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# TaxTalk Monthly

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

June 2020



# Corporate Tax Update

## Private companies and UPE deadlines

In the context of the Division 7A deemed dividend rules applicable to private companies and specifically those that have unpaid present entitlements (UPEs) from a trust, the Australian Taxation Office (ATO) has updated [PS LA 2010/4 Division 7A: trust entitlements](#). Specifically, the updated Practice Statement provides that, for this financial year only, unless a trust has already lodged its 2019 tax return or has an ATO agreed later lodgment date, in managing Division 7A consequences for UPEs, taxpayers have until 5 June 2020 (in line with the administrative lodgment concession date), to enter into a complying sub-trust investment agreement for 2018-19 UPEs and/or pay any 2018-19 interest accrued on existing investment agreements. The ATO's [website](#) has also been updated, noting that the Commissioner will be issuing further guidance for those affected by

COVID-19 with minimum yearly repayments due for the year ended 30 June 2020.

## AAT finds mining activities not core R&D activities

The Administrative Appeal Tribunal (AAT) in [Havilah Resources Ltd v Innovation and Science Australia \[2020\] AATA 933](#) has held that the taxpayer, an exploration company, which conducted mining activities for gold, copper-gold and iron ore, was not entitled to claim the research and development (R&D) tax offsets as it was not engaged in "core R&D activities". The Tribunal found that the specific activities conducted were excluded under s355-25(2)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997) as prospecting, exploring or drilling for minerals or s355-25(2)(f) of the ITAA 1997 as they were associated with complying with environmental statutory requirements or standards.

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# Employment Taxes Update

## JobKeeper update

With effect from 30 March 2020, the JobKeeper subsidy of AUD1,500 per fortnight, per eligible employee, will be paid to many affected employers (including not-for-profits and charities) and self-employed individuals who qualify. Since our last edition of TaxTalk, there have been further

refinements to the application of the JobKeeper program, as well as additional guidance from the Australian Taxation Office (ATO). This includes:

- a [legislative instrument](#) made by the Treasurer on 1 May 2020, which provided further clarifications to ensure the integrity and the efficient operation of the JobKeeper payment Rules. This included a modified decline in

turnover test for use by groups where the operating business which has suffered a decline in turnover is conducted in a different legal entity to the employer entity, which cannot otherwise show the requisite fall in turnover; impose additional requirements that must be met for children (those aged 16 and 17) to be an eligible employee (broadly, that they must be financially independent); adjust the way in which certain Government payments are treated when calculating a university's or charity's turnover; extend the JobKeeper scheme to include religious practitioners that are not employees; and exclude an Australian resident entity that is wholly owned by a sovereign entity from the JobKeeper scheme.

- the ATO's practical compliance guideline [PCG 2020/4](#), which provides guidance on how the ATO will apply its compliance resources to schemes to obtain access to the JobKeeper payment, or an increased amount of a JobKeeper payment. In particular, the Commissioner will be concerned with an entity that accesses or increases JobKeeper payment entitlements where the entity's business is not significantly affected by external environmental factors beyond its control, and/or in excess of those that would maintain pre-existing employment relationships.
- the ATO's Law Administrative Practice Statement [PS LA 2020/1](#), which provides guidance on the relevant circumstances that should be taken into account when the Commissioner is considering whether to grant further time for an entity to register for an Australian Business Number (ABN), or to provide notice of income or taxable supplies during the relevant period to the Commissioner which is relevant for determining an entity's eligibility for the JobKeeper payment or the Cash flow Boost.
- ATO guidance on the decline in turnover test as well as practical compliance approaches, which can be applied by an entity to calculate its current and projected GST turnover set out in [LCR 2020/1](#) (see Indirect Taxes section for more detail).
- an ATO [JobKeeper governance guide](#) for large public groups and multinationals including better practice in terms of substantiating claims for JobKeeper payments.

Potentially affected employers should assess their eligibility, as well as for their employees, and if applicable, take steps to enrol in the program and implement and satisfy the various conditions which must be satisfied in order to remain eligible.

For the latest up-to-date information, refer to our [JobKeeper payments](#) webpage.

## Payroll tax relief measures in response to COVID-19

The States and Territories of Australia have announced their own measures to support businesses impacted by COVID-19, with all offering some form of relief in relation to payroll tax deferrals and/or waivers. In addition, all States and Territories have provided payroll tax relief in the context of its interaction with the Federal Government's JobKeeper payments, however the manner and extent of that relief is not consistent across the different jurisdictions. For the latest up to date information refer to our [State Tax COVID-19 updates webpage](#).

## FBT rates and thresholds for 2020-21

The ATO has updated the various [thresholds](#) for the 2020-21 fringe benefits tax (FBT) year commencing on 1 April 2020. This includes:

- the car parking threshold – AUD9.15,
- the record keeping exemption threshold – AUD8,853,
- the indexation factors for valuing non-remote housing, and
- the benchmark interest rate – 4.80 per cent per annum.

[TD 2020/3](#) provides the rates to be applied on a cents per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car. [TD 2020/4](#) sets out the amounts that the Commissioner of Taxation considers reasonable for food and drink expenses incurred by employees receiving a living-away-from-home allowance (LAFHA) fringe benefit.

## 2020 FBT return payment and lodgment deferred

The ATO has advised that the lodgment and payment due date for all 2019/20 fringe benefits tax (FBT) annual returns not already lodged has been automatically deferred to 25 June 2020. This recognises the impacts that COVID-19 has had for tax practitioners and their clients.

## NSW 2019-20 Payroll Tax annual reconciliations deferred

Revenue NSW has updated their website to advise that the due date for lodgment of the 2019-20 payroll tax annual reconciliation has been extended to 30 October 2020. This extension is only available for the NSW 2019-20 annual reconciliation.

## Tasmanian guideline on payroll tax schemes for apprentices, trainees and youth employees

The State Revenue Office of Tasmania has released [Payroll Tax rebate schemes for apprentices, trainees and youth employees guideline](#) which provides information on employer rebates that are available for employers that pay payroll tax and commence employment of:

- youth employees between 1 April and 31 December 2020; and

- apprentices and trainees in the building, construction, tourism, hospitality and manufacturing industries between 1 July 2019 and 30 June 2021.

## Single touch payroll and small business

The ATO has [extended](#) the Single Touch Payroll (STP) exemption for small employers (19 or fewer employees) to report their closely held payees from 1 July 2020 to 1 July 2021. Closely held payees include family members, directors or shareholders of a company, and beneficiaries of a trust.

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# Global Tax Update

## Latest news from international tax and transfer pricing

### Expanded concept of significant global entity now law

The definition of a Significant Global Entity (SGE) has now been broadened after [legislation](#) giving effect to this 2018-19 Federal Budget measure was enacted. As part of the broadening of the definition, there is also the new concept of a Country by Country Reporting Entity (CbCRE).

The new rules, which apply to income years commencing on or after 1 July 2019, are particularly relevant for any groups of entities that would be required to consolidate for accounting purposes as a single group if the members of the group were assumed to be a listed company and were not affected by the accounting exceptions for consolidation or materiality.

As the consequences of an entity becoming an SGE or a CbCRE are significant in terms of the additional compliance burdens and the cost of failing to determine status as an SGE correctly, affected

entities should review their existing ownership and control structure as soon as possible. For further insights refer to our [TaxTalk Alert](#).

### Refinements to Australian hybrid mismatch rules

As noted in the Legislative Update section, [legislation](#) has been introduced to propose amendments to Australia's current hybrid mismatch rules. The measures seek to:

- clarify the operation of the hybrid mismatch rules for trusts and partnerships;
- clarify the circumstances in which an entity is a deducting hybrid;
- clarify the operation of the dual inclusion income rule;
- clarify the operation of provisions that refer to corresponding foreign hybrid mismatch rules;
- clarify that, for the purpose of applying the hybrid mismatch rules, foreign income tax generally

does not include foreign municipal or State taxes;

- clarify that the hybrid mismatch rules apply to multiple entry consolidated (MEC) groups in the same way as they apply to tax consolidated groups;
- ensure that the hybrid mismatch integrity rule can apply appropriately to financing arrangements that have been designed to circumvent the operation of the hybrid mismatch rules; and
- where distributions made on Additional Tier 1 capital instruments give rise to a foreign income tax deduction, allow franking benefits on those distributions and include an amount equal to the amount of the deduction in the assessable income of the entity that makes the distribution.

The majority of the proposed amendments are retrospective and likely to be viewed as beneficial to taxpayers as they clarify interpretative uncertainties and should reduce the compliance burden for a range of taxpayers. However, some of the proposed measures may cause difficulties for taxpayers. For further information refer to our [TaxTalk Alert](#).

## Synthesised text of Australia-Norway tax treaty

The Australian Taxation Office (ATO) has released the [synthesised text](#) of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) and the double tax agreement (DTA) between Australia and Norway. The provisions of the MLI have effect with respect to this DTA for taxes withheld at source on amounts paid or credited to non-residents where the event giving rise to such taxes occurs on or after 1 January 2020, and for all other taxes levied by each country for taxable periods beginning on or after 1 May 2020.

## Taxpayer Alert on foreign investment into Australia

The ATO released Taxpayer Alert [TA 2020/2](#) on mischaracterised arrangements and schemes connected with foreign investment into Australian entities. The ATO is reviewing arrangements that typically display the following features:

- The Australian resident entities are unable to obtain capital from traditional external debt finance sources on normal terms.
- The foreign investor either already participates in the management, control or capital of the Australian entity at the time of investment, or starts to participate in the management, control or capital as part of the investment.

- The investment has features not consistent with vanilla debt or equity investments. The investment may provide the foreign investor with direct exposure to the economic return from a particular business or assets exploited therein (whether ongoing profit or a gain on disposal).

The ATO's concerns include, among other things, structuring to avoid Australian tax or obtain a tax deduction in Australia, failure to comply with interest or dividend withholding tax obligations, mischaracterisation of debt/equity interests, transfer pricing, access to tax treaty benefits, general anti-avoidance rules and avoiding Foreign Investment Review Board disclosure requirements.

## Trustee of non-fixed trust assessable on capital gains to which non-resident was presently entitled

The Federal Court in [Peter Greensill Family Co Pty Ltd \(trustee\) v Commissioner of Taxation \[2020\] FCA 559](#) has held that a trustee of a non-fixed trust which distributed 100 per cent of the capital gains from the sale of shares, which were not "taxable Australian property", to a foreign resident was liable for tax under s98 of the *Income Tax Assessment Act 1936 (Cth)*. The Court found that the foreign resident beneficiary was deemed to have made the capital gains as a result of being a presently entitled beneficiary under s115-215(3) of *Income Tax Assessment Act 1997 (Cth)*. The Court held that although the beneficiary was a foreign resident, that capital gain was not disregarded under Division 855 of the ITAA 1997 because the capital gain deemed to have been made under s115-215 of the ITAA 1997 is not a "capital gain ... from a CGT event" within the context of s855-10(1) of the ITAA 1997.

## New Zealand Budget 2020

The New Zealand Budget 2020 was delivered by the Minister of Finance, Hon Grant Robertson on 14 May 2020. The Budget includes various measures including a NZD4 billion business support package, an extension of the Wage Subsidy Scheme and a NZD150 million fund for loans to research and development (R&D) intensive businesses. For further details refer to the [PwC NZ Budget website](#).

## OECD – Taxing Wages 2020

This annual [publication](#) from the Organisation for Economic Co-operation and Development (OECD) provides details of taxes paid on wages in OECD countries. It covers personal income taxes and social security contributions paid by employees, social security contributions and payroll taxes

paid by employers, and cash benefits received by workers.

## US tax reform update

The United States' Internal Revenue Service (IRS) Large Business and International (LB&I) Division has announced a Tax Cuts and Jobs Act (TCJA) compliance campaign focused on issues relating to the 2017 tax reform legislation. Refer to this Global Tax [Insights](#) for further details.

## US individuals and businesses impacted by travel disruptions

The United States' Treasury Department and the IRS has issued guidance in the form of Frequently Asked Questions (FAQs) and Revenue Procedures regarding relief for businesses and individuals impacted by travel disruptions related to the COVID-19 pandemic. Companies with mobile workers should review their mobility populations, both inbound into the United States and outbound. Refer to this Global Tax [Insights](#) for further details.

## Other OECD developments

The following OECD developments have occurred since our last update:

- In the [recording](#) of the latest OECD TaxTalks webcast, the OECD's Centre for Tax Policy and Administration discussed COVID-19 related work including requests for further work and guidance on transfer pricing, an update on tax transparency and on the digitalised economy work.
- The Czech Republic and Korea have [deposited](#) their instrument of ratification for the Multilateral BEPS Convention each of which will enter into force on 1 September 2020.

## Product Stewardship Oil Scheme and diesel

The Government has introduced the [Product Stewardship \(Oil\) Amendment Bill 2020](#) and the [Excise Tariff Amendment Bill 2020](#) into Federal Parliament to address the Federal Court's decision in [Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation \[2019\] FCA 1849](#) which gave a broad interpretation of the definition of "oils" in the *Product Stewardship (Oil) Act 2000* (Cth)(PSO) that included diesel. The PSO Scheme is designed to encourage the environmentally sustainable management and re-refining of used lubricant base oils and fluid base oils and greases in Australia. These Bills address the issues raised by the decision by amending:

- the definition of oils in the PSO Act to apply to lubricant oils, fluid oils and other oils and greases manufactured from base oils only to reflect the original intention of the PSO Scheme, which excludes diesel and other fuels, and
- item 15 of the Schedule to the *Excise Tariff Act 1921* to narrow the scope of petroleum-based oils and synthetic equivalents for which excise duties are imposed for the purposes of the PSO Scheme to exclude diesel and other fuels. Diesel and other fuels will continue to be subject to excise duty under other items in the Schedule to the Excise Tariff Act.

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# Indirect Tax Update

## GST turnover in testing JobKeeper eligibility

The Australian Taxation Office (ATO) has issued Law Companion Ruling [LCR 2020/1](#) providing guidance on applying the decline in turnover test, which is relevant to assess eligibility for the JobKeeper program. Under this test, it is necessary for a business to calculate its 'current GST turnover' and 'projected GST turnover'; terms defined in Division 188 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), subject to modification by the JobKeeper rules. The ruling specifically covers:

- what supplies are relevant when calculating projected GST turnover and current GST turnover;
- how to allocate supplies to relevant periods;
- how to determine the value of each supply that has been allocated to a relevant period; and
- the ATO compliance approach.

As an alternative to allocating a supply to a relevant period and then determining its value based *strictly* on the time the supply is made, the Commissioner will allow the use of alternative methods – accrual accounting, GST attribution basis or income tax accounting for a business that is not registered for GST – to allocate supplies to a relevant period and determine the value of those supplies under an ATO compliance approach set out in the Ruling.

For general information about the JobKeeper program, refer to our [JobKeeper Payments webpage](#).

## Taxpayer not entitled to input tax credit on acquisition of land

The Administrative Appeals Tribunal (AAT) has held in [304 Wanda Street Pty Ltd v FC of T \[2020\] AATA 921](#) that the taxpayer, a corporate trustee of a trust, was not entitled to claim input tax credits on the acquisition of land as it was not an activity that constituted the carrying on an enterprise at the time the property was acquired. Furthermore, even if the Tribunal were satisfied that the taxpayer had some kind of property development intention at the time of the acquisition of the property, it would not have concluded that the acquisition of the property marked the commencement of an enterprise. The Tribunal found that in the absence of evidence to support the conduct of an enterprise, the acquisition was not a "creditable acquisition". As such, the taxpayer was not entitled to an input tax credit.

## Freeze on road user charge

The Australian Government [announced](#) that it will freeze the Heavy Vehicle Road User Charge at current levels for 2020-21. The Road User Charge will stay at 25.8 cents per litre for diesel in 2020-21, instead of increasing by the scheduled 2.5 per cent.

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# Personal Tax Update

## Payments for exploitation of professional sportsperson's 'public fame' or 'image'

The Australian Taxation Office (ATO) has withdrawn its Draft Practical Compliance Guideline [PCG 2017/D11](#) which provided the ATO's draft guidance on the treatment of payments for use and exploitation of a professional sportsperson's 'public fame' or 'image'.

Note that it was announced as part of the 2018-19 Federal Budget that from 1 July 2019, the law would be amended to ensure that high profile individuals will not be able to take advantage of lower tax rates by licencing their fame or image to another entity.

Although the ATO has indicated that it has concerns about the tax effectiveness of some of the arrangements it has observed, it has stated that for the period up to 1 July 2020, it will not seek to apply

compliance resources to review an arrangement entered into prior to 24 August 2018 (the date of withdrawal of its initial guidance in [ATO ID 2004/511](#)), where that arrangement complies with the terms of the withdrawn guideline, provided that the arrangement was entered into and carried out as a consequence of the taxpayer relying on this withdrawn guideline in good faith.

## Access to deceased's tax information

The ATO has issued [Taxation Administration \(Remedial Power — Disclosure of Protected Information by Taxation Officers\) Determination 2020](#) to allow a taxation officer to disclose protected information of a deceased person to the registered tax agent or BAS agent and legal practitioner of an executor or administrator of the deceased estate. This information assists an executor or administrator to attend to the affairs of the deceased.

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# State Taxes Update

## State tax measures in response to COVID-19

The States and Territories of Australia continue to provide various relief measures to support businesses impacted by COVID-19, with all offering some form of relief in relation to land tax and some offering some form of waiver or refunds of rates and licencing fees. For the latest up to date information refer to our [State Tax COVID-19 updates](#) webpage

## Revenue NSW Duties ruling on bare trusts

Revenue NSW has issued revised Revenue Ruling [DUT 041v2](#) which provides an overview of the circumstances in which the provisions in Part 2A of Chapter 4 of the *Duties Act 1997* (NSW) apply to acquisitions and holdings of interests in landholders by trustees of bare trusts. The general effect of

these provisions is that where an interest in a landholder is acquired or held under a bare trust (or a chain of bare trusts), the ultimate beneficial owner of the interest under the bare trust, rather than the legal owner of the interest (the bare trustee), is deemed to acquire or hold the interest in the landholder. The ruling is effective from 1 May 2020.

## NSW duty cases

The following NSW duty cases have been issued since our last update:

- The Supreme Court of NSW in [Benidorm Pty Ltd v Chief Commissioner of State Revenue \[2020\] NSWSC 471](#) has held that the taxpayer's declaration that it that it held an apartment as nominee on trust (for the sole executor and beneficiary of a deceased estate) did not constitute a "dutyable transaction" as it did not fall within the definition of "declaration of trust" under



s8(3) of the *Duties Act 1997* (NSW). The taxpayer had originally held the property on trust for a sole beneficiary who had died. The death of the original beneficiary and the terms of the Will had the consequence of effecting a change in the beneficiary of the original trust and, in effect, created a new and different trust. The latter Declaration of Trust did no more than acknowledge that fact.

- The Supreme Court of NSW in [Bloore v Chief Commissioner of State Revenue \[2020\] NSWSC 502](#) has held that the taxpayer which had transferred property to a beneficiary of a deceased estate was not eligible for the concessional rate of duty under s63 of the *Duties Act 1997* (NSW). This was because it was not an “appropriation” that achieves “satisfaction” (in whole or in part) of the beneficiary’s entitlement under the Will – instead it was an appropriation that resulted in the beneficiary receiving an amount more than their entitlement under the Will.

## QLD – Concessional duty applied on transfer of half-interest

The Supreme Court in [Ward & Anor v Commissioner of State Revenue \[2020\] QSC 59](#) has

granted the taxpayer’s appeal in relation to the application of transfer duty on the dutiable transaction of a transfer of a half-interest in residential land to the appellants who had occupied the land as their home both before and after the transfer. The Court found that the QLD Commissioner of State Revenue had incorrectly assessed the taxpayer on the dutiable transaction under s93 under the *Duties Act 2001* (Qld) and that it was correct to apply the concessions for the amount of transfer duty payable on the basis that it related to the transfer of a part interest to more than one transferee.

## SA Guide to land tax changes

The South Australian Commissioner of State Taxation issued detailed guidance – [Land Tax Guide to Legislation: Changes for Joint Owners, Land Held on Trust & Related Corporations](#) – as to how land tax will be assessed in South Australia, following new measures (implemented by the [Land Tax \(Miscellaneous\) Amendment Act 2019](#) the [Statutes Amendment and Repeal \(Budget Measures\) Act 2018](#)) that broadly affect the aggregation rules and certain trusts, with effect from 1 July 2020.

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# Superannuation Update

## Permanent relief for merging superannuation funds

[Legislation](#) has passed Federal Parliament to remove impediments to mergers between complying superannuation funds by permitting the roll-over of both revenue gains or losses and capital gains or losses on a permanent basis.

## COVID-19 and early release of superannuation by temporary residents

The Treasurer has made [Treasury Laws Amendment \(Release of Superannuation on Compassionate Grounds\) Regulations \(No. 2\) 2020](#) which revises the criteria (originally set out in [Treasury Laws Amendment \(Release of Superannuation on Compassionate Grounds\) Regulations 2020](#)) for holders of a Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa to apply to the Commissioner of Taxation for release of their superannuation on compassionate grounds. By way of background, certain temporary residents affected by the adverse economic effects of coronavirus can have up to AUD10,000 released from their

superannuation or retirement savings account on compassionate grounds. The revised criteria which is now applicable to these visa holders is that the person is employed and is unable to meet immediate living expenses, rather than merely had their working hours reduced to zero and still be employed by their employer. This change is expected to broaden access to the early release provisions for these visa holders. Eligible individuals who wish to access the early release of super for COVID-19 can do so via applying through myGov.

## SMSFs and Limited Recourse Borrowing Arrangements

The [Superannuation Industry \(Supervision\) In-house Asset Determination – Intermediary Limited Recourse Borrowing Arrangement Determination 2020](#) ensures that an investment by a self managed superannuation fund (SMSF) in a related trust that is in connection with an Intermediary Limited Borrowing Recourse Arrangement (LRBA) is excluded from being an in-house asset of the fund in certain circumstances. The Australian Taxation Office (ATO) has reviewed the particular arrangement and is satisfied that where the requirements of this Legislative Instrument are satisfied, it complies with section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth). Central to this conclusion is that the deed, which limits the rights of the holding trustee or any guarantors against the trustee of the fund in connection with default on the borrowing, is disclosed to the lender.

Trustees of a fund who have or are proposing to enter into an LRBA arrangement where the trustee of the fund is maintaining the borrowing of a third party, other than the Intermediary LRBA covered by this latest Legislative Instrument are advised to take

care to ensure that the arrangement complies with the relevant rules.

## ATO concerns with property development by SMSFs

In an ATO Bulletin, [SMSFRB 2020/1](#), the ATO has noted that it has seen an increase in the number of SMSFs entering into arrangements, with related or unrelated parties, involving the purchase and development of real property for subsequent disposal or leasing. Although there are no specific prohibitions preventing an SMSF investing directly or indirectly in property development, the ATO is concerned with investments used to inappropriately divert income into the superannuation environment, or if SMSF assets are used to fund property development ventures in a manner that is inappropriate for and sometimes detrimental to retirement purposes. In this regard, the ATO has indicated that it will continue to monitor property development arrangements involving SMSFs, particularly those that include LRBAs and related party transactions, to ensure that SMSFs are not contravening any of the regulatory rules.

## More flexible super for older Australians

As reported in the Legislative Update of this month's edition, [measures](#) are now before Parliament to provide greater flexibility for Australians aged over 65 in making voluntary superannuation contributions from 1 July 2020. Currently, only an individual under 65 years of age in the financial year in which they make a superannuation contribution may access the bring forward non-concessional contributions cap (AUD100,000 per year). Once these measures are enacted, an individual aged 65 and 66 will be able to make up to three years of non-concessional superannuation contributions.

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# Legislative Update

Since our last update, the following new Commonwealth tax and superannuation legislation has been introduced into Federal Parliament since our last update:

- [Treasury Laws Amendment \(2020 Measures No.2\) Bill 2020](#) which was introduced to the House of Representatives on 13 May 2020, among other things, includes the technical amendments to the hybrid mismatch rules (announced in the 2019-20 Federal Budget and the 2019-20 Mid-Year Economic and Fiscal Outlook), broadens the amounts that employers can voluntarily report under the Single Touch Payroll rules relating to child support information, provides deductible gift recipient status for community sheds and also makes amendments to the tax secrecy provisions in the *Taxation Administration Act (1953)(Cth)* to allow protected information relating to the JobKeeper scheme to be disclosed to the Fair Work Commission and the Fair Work Ombudsman.
- [Treasury Laws Amendment \(More Flexible Superannuation\) Bill 2020](#), which was introduced into the House of Representatives on 13 May 2020, extends the superannuation contribution bring forward rule by enabling individuals aged 65 and 66 years to make up to three years of non-concessional superannuation contributions.

Commonwealth revenue measures registered as legislative instruments or regulations since the last monthly update include:

- [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 2\) 2020](#) which made various amendments to refine and clarify elements of the JobKeeper scheme set out in [Coronavirus Economic Response Package \(Payments and Benefits\) Rules 2020](#) (the Rules).
- [Coronavirus Economic Response Package \(Payments and Benefits\) Alternative Decline in Turnover Test Rules 2020](#) sets out alternative decline in turnover tests for purposes of assessing eligibility for the JobKeeper payment program where there is not an appropriate relevant comparison period in 2019 in the context of satisfying the decline in turnover test in s8(1) of the Rules.

- [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 3\) 2020](#) amends the Rules to ensure the six month turnover test period applying to universities is limited to only those universities that are Table A providers within the meaning of *Higher Education Support Act 2003*.
- [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 1\) 2020](#) and [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 4\) 2020](#) amend the Rules to provide a mechanism to allow authorised deposit-taking institutions (ADIs) to confirm that notices have been provided by the Commissioner of Taxation to entities concerning their election to participate in the JobKeeper payment program.
- [Corporations \(Coronavirus Economic Response\) Determination \(No 1\) 2020](#) amends the Corporations Act 2001 (Cth) to enable Annual General Meetings to be run electronically, and to enable electronic signatures to be used. The Determination gives companies, responsible entities, external administrators and other classes of persons certainty about how they can meet their legal obligations for the next six months while the Determination is in effect.
- [Customs By-law 2019608](#) reduces the rate of duty to "free" on certain medical products and hygiene products imported as part of the response to the COVID-19.
- [Social Security \(Coronavirus Economic Response - 2020 Measures No. 5\) Determination 2020](#) facilitates the provision of information regarding JobKeeper payments by the Commissioner of Taxation to the Secretary of the Department of Social Services, which will then use this information to determine if a person who is receiving social security benefits (or has made a claim) will benefit from a JobKeeper payment.

Federal Parliament is expected to resume from 10 June 2020 in accordance with the [revised Parliamentary sitting calendar](#).

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## Other News

### Trustee subject to income tax on gains from sale and exchange of shares

The Administrative Appeals Tribunal (AAT) in [XPQZ, KYZC, DHJP and Commissioner of Taxation \[2020\] AATA 1014](#) has held that the taxpayer, the trustee of the trust, which derived gains on disposals of shares in two companies, was assessable on the gains as income according to ordinary concepts. The Tribunal was not satisfied that the trustee did not acquire the shares for a significant purpose of disposal at a profit by the means by which the profit was obtained, nor that the acquisitions were not in a business operation or commercial dealing. The Tribunal found that the trustee had incorrectly treated the gains on disposal of the shares on capital account which were therefore taxed in the hands of the beneficiaries on a discounted basis under the capital gains tax (CGT) provisions.

### Trust distribution resolutions not effective

The AAT in [Donkin & Ors v Commissioner of Taxation \(Taxation\) \[2019\] AATA 6746](#) has held that taxpayers, beneficiaries of a family trust, were correctly assessed on an increase in the net income of the trust having regard to disallowed deductions. The Tribunal found that the respective distribution resolutions did not have the effect that all of the resulting increase in the net income should have only been assessed to a residual beneficiary, being the trustee of the trust. Specifically, the Commissioner was correct in the application of the

Bamford decision in assessing the individual beneficiaries to the increased net income in the same proportions as he calculated they shared in the trust law income according to the resolutions.

### Franchisee prepaid rent not deductible

The Federal Court in [Mussalli v Commissioner of Taxation \[2020\] FCA 544](#) has held that payments made upon entering into lease and licence agreements of franchise restaurants, described as prepayments of rent, were capital in nature and therefore not deductible under s8-1 of the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997). The agreements included an option for the franchisee to reduce their rent by making a lump sum payment described as a 'prepayment of rent'. The Court found that from a 'practical and business point of view' the payments were calculated to effect the acquisition of a right to operate the franchises on better terms as to rent than otherwise would have been the case. The Court found that the payment had the characteristics of capital as it was a one off, lump sum, non-refundable payment made to secure an enduring advantage (the right to pay the lesser percentage rent) for the term of the lease and licence and most likely the term of its renewal. The payments negated or extinguished any obligation to pay the higher percentage rent and did not thereby relate to any future obligation to pay rent.

## Update on economic impacts from the coronavirus:

The Federal Treasurer Hon Josh Frydenberg has delivered a [ministerial statement](#) on the economy to Federal Parliament. In his statement, the Treasurer noted that tax receipts to the end of March were AUD11.3 billion lower than forecast in 2019-20 Mid-Year Economic and Fiscal Outlook (MYEFO). An updated economic and fiscal outlook will be provided by the Government in June, with the Federal Budget to be delivered in October 2020.

## IGTO update

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has released [quarterly reporting packs](#) and a [register of potential review topics](#). The reporting packs provide high level information on Tax Complaint investigations and some Key Performance Indicator information – consistent with the IGTO's Corporate Plans (commencing FY 2019-2020). Note that the Register does not reflect a formal or proposed work program for the IGTO, but it is issued in the interests of transparency.

## Draft third party reporting determinations

The ATO has released in draft the following determinations in relation to third party reporting obligations under the tax law:

- [TPRE 2020/D1](#) which seeks to exempt administrators of a payment system (within the meaning of the *Payment Systems (Regulation) Act 1998*) to report certain transactions involving an electronic payment where the transaction was initiated by another entity where that other entity

is required to report the transaction and including payments processed by Framework Participants under the High Value Clearing System governed by Australian Payments Clearing Association Limited. The instrument, once finalised, will commence on 1 July 2020. Comments are due by 7 July 2020.

- [TPRE 2020/D2](#) which provides the classes of transactions and entities that are excluded from providing reports on shares and units to the Commissioner of Taxation. This instrument, once finalised, will remake the previous instrument and extend the exemptions to certain small unit trusts and trustees of other trusts, and provide an exclusion for erroneous transactions and their subsequent correction transactions from reports for all entities to which the instrument applies. The remade instrument will retrospectively commence on 1 July 2017. Comments are due by 9 July 2020.

## Who might be required to lodge a 2020 income tax return?

The ATO has released the following legislative instruments, setting out which persons and entities might be required to lodge an income tax return for the year ending 30 June 2020.

- [LODGE 2020/1](#), which sets out which persons are required and which persons are exempt from the requirement to lodge an income tax return for the income year ended 30 June 2020.
- [LODGE 2020/2](#), which provides notice to a liable parent or a parent receiving child support under a child support assessment of their obligation to lodge an income tax return for the income year ended 30 June 2020.

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