parliament now in recess, the Bill cannot be considered until it resumes sitting from 13 August 2018.

### Status of SG compliance Bill

The [Treasury Laws Amendment \(2018 Measures No. 4\) Bill 2018](#), which contains a range of measures targeting employer non-compliance with SG obligations, is currently before the Senate. The Senate Economics Legislation Committee has tabled its report on the Bill and has recommended that it be passed.

By way of background, this Bill contains a range of measures that were based on recommendations from the Superannuation Guarantee Cross-Agency Working Group, including enabling the Commissioner of Taxation to issue directions to employers to pay unpaid SG and undertake SG education courses, and to disclose more information about SG non-compliance to affected employees, as well as strengthen the Commissioner's ability to collect SG charge and Pay As You Go (PAYG) withholding liabilities.

In addition to the SG measures, the Bill proposes amendments to rules about the sharing and verification of Tax File Numbers (TFNs) between the Commissioner and other Commonwealth agencies.

This Bill will be considered again after Federal Parliament resumes sitting from 13 August 2018.

## **Payroll tax measures from recent State Budgets**

The following announcements were made in the respective State Budgets released during the month:

- In New South Wales, from 1 July 2018, payroll tax thresholds will be progressively lifted from AUD750,000 to AUD1 million over four years ([State Revenue Legislation Amendment Bill 2018](#)) as follows:
  - from 1 July 2018 – AUD850,000
  - from 1 July 2019 – AUD900,000
  - from 1 July 2020 – AUD950,000
  - from 1 July 2021 – AUD1,000,000
- In Tasmania, a number of payroll tax measures were announced and subsequently introduced into Parliament ([Taxation Related Legislation \(Housing Availability and Payroll Relief\) Bill 2018](#)), including:
  - the extension of the Payroll Tax Rebate Scheme for apprentices and trainees in areas of skills shortages;
  - a reduced rate of payroll tax (4 per cent) from 1 July 2018 for wages between AUD1.25 million and AUD2 million and,
  - a three-year payroll tax exemption for wages paid to employees in regional Tasmania, where a mainland business relocates and establishes operations in a regional area between 1 July 2018 and 30 June 2021.

In addition, the [State Taxation Acts Amendment Bill 2018](#), which was introduced into the Victorian Parliament in May 2018 to reduce the rate for payroll tax payable by certain regional Victorian businesses from 1 July 2018 and to increase the payroll tax-free threshold in Victoria for all employers to AUD650,000, has been enacted.

Similarly, in Queensland, the [Revenue Legislation Amendment Bill 2018](#) which extends the 50 per cent payroll tax rebate on the wages of apprentices and trainees for a further 12 months until 30 June 2019, has also been enacted.

## **Single Touch Payroll: exemption for employers having seasonal workforce**

A new [legislative instrument](#), *Taxation Administration – Single Touch Payroll – Exemption for Employers Having a Seasonal Workforce*, exempts an entity that has, or reasonably

expects to have, fewer than 20 employees for 10 months out of each of the relevant years from reporting under Single Touch Payroll. The instrument recognises that, for some employers, the number of individuals employed on 1 April may be higher than is the case for the majority of the year. That may be due to seasonal or other industry specific factors. Employees, for the purpose of the headcount, can include full-time, part-time and casual employees.

## **Employment agency contract payroll tax case (NSW)**

In [H R C Hotel Services Pty Ltd v Chief Commissioner of State Revenue \[2018\] NSWSC 820](#), the Supreme Court dismissed a taxpayer's appeal against payroll tax assessments relating to the employment agency contract provisions. The case centred around the plaintiff's use of subcontractors to fulfil its contracts with a number of hotels in relation to the cleaning and servicing of hotel rooms. The subcontractors were not a party to the agreements between the plaintiff and the hotels. The plaintiff was of the opinion that the contract was for a specific result, rather than for the procurement of service providers to work in the hotels' business.

A number of issues were considered in the Supreme Court, including:

- Whether contracts between the plaintiff and the hotels were 'employment agency contracts'; and
- What amounts were to be deemed as 'wages' if the contracts were employment agency contracts.

The Court found that in order to perform the obligation of cleaning and servicing hotel rooms to the requisite standard (i.e. to produce the required result under the hotel client contracts), it was necessary from time to time for the plaintiff to procure the services of additional housekeeping staff under the subcontracting arrangements. The fact that those services were procured for the purpose of performance of the obligations under the hotel client contracts meant that the hotel contracts were ones 'under which' the services were procured in the sense of the services being required to be supplied for the purposes of those contracts.

Additionally, the subcontractors were procured by the plaintiff 'for' the hotel clients' businesses and were considered to be 'in and for the conduct of those businesses'. This was on the basis that the subcontractors did form an 'addition to the hotel's workforce', in that they wore hotel branded uniforms, liaised with guests and other hotel staff, used hotel communication channels, and were entitled to use hotel staff dining facilities during breaks. As such, it was found that the hotel contracts were employment agency contracts, with the plaintiff characterised as the 'deemed' employer.

In addressing what amounts were to be deemed as 'wages' for payroll tax purposes, the Court again found in favour of the Chief Commissioner, dismissing the plaintiff's argument that only the payments made to the individual service providers should be subject to payroll tax, preferring instead to view the payments made by the plaintiff to the subcontractor entities as taxable wages for payroll tax purposes.

### **Tribunal confirms decision not to de-group taxpayer for NSW payroll tax purposes**

The NSW Civil and Administrative Tribunal – Appeal Panel in *Cessnock Tyres Pty Ltd v Chief Commissioner of State Revenue [2018] NSWCATAP*

[147](#) has dismissed the taxpayer's appeal and confirmed the decision of the Chief Commissioner not to exercise discretion to de-group the taxpayer for payroll tax purposes after considering the nature and degree of ownership and control of the relevant businesses.

### **FBT car parking threshold**

The ATO has released [TD 2018/7](#) during the month, which provides that the fringe benefits tax (FBT) car parking threshold for the FBT year commencing on 1 April 2018 is AUD8.83 (replacing the amount of AUD8.66 which applied to the FBT year ended 31 March 2018).

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## Global Tax Update

### Latest news from international tax and transfer pricing

#### **Corporate tax residency – Determining central management and control**

On 21 June 2018, the Australian Taxation Office (ATO) finalised its taxation ruling dealing with the central management and control test for determining the residency of a company ([TR 2018/5](#)), and also released a draft Practical Compliance Guideline ([PCG 2018/D3](#)) to assist taxpayers to comply with the new ruling. The draft PCG recognises that many foreign incorporated companies will be affected by the withdrawal of [TR 2004/15](#), which previously provided the ATO view on the test, and provides a transitional period until 13 December 2018 where the Commissioner will not

apply resources to review or disturb a foreign company's status as non-resident. Many taxpayers will be required to revisit their governance, systems and processes in relation to the management of foreign incorporated companies as a matter of urgency given the 13 December 2018 transitional period deadline that has been proposed. Comments can be made on the draft PCG until 20 July 2018. Refer to our [TaxTalk Alert](#) for details of the new ruling and its implications for affected companies.

#### **Draft compliance guideline on restructuring for anti-hybrid rules**

On 22 June 2018, the ATO released a draft Practical Compliance Guideline ([PCG 2018/D4](#)) which

provides guidance on the ATO's compliance approach to the application of general anti-avoidance provision (Part IVA of the *Income Tax Assessment Act 1936*) to restructures that have the effect of preserving Australian tax benefits that would otherwise be disallowed under the hybrid mismatch rules. The purpose of the draft PCG is to assist taxpayers to manage their compliance risk by outlining straightforward ('low risk') restructuring to which the Commissioner of Taxation will not seek to apply Part IVA. The draft PCG also provides examples of 'higher risk' restructuring that will not preclude scrutiny of the arrangement if it is one that otherwise has features of artificiality or contrivance. Comments can be made on the draft PCG by 20 July 2018. Refer to our [TaxTalk Alert](#) for the key aspects raised in the draft PCG.

### **ATO update to cross-border related financing guidance**

The ATO has made updates to its Practical Compliance Guideline [PCG 2017/4: Cross-border related party financing](#). The ATO has amended this PCG to address minor formatting corrections and insert new comments which deal with pre-asset revaluation safe harbour gearing ratios.

### **ATO on transfer pricing risks**

ATO Deputy Commissioner Mark Konza in a [speech](#) to the TPMinds Australia Conference discussed various transfer pricing issues. In the context of the Diverted Profits Tax (DPT), it was highlighted that the ATO is assessing arrangements including those which involve any of the following: transfer or effective transfer of valuable intangible assets offshore, transfer or effective transfer and/or centralisation of functions and/or risks offshore, significant transfer of value relative to overall profitability, the mischaracterisation of payments (e.g. service fees rather than royalties).

### **US tax reform developments**

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

- [Tax reform readiness – The global company perspective](#).
- [Tax reform readiness – Business decision-making in the post-reform world: early observations](#).

- [Tax reform readiness – Global intangible low-taxed income \(GILTI\) mechanics impacting multinational entities](#).
- [Taxpayers with under-depreciated assets may have opportunities for permanent tax benefits from tax reform](#).
- [US base erosion and anti-abuse tax \(BEAT\) regime creates uncertainty for global banks](#). In addition, this [PwC comment letter addresses BEAT and interest expense limitation issues](#).

### **OECD developments**

The Organisation for Economic Cooperation and Development (OECD) and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) have [released](#) a draft toolkit that will help developing countries identify and cost potential behavioural responses by mining investors to tax incentives. Comments are due by 6 July 2018.

The OECD and the African Tax Administration Forum [signed](#) a renewal of their Memorandum of Understanding agreeing to continue to work together to improve tax systems in Africa.

In other developments:

- Serbia has [deposited](#) its instrument of ratification for the [Multilateral Base Erosion and Profit Shifting \(BEPS\) Convention](#).
- [Liberia, Paraguay and Peru](#) have joined the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#).
- Italian Ministerial decree on transfer pricing incorporates latest OECD principles. For further information on this, refer to PwC's [Global Tax Insights](#).

### **OECD CbC reporting peer reviews**

The OECD has [released](#) the [first peer reviews of the Country-by-Country \(CbC\) reporting initiative](#), demonstrating strong progress. The first annual peer review focuses mainly on the domestic legal and administrative framework, and reflects implementation as of January 2018. It is part of a phased approach which gradually monitors the domestic legal and administrative framework, the exchange of information framework, and the confidentiality and appropriate use conditions over three annual reviews (starting in 2017, 2018 and 2019). Highlights include:

- 60 jurisdictions have already introduced legislation to impose a filing obligation on multinational groups. The remaining jurisdictions are working towards finalising their

domestic legal framework with the support of the OECD.

- Where legislation is in place, the implementation of CbC reporting has been found largely consistent with the BEPS Action 13 minimum standard. Some jurisdictions have received recommendations for improvement on certain specific aspects of their legislation and work has already begun to bring the provisions concerned in line with the standard.

### **EU Mandatory Disclosure Directive aims to strengthen tax transparency and deter aggressive tax planning**

The Economic and Financial Affairs Council, which is responsible for European Union (EU) tax policy, formally adopted the Council Directive that amends Directive 2011/16/EU on administrative cooperation in the field of taxation with regard to mandatory automatic exchange of information related to reportable cross-border arrangements. The main purpose of this Directive is to strengthen tax transparency and deter aggressive tax planning. Although 'aggressive tax planning' is not defined, the Directive references a number of pre-determined 'hallmarks' which could render a cross-border arrangement reportable. Although the actual reporting of such transactions is not required until 2020, taxpayers and intermediaries should start

planning now for how they will document the reportable transactions and reportable information. For further information, refer to PwC's [Global Tax Insights](#).

### **Italian Revenue Agency allows for unilateral transfer pricing correlative adjustments**

The Italian Revenue Agency has issued rules allowing Italian resident companies and permanent establishments in Italy of any foreign company to obtain a transfer pricing adjustment decreasing the Italian taxable base for corporate income tax purposes, as a consequence of a final transfer pricing adjustment abroad shown to be consistent with the arm's-length principle. For further information, refer to PwC's [Global Tax Insights](#).

### **Dutch government proposes changes to income tax fiscal unity regime**

The Dutch Ministry of Finance submitted a legislative proposal to change the Dutch fiscal unity regime with retroactive effect. If the proposal is accepted, some provisions of the *Dutch Corporate Income Tax Act* will apply as if there was no fiscal unity which could affect the tax positions of multinational enterprises whose Dutch entities currently are included in a fiscal unity. For further information, refer to PwC's [Global Tax Insights](#).

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# Indirect Tax Update

## **Reminder: New GST related laws apply from 1 July 2018**

Under newly enacted law, a number of goods and services tax (GST) related changes take effect from 1 July 2018. Affected entities need to be aware of these changes and prepared for the resulting compliance obligations. These new rules are as follows:

- Offshore low value goods (AUD1,000 and under) supplied by retailers to Australian consumers will be taxable supplies and subject to Australian GST. Under these changes, the vendor collection model will be used for collecting GST, whereby vendors (including online marketplaces and 'redeliverers') will collect the GST on low value imported goods at the time of sale. Refer to our [TaxTalk Alert](#), published on 29 March 2018, for further information.
- Purchasers of new residential premises or potential residential land included in a property subdivision plan will be required to withhold and remit to the Australian Taxation Office (ATO) an amount on account of GST as part of the settlement process. Refer to our [TaxTalk Alert](#), published on 8 February 2018, for further information. Outlined below are some practical issues and commercial observations associated with this new law, which vendors should be aware of to ensure that risks are appropriately managed:
  - **Vendor notification.** The standard land contracts issued by each State or Territory law society may or may not incorporate the GST Withholding notice that a vendor must issue to purchasers under the new law. If the intention is to include the GST Withholding notice within the contract itself and this is not already provided in the standard land contract, then this will need to be inserted by way of additional special conditions.
  - **Vendor protection.** Additional special conditions added to sales contracts may give the vendor increased rights and indemnities and mitigate any risks associated with GST withholding. Including such conditions should give the vendor recourse if the purchaser fails to meet its obligations and the vendor is unable to claim a credit for the GST withholding amount.
  - **Timing of GST withholding credit.** A significant short-term cash flow issue may arise for vendors if the ATO has not allocated the GST withholding payment to the vendor's GST property withholding account by the time the Business Activity Statement (BAS) is lodged for the relevant tax period. Consideration should be given to how vendors can incorporate contractual obligations on buyers to help ensure that the GST withholding credits flow through to the vendor's GST property withholding account in a timely manner.
- **ATO email confirming payment.** The ATO has advised that the GST withholding payment confirmation emails will be sent to the email address currently registered with the ATO (via the business portal or tax agent portal). Consideration should be given to whether it is appropriate to set up a separate email address to track the GST property withholding credit notifications received from the ATO, as these notifications will be an important part of the vendor's GST reconciliation process.
- **Project development agreements (PDAs).** The statutory transitional rules with respect to 'waterfall' clauses that distribute sales proceeds between the parties to a development agreement only apply to existing PDAs and are ineffective where the actual GST liability does not equal the GST withholding amount. Waterfall clauses may need to be amended in existing PDAs and re-drafted in new PDAs to ensure that the distribution of the sales proceeds as between the parties is not adversely affected by the operation of GST withholding.

## **New ATO determinations**

The ATO has issued the following foreign currency determinations relevant to the application of the GST from 1 July 2018:

- **FOREX 2018/1: Goods and Services Tax: Foreign Currency Conversion Determination 2018.** This determination 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.
- **LVG 2018/1: Goods and Services Tax: Foreign Currency (Customs Value of Low Value Goods) Determination 2018.** This determination provides a method for converting an amount expressed in foreign currency to Australian

currency when working out the customs value of goods under subsection 84-79(4) of the GST Act, to determine if there is a supply of low value goods.

In addition, the ATO has issued [GSTR 2004/1A8 – Addendum](#) which amends GSTR 2004/1 to reflect amendments made in relation to the GST treatment of digital currency and specifically reduced credit acquisitions.

## Federal Court grants land developer’s appeal against AAT decision on ‘approved valuation’

The Federal Court in [Decleah Investments Pty Ltd and Prince Removal and Storage Pty Ltd as Trustees for the PRS Unit Trust v Commissioner of Taxation \[2018\] FCA 717](#) has allowed the taxpayer’s

appeal and set aside the [decision](#) of the Administrative Appeals Tribunal which had found that a land developer did provide an ‘approved valuation’ for the purposes of section 75-10 of the GST Act when applying the margin scheme to calculate GST payable on the supply of subdivided lots. The Court held that the failure of the Tribunal to consider the valuation evidence in its reasons for decision was a breach of procedural fairness and an error of law.

## Luxury car tax thresholds for 2018-19

The ATO has issued [LCTD 2018/1](#), which provides that the luxury car tax threshold for the 2018-19 financial year is AUD66,331. The fuel-efficient car limit for the 2018-19 financial year is AUD75,526.

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# Personal Tax Update

## Personal tax cuts now law

The Federal Government’s seven-year personal income tax plan has passed Parliament and is now law, having received Royal Assent (for further information, refer to the Legislative Updates section). Under this plan, changes apply to affect the total income tax payable by some resident and non-resident individuals from as early as 1 July 2018.

Specifically, tax relief will initially apply to low and middle income earners (via a new Low and Middle Income Tax Offset) and an increase to the top threshold at which the 32.5 per cent personal tax bracket applies. Later phases will further increase the threshold for the 32.5 per cent personal income

tax bracket and eventually remove the 37 per cent marginal tax rate.

### 2018-19, 2019-20, 2020-21 and 2021-22 income years

- For Australian and foreign residents, the top threshold for the 32.5 per cent marginal tax rate will increase from AUD87,000 to AUD90,000.

### 2022-23 and 2023-24 income years

- For Australian residents, the top threshold for the 19 per cent marginal tax rate will increase from AUD37,000 to AUD41,000, and the top threshold for the 32.5 per cent marginal tax rate will increase from AUD90,000 to AUD120,000.

- For foreign residents, the top threshold for the 32.5 per cent marginal tax rate will increase from AUD90,000 to AUD120,000.

### 2024-25 income year onwards

- For Australian residents, the top threshold for the 32.5 per cent marginal tax rate will increase from AUD120,000 to AUD200,000. The current 37 per cent marginal tax rate will be removed.
- For foreign residents, the top threshold for the 32.5 per cent marginal tax rate will increase from AUD120,000 to AUD200,000. The current 37 per cent marginal tax rate will be removed.

The tax rate changes which have implications from 1 July 2018 have been incorporated into the applicable [ATO pay as you go \(PAYG\) withholding tax tables](#) which have been updated.

In addition, a new Low and Middle Income Tax Offset will apply in the 2018-19, 2019-20, 2020-21 and 2021-22 income years to Australian resident individuals (and certain trustees) whose income does not exceed AUD125,333. From the 2022-23 income year, a new Low Income Tax Offset will replace both the new Low and Middle Income Tax Offset and the current Low Income Tax Offset and apply to Australian resident individuals (and certain trustees) with taxable income that does not exceed AUD66,667.

## Cents per kilometre rate for work-related car expense deductions

The Australian Taxation Office (ATO) has released a draft determination [MVE 2018/D1](#) which sets out the proposed cents per kilometre deduction rate for car expenses from 1 July 2018. The instrument sets 68 cents per kilometre as the applicable rate for claiming work-related car expense deductions for the income year commencing 1 July 2018 when using the cents per kilometre method. Comments were due on 22 June 2018.

## Tribunal refuses taxpayers request for extension of time to lodge objection

The Administrative Appeals Tribunal (AAT) in [Jonshagen v Commissioner of Taxation \[2018\] AATA 1338](#) has dismissed the taxpayer's request for the extension of time to lodge an objection under section 14ZX of the *Taxation Administration Act 1953* (Cth) as the taxpayer failed to provide any adequate explanation for the delay in making the request which was 10 years out of time. The Tribunal was also of the view that the Commissioner would be prejudiced by the delay if an extension of time was granted.

## Taxpayer not entitled to small business CGT concession

The AAT has found for the Commissioner of Taxation in [Hookey and Commissioner of Taxation \[2018\] AATA 1509](#) and held that the taxpayer, who made a capital gain from the sale of a child care centre businesses, was not entitled to reduce that capital gain by application of the small business capital gains tax concession in Division 152 of the *Income Tax Assessment Act 1997* (Cth) as the maximum net asset value test could not be satisfied. The taxpayer had failed to establish that the contract price for the sale of the businesses appearing on the apparently arms-length contracts was not the business' market value.

## Federal Court finds taxpayer was a tax resident

The Federal Court in [Harding v Commissioner of Taxation \[2018\] FCA 837](#) has held that an Australian citizen who lived and worked overseas was a tax resident of Australia in the relevant income year, which meant that the taxpayer's overseas-earned income was assessable income. Specifically, the Court held that the taxpayer, who had lived outside of Australia for some years, remained a tax resident of Australia because his fully furnished apartment maintained overseas was not permanent enough to be considered to be a 'permanent place of abode' outside of Australia as required under the 'domicile test for residency'. For further details refer to our [TaxTalk Alert](#).

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# State Taxes Update

## Australian Capital Territory Budget

The [Australian Capital Territory Budget 2018-19](#) was delivered by the Territory's Chief Minister and Treasurer Andrew Barr on 5 June 2018. The Budget contained the following key measures:

- A point of consumption wagering tax of 15 per cent will be introduced from 1 January 2019.
- Stamp duty for eligible first home buyers will be fully abolished from 1 July 2019. First home buyers with a household income below AUD160,000 will pay no stamp duty, regardless of the property's value or whether they are buying a new or established property. At the same time, the payment of First Home Owner Grants will end.
- From 1 July 2018, conveyance duty for commercial property transactions worth AUD1.5 million and below will be fully phased out. Residential conveyance duty rates will continue to reduce across all property price values in 2018-19, and across the forward estimates.

## Queensland Budget

The [Queensland Budget 2018-19](#) was delivered by the Treasurer, Jackie Trad, on 12 June 2018. The Budget contained the following key measures:

- Introduction of a 15 per cent point of consumption betting tax from 1 October 2018 for taxable wagering revenue exceeding an annual threshold amount of AUD300,000 in a financial year.
- An increase in the rate of additional foreign acquirer duty from 3 per cent to 7 per cent to liabilities arising on or after 1 July 2018.
- An extension, until 30 June 2019, to the payroll tax rebate on the wages of apprentices and trainees at the increased rate of 50 per cent.
- From the 2018-19 financial year onwards, an increased land tax rate of 2.25 per cent to apply to resident individuals, and 2.5 per cent for companies, trustees and absentees will apply to the portion of an owner's aggregated landholdings that exceeds a taxable value of AUD10 million.
- The amount of vehicle registration duty payable on vehicles valued at more than AUD100,000 will increase from 1 July 2018. Heavy vehicles will not be liable for the increase.

The [Revenue Legislation Amendment Bill 2018](#) and the [Betting Tax Bill 2018](#) which implement the 2018-19 Budget measures have passed the Queensland Parliament and were enacted on 21 June 2018.

## Tasmanian Budget 2018-19

The [Tasmanian Budget 2018-19](#) was delivered by the Treasurer, Peter Gutwein, on 14 June 2018. The Budget contained the following key measures:

- The introduction of a new 'Foreign Investor Duty Surcharge'.
- A three-year land tax exemption for newly built housing made available for long-term rental, and a one-year land tax exemption for short-stay accommodation property made available for long-term rental accommodation within the Greater Hobart area.
- For a 12-month period, a 50 per cent duty concession to first home buyers of established homes up to AUD400,000, and a 50 per cent duty concession to eligible pensioners that sell and downsize.
- An extension to the Payroll Tax Rebate Scheme for apprentices and trainees in areas of skills shortages.
- A reduced rate of payroll tax (four per cent) for wages between AUD1.25 million and AUD2 million.
- A three-year payroll tax exemption for wages paid to employees in regional Tasmania, where a mainland business relocates and establishes operations in a regional area between 1 July 2018 and 30 June 2021.

The [Taxation Related Legislation \(Housing Availability and Payroll Relief\) Bill 2018](#), which proposes to implement the 2018-19 Budget measures was introduced into the Tasmanian Parliament.

## New South Wales Budget

The [New South Wales Budget 2018-19](#) was delivered by the Treasurer, Dominic Perrottet, on 19 June 2018. The Budget contained the following key measures:

- From 1 July 2018, payroll tax thresholds will be progressively lifted from AUD750,000 to AUD1 million (refer [State Revenue Legislation Amendment Bill 2018](#) to give effect to this proposal which was subsequently introduced and passed by NSW Parliament).

- From 1 January 2019, the introduction of a 10 per cent point of consumption tax on wagering.

## State legislative developments

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

- The Victorian [\*State Taxation Acts Amendment Bill 2018\*](#) has received Assent. The Act gives effect to a number of measures, including changes to the *Duties Act 2000* (Vic) regarding aggregation of interests of all foreign persons for purposes of the foreign purchaser additional duty, foreign purchasers who jointly purchase a principal place of residence with an Australian spouse or domestic partner, and partners' interests in partnership property, and also to amend the *Payroll Tax Act 2007* (Vic) to reduce the rate for payroll tax for regional Victorian businesses. See the June 2018 edition of [TaxTalk Monthly](#) for more detail of the measures included in this Bill.
- The [\*Duties Amendment \(Additional Duty for Foreign Persons\) Bill 2018\*](#) was introduced into the Western Australian (WA) parliament on 13 June 2018 and seeks to amend the *Duties Act 2008* (WA) to implement a seven per cent foreign buyers surcharge on residential property acquired by foreign persons from 1 January 2019.

## WA to extend land tax primary production business exemption

The Government of Western Australia has [announced](#) the land tax exemption for primary production businesses will be extended to include certain contract farming business activities from the 2018-19 assessment year. The Government will introduce legislation later this year which will enable the exemption to be applied retrospectively.

## SA to no longer charge duty on transfer of non-residential or non-primary production land

RevenueSA has [announced](#) that, effective from 1 July 2018, stamp duty will no longer be charged in South Australia (SA) on a transfer of non-residential or non-primary production land ('Qualifying Land'). The requirement for these transfer types to be stamped under the relevant Qualifying Land document type will however continue. Registration fees remain payable to the Registrar-General in respect of a transfer of Qualifying Land, and are based on the consideration (purchase price) or the value assessed by the Commissioner of State Taxation under the *Stamp Duties Act 1923*. The *Real Property (Fees) Variation Regulations 2018*, as gazetted on 31 May 2018, vary the *Real Property Regulations 2009* to ensure the registration fees

remain payable. The Regulations come into operation on 1 July 2018.

## ACT Revenue Office determinations

The ACT Revenue Office has issued the following determinations:

- [\*Taxation Administration \(Amounts payable – Duty\) Determination 2018 \(No 1\)\*](#), which reduces conveyance duty rates for transactions of residential properties as part of the ACT Government's reform program to reduce conveyance duty rates each year. This instrument fully phases out conveyance duty for transactions of commercial properties with a dutiable value of AUD1.5 million or less, maintaining a flat five per cent duty rate for commercial transactions above that value.
- [\*Taxation Administration \(Amounts payable – Home Buyer Concession Scheme\) Determination 2018 \(No 1\)\*](#), which makes cuts to residential conveyance duty in 2018-19, as announced in the 2017-18 ACT Budget. The concessional rates have been adjusted to take account of the reduction in residential conveyance duty.
- [\*Taxation Administration \(Amounts payable – Pensioner Duty Concession Scheme\) Determination 2018 \(No 1\)\*](#), which makes consequential changes to take account of cuts to residential conveyance duty in 2018-19.

## NSW Supreme Court declines stamp duty exemption for land acquisition

The Supreme Court of NSW in [\*Winston-Smith v Chief Commissioner of State Revenue \[2018\] NSWSC 773\*](#) has affirmed the decision of the Chief Commissioner to not grant a full exemption under s163H of the *Duties Act 1997* (NSW) in relation to the acquisition of land. The Court was not persuaded that the application of Chapter 4 of the Act (imposition of ad valorem duty on the acquisition of interests in landholders) would not be just and reasonable in the circumstances. The Court also declined to remit the market rate component or the premium component of interest, based on the refusal of a full exemption.

## Tribunal finds taxpayer should be assessed separately for land tax purposes

The Queensland Civil and Administrative Tribunal in [\*Harrison v Commissioner of State Revenue \[2018\] QCATA 75\*](#) has found for the taxpayer and concluded that the owner of the property, as trustee,

should be assessed separately under section 20 of the *Land Tax Act 2010* (QLD) in respect of each property as if he were a separate owner in the

capacity as trustee for another person in relation to each property.

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## Superannuation Update

### **Assessing efficiency and competitiveness of superannuation**

The Productivity Commission has released its [draft report](#) on assessing the efficiency and competitiveness of the superannuation system. The Commission has proposed a package of changes to modernise the system and deliver the best possible returns and products for all members. Comments are due by 13 July 2018.

### **Release of superannuation on compassionate grounds**

The Minister for Revenue and Financial Services has [announced](#) that, from 1 July 2018, responsibility for the administration of the early release of superannuation benefits on compassionate grounds will be transferred from the Department of Human Services (DHS) to the Australian Taxation Office (ATO). DHS will accept early release applications up until 30 June 2018. There will be a short transition period where DHS will continue to process existing applications and complete any necessary reviews.

In addition, the [Treasury Laws Amendment \(Release of Superannuation on Compassionate Grounds\) Regulations 2018](#), registered on 30 May 2018, improves the integrity of the processes under which benefits are released on compassionate grounds by superannuation entities or retirement savings account providers to their members. This outcome is achieved by requiring the Regulator, who makes a determination that a member meets the conditions for release on compassionate grounds, to provide a copy of the determination to the

superannuation entity or retirement savings account provider.

### **Superannuation fund investment in agriculture**

The House of Representatives Standing Committee on Agriculture and Water Resources has launched an [inquiry](#) into the barriers to increased investment in Australia's agriculture sector by superannuation funds. Submissions were due on 22 June 2018.

### **Proposal to access superannuation for victims of crime**

The Government has [released](#) for public consultation two draft proposals that would provide victims of crime with access to a perpetrator's superannuation in certain circumstances. The first is for a new claw-back mechanism for 'out of character' superannuation contributions made by criminals to shield their assets from use in compensating victims of their crimes. The second is to allow victims of serious, violent crimes to be able to access a perpetrator's superannuation as compensation, where other assets have been exhausted, subject to appropriate limits and thresholds. Comments were due on 15 June 2018. For further information, please also see the Government's [media release](#).

### **ATO rulings on superannuation-related housing affordability measures**

The ATO has released the following Law Companion Rulings (LCRs) which consider the Government's

housing affordability reforms that relate to superannuation:

- [LCR 2018/D4](#): Housing affordability measures: contributing the proceeds of downsizing to superannuation. This draft Ruling discusses the 'downsizer contribution' and how the measure interacts with other income tax and superannuation concepts including contribution caps, fund acceptance rules, and capital gains tax. Comments were due on 21 June 2018.
- [LCR 2018/D5](#): First Home Super Saver Scheme. This draft Ruling provides guidance on the operation of the First Home Super Saver (FHSS) Scheme which is designed to allow individuals who make voluntary contributions into the superannuation system on or after 1 July 2017 to withdraw those contributions (up to certain limits), and an amount of associated earnings, for the purpose of purchasing their first home. Comments were due on 21 June 2018.

## Assurance and governance for large superannuation funds – ATO perspective

ATO Deputy Commissioner, James O'Halloran, and Assistant Commissioner, Graham Whyte, in a [speech](#) have indicated that the ATO plans to undertake a small number of information system risk assessments and specific issue reviews with funds that have not met benchmarks over several years or may have systemic issues across multiple reporting obligations.

## ATO guidance on use of propagation arrangements

The ATO has released Practical Compliance Guideline [PCG 2018/2](#): Propagation arrangements adopted by registrable superannuation entities. This Guideline applies from 1 July 2018 and sets out the ATO's compliance approach to the use of propagation in selecting assets for disposal.

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## Legislative Update

Federal Parliament concluded its Winter sittings on Thursday 28 June 2018.

Commonwealth tax and superannuation Bills introduced into Parliament since the June edition of TaxTalk include:

- [Customs Tariff Amendment \(Incorporation of Proposals\) Bill 2018](#), which proposes to make various amendments to the *Customs Tariff Act 1995* (Cth) consistent with Customs Tariff Proposal (No.1) 2018 and Customs Tariff Proposal (No. 2) 2018 to assist Australian

businesses and consumers and further enhance the operation of the Act.

- [Treasury Laws Amendment \(Protecting Your Superannuation Package\) Bill 2018](#), which proposes amendments to give effect to the 2018-19 Federal Budget announcements in relation to the protection of individuals' retirement savings from erosion. For further information, see the Government's [media release](#).

The [Treasury Laws Amendment \(Personal Income Tax Plan\) Bill 2018](#), which implements the seven

year Personal Income Tax Plan announced by the Government in the 2018-19 Federal Budget, has passed both Houses of Parliament and received Royal Assent on 21 June 2018. For further information, refer to the Personal Tax Update section in this edition of TaxTalk Monthly, and also the Government's [media release](#).

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

- [Treasury Laws Amendment \(Reducing Pressure on Housing Affordability Measures No. 2\) Regulations 2018](#), which prescribes the circumstances in which the Commissioner of Taxation is to make a determination that an individual has suffered a 'financial hardship' for the purposes of the First Home Super Saver Scheme. Individuals who obtain such a determination are able to access the scheme despite having previously owned a property that would otherwise disqualify them.
- [Treasury Laws Amendment \(2018 Measures No. 1\) Commencement Proclamation 2018](#), which fixes 1 July 2018 as the day on which the new law to transfer the regulator role for early release of superannuation benefits on compassionate grounds from the Chief Executive Medicare to the Commissioner of Taxation takes effect (as applicable under Schedule 4 to the *Treasury Laws Amendment (2018 Measures No. 1) Act 2018* (Cth).

A number of key tax measures remain before Parliament and cannot be considered next until it resumes sittings for the commencement of the Spring session on Monday 13 August 2018. Some of those outstanding measures include:

- [Treasury Laws Amendment \(Enterprise Tax Plan No. 2\) Bill 2017](#). This Bill proposes to

implement the Government's Enterprise Tax Plan which would see the tax rate for all companies progressively reduced to 25 per cent.

- [Treasury Laws Amendment \(OECD Multilateral Instrument\) Bill 2018](#), which contains amendments to give force of law in Australia to the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*.
- [Treasury Laws Amendment \(Tax integrity and Other Measures\) Bill 2018](#), which proposes amendments to the previously announced small business integrity measure, and to extend the application of the Multinational Anti-avoidance Law (MAAL) to arrangements involving trusts and partnerships.
- [Treasury Laws Amendment \(Tax Integrity and Other Measures No. 2\) Bill 2018](#), which proposes to implement the Organisation for Economic Cooperation and Development's (OECD) recommended hybrid mismatch rules in Australia.
- [Treasury Laws Amendment \(Accelerated Depreciation for Small Business Entities\) Bill 2018](#), which proposes to give effect to the Federal Budget 2018-19 announcement to extend until 30 June 2019 the period during which small business entities can access the accelerated depreciation rules.
- [Treasury Laws Amendment \(Enterprise Tax Plan Base Rate Entities\) Bill 2018](#), which proposes to ensure that from the 2017-18 income year, a corporate tax entity will not qualify for the lower corporate tax rate if more than 80 per cent of its assessable income for that income year is passive income.

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## Other News

### ***Draft legislation on technical amendments to AMIT regime***

Treasury has released [exposure draft legislation](#) on a package of technical amendments to ensure the new system for attribution managed investment trusts (AMITs) operates as intended (for further information, refer also to the Government's [media release](#)). The proposed amendments seek to give effect to the Government [announcement](#) of 19 July 2017, and include measures to modify:

- the primary AMIT rules, including clarification that an MIT with a single unitholder that is a widely-held entity can access the AMIT regime
- the MIT and AMIT capital gains tax (CGT) rules, including alignment of the CGT outcomes for MITs with AMITs
- the withholding tax rules for AMITs, and
- the operation of the AMIT transitional rules (in particular, to ensure that former public trading trusts and corporate unit trusts can use accumulated franking credits until 30 June 2018).

Submissions on the draft law are due by 16 July 2018.

### ***Economy wide cash payment limit***

Treasury has released a [discussion paper](#) dealing with the 2018-19 Federal Budget Black Economy measure to implement an economy-wide cash payment limit of AUD10,000 for payments to businesses for goods and services from 1 July 2019. Transactions in excess of this amount would need to be made using the electronic payment system or by cheque. For further information, also refer to the Government's [media release](#).

### ***Ombudsman supports ATO's pilot of Independent Reviews for small business***

The Australian Small Business and Family Enterprise Ombudsman has [welcomed](#) the

Australian Taxation Office's (ATO) Independent Review facility being extended to small businesses as part of a pilot.

### ***Review of Australian Charities and Not-for-profits Commission legislation***

The Government has [announced](#) that it has received the final report from the review panel for the statutory review of the Australian Charities and Not-for-profits Commission legislation. The Government is currently considering the report before it is publicly released.

### ***Federal Court dismisses application for judicial review of GIC decision***

The majority of the Full Federal Court in [Pintarich v Deputy Commissioner of Taxation \[2018\] FCAFC 79](#) has dismissed the taxpayer's application for judicial review of a decision by a Deputy Commissioner to grant partial remission of a general interest charge (GIC) on outstanding tax debts. The Court upheld the [decision](#) of the primary judge which rejected the taxpayer's argument that the Deputy Commissioner had made an earlier decision to remit the GIC in full. The primary judge held that the earlier letter from the ATO stating a 'payout figure' did not purport to be the communication of a decision relating to the GIC remission application, and as such the decision to only partly remit the charge should stand.

### ***Depreciation car limit for 2018-19***

The ATO has issued [TD 2018/6](#) which sets out that the depreciation car limit to apply for the 2018-19 financial year as AUD57,581.

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## Editorial

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