

TaxTalk Monthly

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

March 2019



Corporate Tax Update

Sufficient influence to be considered an ‘associate’?

The Full Federal Court in [Commissioner of Taxation v BHP Billiton Limited \[2019\] FCAFC 4](#), by majority, has found for the Commissioner of Taxation and held that BHP Billiton Plc’s Australian subsidiaries were “associates” of a controlled foreign company (CFC) under the “sufficient influence” test in section 318 of the Income Tax Assessment Act 1936 (ITAA 1936). The case dealt with the application of the CFC provisions which required a consideration of whether certain Australian entities were “associates” of the CFC with the result that the income derived by the CFC from the sale of commodities it purchased from those Australian entities was “tainted sales income” on the basis that those entities were “associates” of the CFC. For further details refer to our [TaxTalk Alert](#).

Contribution for construction work assessable

The Federal Court in [Victoria Power Networks Pty Ltd v Commissioner of Taxation \[2019\] FCA 77](#) has found that a “customer cash contribution” for construction work undertaken by an electricity distributor was assessable income according to ordinary concepts under subsection 6-5(1) of the Income Tax Assessment Act 1997 (ITAA 1997) and was not assessable recoupment within the meaning of section 20-20 of the ITAA 1997. The Court also determined that the transferred assets (“gifted assets”) which were received by the taxpayer, constituted a “non-cash business benefit” that also resulted in an amount to be included in the taxpayer’s assessable income.

Tribunal affirms Commissioner’s Division 7A decision

The AAT in [KKQY v Commissioner of Taxation \[2019\] AATA 204](#) has confirmed the Commissioner of Taxation’s decision which found that the taxpayer had received a deemed dividend under the Division 7A rules in relation to a loan made from a private company in which the taxpayer was a shareholder or associate of a shareholder. After considering the terms of the various loans, the Tribunal found that an earlier year loan agreement was not varied but was discharged and replaced by a later year loan agreement which provided for an “amalgamated loan” as defined in section 109E of the ITAA 1936. As such, a shortfall on the repayments that were required to be made on the amalgamated loan so as to conform with

the requirements of Division 7A was a deemed dividend that was assessable to the taxpayer.

Update to ruling on single entity rule

The ATO has issued an [addendum](#) to Taxation Ruling TR 2004/11 which provides guidance on the meaning and application of the single entity rule (SER) applicable under the tax consolidation rules. The addendum is an appendix that explains how the Commissioner will administer the relevant provisions of the general anti-avoidance rules (Part IVA of the ITAA 1936) and the SER following the decision of the Full Federal Court in *Channel Pastoral Holdings Pty Ltd v Federal Commissioner of Taxation [2015] FCAFC 57*.

Of note, the Appendix indicates that where a tax benefit is obtained by an entity in connection with a scheme that includes an entity becoming a subsidiary member of the consolidated group, the Commissioner will make a Part IVA determination for that entity and give effect to that determination by including an amount in its assessable income. Furthermore, the Commissioner will continue to administer the SER in accordance with the view expressed in the Ruling.

Use of a mining, quarrying or prospecting right

The ATO has issued finalised Tax Determination [TD 2019/1](#) which considers the ATO’s 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 the tax deduction allowed under subsection 40-80(1) of the ITAA 1997.

In brief, the ATO concludes that a taxpayer will ‘use’ a MQPR when something is done that the MQPR permits or authorises. However, merely holding, or meeting the conditions or requirements to hold, or retain, an MQPR does not constitute its ‘use’. Furthermore, the Determination indicates that activities that are neither permitted nor authorised by the MQPR, or that could be undertaken without holding the MQPR, are not a ‘use’ of the MQPR.

Debt forgiveness and natural love and affection

The ATO has withdrawn [ATO ID 2003/589](#) which indicated a view that a creditor does not have to be a natural person to qualify for the commercial debt forgiveness exception for forgiveness of a debt because of natural love and affection towards the

debtor. The ATO is [developing guidance](#) on this matter and has withdrawn the ATO ID because it no longer represents the ATO view.

Issues arising from Initial Coin Offerings

Treasury has [released](#) an Issues Paper on Initial Coin Offerings (ICOs) in Australia and the application of Australia's regulatory framework to ICOs. ICOs, which rely on distributed ledger technology (eg blockchain), have emerged as a niche form of private fundraising. The ways in which ICOs are structured can be quite distinct from other forms of traditional capital raising.

The Treasury Issues Paper seeks the views on a range of issues including the opportunities and risks posed by ICOs for Australia, whether Australia's regulatory framework will allow opportunities to be harnessed while appropriately managing associated risks, and whether there are other actions that could be taken to support Australia's competitiveness.

The paper notably covers issues concerning the tax treatment of ICOs including the tax implications for issuers and token holders (including the goods and services tax (GST) treatment). The paper notes that given the variety in how ICO arrangements can be structured, there is no single manner in which ICO proceeds are taxed to the issuer and raises the question as to whether there is a need for changes to be made to the current tax treatment.

Submissions were due on 28 February 2019. See also the Government's [media release](#).

Status of the 2018-19 Budget R&D reform proposals

The Senate Economics Legislation Committee has tabled its [report](#) on the [Treasury Laws Amendment \(Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures\) Bill 2018](#) and recommended that the Bill not proceed until further examination and analysis of the impact of the research and development (R&D) reforms are undertaken. Specifically, the committee recommends that:

- the approach to the cap on the refundable portion of the R&D tax incentive is refined, noting investment decisions already taken; and
- the formula for R&D intensity is refined, noting inherent differences in R&D intensity across industries and impacts on businesses with large operating costs.

There will be no further progress on this Bill until at least 2 April 2019 when Parliament resumes sittings.

R&D tax incentive and software activities

Ausindustry has [released](#) a reference document which provides guidance for companies that are considering undertaking R&D involving software development in the context of eligibility for the R&D Tax Incentive. The guidance clearly indicates that while software development is often innovative, it does not always meet the definition of eligible R&D activities for the purpose of the R&D Tax Incentive. In this regard, there is guidance on the common errors that are often made in relation to R&D Tax Incentive claims for software development.

Let's talk

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

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

David Ireland, Sydney
Financial Services Corporate Tax Leader
+61 (2) 8266 2883
david.ireland@pwc.com

Kirsten Arblaster, Melbourne
Infrastructure & Urban Renewal Corporate Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

James O'Reilly, Brisbane
Brisbane Corporate Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Rob Bentley, Perth
Perth Corporate Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Jason Karametos, Melbourne
Industries Corporate Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Employment Taxes Update

Reporting under single touch payroll

The single touch payroll system, which has applied to large employers since 1 July 2018 and soon extended to all employers from 1 July 2019, provides for both mandatory and voluntary reporting of employee payroll and superannuation information by employers to the Australian Taxation Office (ATO). In support of the system, the ATO has recently made the following legislative instruments in relation to its application:

- [Single Touch Payroll – Determination of Amounts to be Notified](#) which prescribes that the *Standard Business Reporting Australian Taxation Office Payroll Event* package of amounts that need to be mandatorily reported by employers to the Commissioner of Taxation is an approved form for purposes of administering the rules. The additional information required includes all necessary identity information and information required for each employee's tax return in relation to reported earnings and also increased reporting in relation to employees' superannuation entitlements.
- [Taxation Administration – Single Touch Payroll – Exemption for Employers from Reporting Contribution Amounts Paid to a Superannuation Fund](#) provides a single touch reporting exemption from reporting contribution amounts paid to superannuation funds. This is because member contribution amounts made by an entity to a superannuation fund are already reported under the Member Account Transaction Service (MATS) reporting regime.

Employment termination payments – 12-month rule

The ATO has released for comment a draft legislative determination [ETP 2019/D1](#) which extends the definition of employment termination payment (ETP) to include certain payments from redundancy trusts that are received more than 12 months after the termination of a person's employment. Conditions are that the payment is in consequence of the termination of the person's employment and:

- a. an application for the payment was lodged with the trustee of the redundancy trust within 12 months of

the person becoming entitled to the terms of the trust deed of the redundancy trust, and

- b. the payment was made by the trustee of the redundancy trust as soon as practicable after the receipt of the application for payment, or no later than two years after the termination of the person's employment that led to the entitlement, whichever occurs earlier.

This instrument extends the tax law definition of ETP by removing the requirement that a payment is made within 12 months of a person's termination of employment in the circumstances explained above. This will extend the kind of payments that receive the concessional tax treatment applying to ETPs.

Failing to withhold PAYG withholding

From 1 July 2019, new law prevents a deduction for payments to employees or service contractors where the payer has failed to withhold any PAYG withholding amount or did not notify the Commissioner of Taxation of the amount withheld. This measure highlights another reason why governance over all employment taxes is important.

Note that a deduction for payments will not be denied simply because of the late payment of the amount to the ATO, merely withholding an incorrect amount or late lodgment of the applicable Business Activity Statement to report the withholding (other penalties would apply in such cases). Furthermore, since the distinction between employee and contractor is often difficult, the measure will not apply where the payer has complied with the no-ABN withholding rule.

Taxable Payments Reporting System (TPRS)

The ATO has [advised](#) that the Taxable Payments Reporting System (TPRS) protected AUD 2.7 billion from being lost to the black economy in the building and construction industry in the 2015-16 financial year. TPRS has now been extended from the building and construction industries to cleaning, courier, road freight, IT, security, investigation and surveillance services.

Let's talk

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

Greg Kent, Melbourne
Partner
+61 (3) 8603 3149
greg.kent@pwc.com

Katie Lin, Sydney
Partner
+61 (2) 8266 1186
katie.f.lin@pwc.com

Paula Shannon, Brisbane
Partner
+61 (7) 3257 5751
paula.shannon@pwc.com

Stephen Baker-Smith, Melbourne
Partner
+61 (3) 8603 0045
stephen.baker-smith@pwc.com

Stephanie Males, Canberra
Partner
+61 (2) 6271 3414
stephanie.males@pwc.com

Penelope Harris, Perth
Partner
+61 (8) 9238 3138
penelope.harris@pwc.com

Rohan Geddes, Sydney
Partner
+61 (2) 8266 7261
rohan.geddes@pwc.com

Maria Ravese, Adelaide
Partner
+61 (8) 8218 7494
maria.a.ravese@pwc.com

Global Tax Update

Latest news from international tax and transfer pricing

Addressing challenges of digitalisation

The Organisation for Economic Cooperation and Development (OECD) has released a [policy note](#) on addressing the challenges of the digitalisation of the economy. According to the policy note, the OECD remains committed to reaching a long term, consensus based solution by 2020 and that it will provide a progress report by June 2019. The policy note contains proposals based on the concepts of marketing intangibles, user contribution and significant economic presence and how they can be used to modernise the international tax system to address the tax challenges of digitalisation. Refer to this [PwC Insight](#) for a summary of the key issues raised in the policy note.

The OECD has also released a [consultation document](#) which describes the proposals discussed by the Inclusive Framework at a high level and seeks comments on a number of policy issues and technical aspects. Refer to this [PwC Insight](#) which looks at each of the four proposals under the two pillars being discussed, as well as the consultation document itself, and next steps, as well as some other relevant tax policy developments outside of the OECD direct tax process. Comments are now due on the OECD consultation document by 6 March 2019.

OECD and BEPS developments

The OECD has [released](#) the [Harmful Tax Practices – 2018 Progress Report on Preferential Regimes](#), which contains results demonstrating that many jurisdictions have delivered on their commitment to comply with the standard on harmful tax practices, including ensuring that preferential regimes align taxation with substance. The assessment of preferential tax regimes is part of ongoing implementation of Action 5 under the OECD/G20 base erosion and profit shifting (BEPS) Project.

The OECD has also [released](#) BEPS peer review reports on improving tax dispute resolution mechanisms and preventing treaty shopping which implements the BEPS Action 6 and Action 14 minimum standards as agreed under the OECD/G20 BEPS Project. The [first peer review report](#) on the implementation of the BEPS Action 6 minimum standard on treaty shopping reveals that a large majority of Inclusive Framework members have begun to translate their commitment on treaty shopping into actions and are now in the process of modifying their treaty network. In relation to BEPS Action 14, reports for the following jurisdictions have been released: [Estonia](#), [Greece](#), [Hungary](#), [Iceland](#), [Romania](#), [Slovak Republic](#), [Slovenia](#) and [Turkey](#).

In other developments:

- Armenia and The Faroe Islands and Greenland have [joined](#) the Inclusive Framework on BEPS.

- Papua New Guinea has [signed](#) the Multilateral BEPS Convention.
- Mauritania has [signed](#) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
- Ireland and Guernsey have [deposited](#) their instruments of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). This means that the MLI will have effect in relation to the Australia-Ireland double tax agreement as early as 1 May 2019.

Italian tax developments

Italy has enacted the European Union (EU) anti-tax avoidance directive (ATAD). The Italian ATAD Decree contains the provisions covering interest limitation rules; exit taxation; entry taxation; controlled foreign company (CFC) rules; a new set of criteria to identify 'tax haven'; and EU and extra-

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

Let's talk

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

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

Michael Taylor, Melbourne
Partner
+61 (3) 8603 4091
michael.taylor@pwc.com

Angela Danieletto, Sydney
Partner
+61 (2) 8266 0973
angela.danieletto@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

Greg Weickhardt, Melbourne
Partner
+61 (3) 8603 2547
greg.weickhardt@pwc.com

Eddy Moussa, Sydney
Partner
+61 (2) 8266 9156
eddy.moussa@pwc.com

Peter Collins, Melbourne
International Tax Leader
+61 (3) 8603 6247
peter.collins@pwc.com

Nick Houseman, Sydney
Australian Transfer Pricing Leader
+61 (2) 8266 4647
nick.p.houseman@pwc.com

Jonathan Malone, Sydney
Partner
+61 (2) 8266 4770
jonathan.r.malone@pwc.com

EU anti-hybrid rules. For further details refer to [PwC Global Tax Insights](#).

The 2019 Italian budget law introduces a 'new' digital service tax (DST), repealing the previous one which never entered into force due to the lack of implementing secondary legislation. Although details about the new DST have not been released, the new DST is expected to employ a structure similar to the EU Commission proposal (2018/0073 (CNS)) and appears to target revenues arising from digital services that underpin 'user participation'. For further details refer to [PwC Global Tax Insights](#).

India Interim Budget 2019-20

The India Interim Budget 2019-20 was released by the Indian Finance Minister. This Budget contains measures relating to personal taxes, corporate tax, indirect tax and social security. PwC provides an [overview of key announcements and proposals](#) made in the Budget and its likely impact.

Indirect Tax Update

ATO consultation on GST and credit card issuers

The Australian Taxation Office (ATO) has provided an [update](#) on its consultation on the goods and services tax (GST) for financial institutions that issue credit cards. The ATO will progress developing legislative instruments that specify the apportionment method to be applied to acquisitions in a credit card issuing business that are partly for a creditable purpose. The ATO is also developing an apportionment method that can be applied by all financial institutions that issue credit cards, and has

raised some issues on which it is seeking comments by 15 March 2019.

The ATO has also extended the due date for comments on its draft determination, [GSTD 2018/D1: Determining the creditable purpose of acquisitions in a credit card issuing business](#), which was released last year, until 15 March 2019.

Addendum to GST ruling on importation of goods into Australia

The ATO has issued an [addendum](#) to GSTR 2003/15 which provides guidance on importation of goods into Australia, to reflect the amendments made by the *Treasury Laws Amendment (GST Low Value Goods) Act 2017 (Cth)* in relation to the importation of low value goods that are made on or after 1 July 2018.

Not carrying on enterprise – No GST registration

The Administrative Appeals Tribunal (AAT) in [NKCX v Commissioner of Taxation \[2019\] AATA 124](#) has affirmed the Commissioner of Taxation's decision and held that the taxpayer was not carrying on an enterprise of private investigations, mercantile agent, litigation support, and consultancy or the enterprise of share trading. Accordingly, the Tribunal found that the Commissioner was required to cancel the taxpayer's GST registration and the taxpayer was not entitled to claim input tax credits in respect of either enterprise.

Cider import found to be duty-free

In [Woolworths Group Limited and Comptroller-General of Customs \[2019\] AATA 62](#) the AAT has set aside the decision of the Comptroller-General of Customs and held that a particular type of alcoholic cider which included caramelised apple juice concentrate could be imported duty-free. The key issue central to the dispute was whether the caramelised apple juice concentrate that was added to the fermented apple juice concentrate during the manufacturing process had the effect of taking the product outside of the definition of 'cider' under the *Customs Tariff Act 1995* and the nil rate of duty. Having regard to the facts, the Tribunal found that the product was "cider" and should be classified under tariff sub-heading 2206.00.30 which means the goods can be imported duty-free.

Parliamentary report into access to free trade agreements by SMEs

The Federal Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade has released its [report](#) following an inquiry into access to free trade agreements (FTAs) by small and medium enterprises (SMEs). Among the key recommendations made by the Committee, is that the Australian Government continues to embrace an ambitious free trade agenda with an expanding network of high quality FTAs, while acknowledging that FTAs are only one way of enabling international trade for Australian businesses. In addition, it recommends that FTAs be made more user-friendly for Australian SMEs by establishing a centralised 'single trade window' of resources and seek to make FTAs more relevant to Australian SMEs by including specific SME chapters or specific obligations to assist SMEs to access trade opportunities in future FTA.

Game of Trade

A number of measures introduced in the trade war so far, such as the imposition of new tariffs by various countries, are having a tangible, negative economic impact on global markets with trade volume growth declining to its lowest level in several years. This is coupled with the numerous non-tariff barriers to trade which, while less visible, are significant inhibitors to trade for businesses. PwC's economic modelling suggests that for some businesses there can be opportunities as well as challenges.

PwC's Game of Trade – to be launched on 8 March 2019 – is an immersive game-based experience where business leaders can explore the effects of tariff increases, non-tariff measures and protectionist policies on business operations, international trade and supply chains. Contact Ross Thorpe, Gary Dutton, Ben Lannan or Stephanie Males for more information.

Let's talk

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

Michelle Tremain, Perth
Indirect Tax Leader
+61 (8) 9238 3403
michelle.tremain@pwc.com

Jeff Pfaff, Brisbane
Partner
+61 (7) 3257 8729
jeff.pfaff@pwc.com

Ross Thorpe, Perth
Partner
+61 (8) 9238 3117
ross.thorpe@pwc.com

Ben Lannan, Melbourne
Partner
+61 (3) 8603 2067
ben.lannan@pwc.com

Adrian Abbott, Sydney
Partner
+61 (2) 8266 5140
adrian.abbott@pwc.com

Brady Dever, Sydney
Partner
+61 (2) 8266 3467
brady.dever@pwc.com

Matt Strauch, Melbourne
Partner
+61 (3) 8603 6952
matthew.strauch@pwc.com

Gary Dutton, Brisbane and Sydney
Partner
+61 (7) 3257 8783
gary.dutton@pwc.com

Mark Simpson, Sydney
Partner
+61 (2) 8266 2654
mark.simpson@pwc.com

Stephanie Males,
Partner
+61 (2) 6271 3414
stephanie.males@pwc.com

Personal Tax Update

Taxpayer's land subject to small business CGT concessions

The Administrative Appeals Tribunal (AAT) in [Eichmann v Commissioner of Taxation \[2019\] AATA 162](#) has set aside the Commissioner of Taxation's decision and held that the taxpayer was entitled to small business capital gains tax (CGT) concession in respect of the disposal of land. The Tribunal was satisfied that the land was an "active asset" as it was used to store materials, tools and work vehicles relevant for the purpose of operating of the business which was carried on by a connected entity. The Tribunal was satisfied that the use of the land was far from minimal or incidental to the carrying on of the business, and that the taxpayer had shown on the balance of probabilities that the Commissioner had erred in determining that the land did not satisfy the requirements for being an active asset eligible for the CGT small business concessions.

Employee not entitled to deduction for relocation expenses

The AAT in [McKenzie and Commissioner of Taxation \[2019\] AATA 77](#) has held that an employee of the Department of Defence, was not entitled to claim tax deductions for relocation expenses (airfares, vehicle transportation costs and removal costs) incurred in moving from Canberra to

Perth due to events in the taxpayer's workplace and the deterioration of his mental condition. The expenses were found to bear too remote a relationship to the gaining or producing of assessable income to be deductible – the mere fact of a connection between the two is insufficient, the costs were in no sense an input of employment and were not a necessary outgoing stemming from the nature or actuality of his employment, but rather a cost associated only tangentially with that activity.

Individual living overseas found to be non-resident

The Full Federal Court allowed the taxpayer's appeal in [Harding v Commissioner of Taxation \[2019\] FCAFC 29](#) and held that the taxpayer, who was an Australian citizen living outside of Australia in a temporary and furnished apartment overseas, was not an Australian tax resident. The Court determined that, when assessing residency of an individual, the phrase "permanent place of abode" should not be interpreted by reference to the permanence of a person's specific house or dwelling, but rather should be interpreted more widely to consider whether a person is living permanently in a particular "country or state". For further detail, refer to our [TaxTalk Alert](#).

Let's talk

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

Bruce Ellis, Melbourne
Partner
+61 (3) 8603 3303
bruce.ellis@pwc.com

Glen Frost, Sydney
Partner
+61 (2) 8266 2266
glen.frost@pwc.com

Martina Crowley, Perth
Partner
+61 (8) 9238 3222
martina.crowley@pwc.com

Murray Evans, Newcastle
Partner
+61 (2) 4925 1139
murray.evans@pwc.com

Cesare Scalise, Perth
Partner
+61 (8) 9238 3417
cesare.scalise@pwc.com

Samantha Vidler
Partner
+61 (7) 3257 8813
samantha.vidler@pwc.com

State Taxes Update

NSW land tax exemption for social and affordable housing

The NSW Treasurer has released a [Land Tax Management Regulation 2019 \(NSW\)](#) which provides that a lessee of land from the NSW Land and Housing Corporation is not required to pay land tax on the land if the dominant purpose of the lease is providing housing (which may include social and affordable housing) and the lease is for a term of at least 10 years.

Tasmanian land tax concession for bushfire affected areas

The Tasmanian Commissioner of State Revenue has [provided](#) owners of Tasmanian properties within bushfire-affected areas an extension of time to pay their 2018-19 land tax assessment notices until 15 March 2019. The extension applies to properties within the Huon Valley Council, Central Highlands Council and West Coast Council areas. Eligible property owners will be notified about the automatic extension.

Northern Territory Home Owner Package

The Northern Territory Government has [announced](#) a Home Owner Package which will provide a grant of AUD 20,000 for the first 600 people to build or purchase a new home in the Territory to live in. Additionally, stamp duty assistance for first home owners will be expanded to include any person who builds or purchases a new or established Territory home, provided they have not owned a home in the Territory in the preceding 24 months.

ACT legislative developments

The Australian Capital Territory (ACT) Government has introduced [Revenue Legislation Amendment Bill 2019](#) which proposes to make various amendments to territory tax laws including, among other things:

- expand the Commissioner's debt recovery powers that will enable the recovery of tax debts from mortgagees, and from the sales proceeds of land owned by a debtor

- realignment of the 25 per cent penalty tax rate as the based default rate from 1 July 2019
- a new exemption from land tax for land rented through a registered community housing provider
- an exemption from duty for the surrender and re-grant of University of Canberra declared land subleases, and
- minor and technical amendments to clarify and simplify tax administration.

Trustee liable for Victorian land tax surcharge

The Victorian Civil and Administrative Appeal Tribunal in [Caveo Communications Pty Ltd as trustee for the Caveo Communications Hybrid Unit Trust v Commissioner of State Revenue \(Review and Regulation\) \[2019\] VCAT 202](#) has affirmed the decision of the Victorian Commissioner of State Revenue to impose the trustee surcharge rate of land tax on relevant landholding. The Tribunal was not satisfied that the taxpayer had provided the Commissioner with a nomination of the unitholders of the trust in the time required to claim the concession in section 46C of the *Land Tax Act 2005* (Vic) to avoid the imposition of the surcharge.

Trustee not exempt from duty on land transfer

The Victorian Civil and Administrative Appeal Tribunal in [Avmak Pty Ltd v Commissioner of State Revenue \[2019\] VCAT 223](#) has affirmed the decision of the Commissioner of State Revenue finding that the exemption of duty in section 35(1)(a) of the *Duties Act 2000* (Vic) did not apply to the transfer of land by a beneficiary to a trustee of the trust. Having regard to the relevant trust deed, the Tribunal was not satisfied that the transfer of property was made to the trustee to be held solely as trustee of the transferor without any change in the beneficial ownership of the property. Specifically, the Tribunal found that the trustees' obligations went further than simply to hold the property for the respective transferor.

Let's talk

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

Costa Koutsis, Sydney
Partner
+61 (2) 8266 3981
costa.koutsis@pwc.com

Rachael Cullen, Sydney
Partner
+61 (2) 8266 1035
rachael.cullen@pwc.com

Barry Diamond, Melbourne
Partner
+61 (3) 8603 1118
barry.diamond@pwc.com

Stefan DeBellis, Brisbane
Partner
+61 (7) 3257 8781
stefan.debellis@pwc.com

Rachael Munro, Perth
Partner
+61 (8) 9238 3001
rachael.munro@pwc.com

Superannuation Update

Draft super contributions tax regulations

Treasury has [released](#) for comment draft Superannuation Contributions Tax regulations to replace existing Regulations which are due to sunset on 1 April 2019. The Draft *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019* and *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019* are made to ensure the ongoing operation of the Superannuation Contributions Tax and are not intended to alter the substantive meaning or operation of the existing Regulations. Comments were due on 15 February 2019.

Protecting your Super Package measures

The [Treasury Laws Amendment \(Protecting Your Superannuation Package\) Bill 2018](#) has completed its passage through Federal Parliament and now awaits assent. This Bill implements the following measures from the Protecting Your Super Package announced in the 2018-19 Federal Budget:

- cap certain fees and costs where the balance of a MySuper or choice product is below AUD6,000
- contains measures to allow trustees to provide opt out insurance to new members aged under 25 years and for certain members with balances below AUD 6,000
- require the Commissioner of Taxation to use all best endeavours to unite inactive account balances.

Let's talk

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

David Ireland, Sydney
Financial Services Corporate Tax Leader
+ 61 (2) 8266 2883
david.ireland@pwc.com

Marco Feltrin, Melbourne
Partner
+ 61 (3) 8603 6796
marco.feltrin@pwc.com

Abhi Aggarwal, Brisbane
Partner
+ 61 (7) 3257 5193
abhi.aggarwal@pwc.com

Alice Kase, Sydney
Partner
+ 61 (2) 8266 5506
alice.kase@pwc.com

Peter Kennedy, Sydney
Partner
+ 61 (2) 8266 3100
peter.kennedy@pwc.com

Jeff May, Melbourne
Partner
+ 61 (3) 8603 0729
jeffrey.may@pwc.com

Matthew Strauch, Melbourne
Partner
+ 61 (3) 8603 6952
matthew.strauch@pwc.com

Ken Woo, Sydney
Partner
+ 61 (2) 8266 2948
ken.woo@pwc.com

Naree Brooks, Melbourne
Partner
+ 61 (3) 8603 1200
naree.brooks@pwc.com

Legislative Update

Federal Parliament's 2019 Autumn sittings commenced on 12 February 2019.

Our [TaxTalk Alert](#) summarised the key proposals that were either before Parliament as at the time that the Autumn session of Parliament commenced, and those which were still to be progressed. Since then, the following tax and superannuation related Bills were introduced:

- [Treasury Laws Amendment \(Combating Illegal Phoenixing\) Bill 2019](#), which was introduced into the House of Representatives on 13 February 2019, proposes to implement four measures that were announced in the 2018-19 Budget to address illegal phoenix activity, including new phoenixing offences to prohibit creditor-defeating dispositions of company property and allowing the Commissioner of Taxation to collect estimates of anticipated goods and services tax (GST) liabilities and make company directors personally liable for their company's GST liabilities.
- [Treasury Laws Amendment \(Increasing the Instant Asset Write-Off for Small Business Entities\) Bill 2019](#), which was introduced into the House of Representatives on 13 February 2019, proposes to amend the tax law to extend by 12 months the period during which small business entities can access the accelerated depreciation rules and to increase the eligibility threshold to assets that cost less than AUD25,000 (rather than the previous AUD20,000 which was to apply until 30 June 2019). To access the immediate deduction for depreciating assets that cost less than AUD25,000, the asset must be first acquired on or after 7.30 pm, by legal time in the Australian Capital Territory, on 12 May 2015 and first used or installed ready for use for a taxable purpose on or on or after 29 January 2019 and before 30 June 2020.
- [Treasury Laws Amendment \(Putting Members' Interests First\) Bill 2019](#), which was introduced into the House of Representatives on 20 February 2019, proposes to protect individuals' retirement savings from erosion by ensuring that trustees can only provide insurance to a member of a choice or MySuper product if directed by the member where the member is under 25 years old and begins to hold a new product on or after 1 October 2019 or to members who hold products with balances below AUD6,000.
- [Treasury Laws Amendment \(2019 Measures No. 1\) Bill 2019](#), which was introduced into the

House of Representatives on 13 February 2019, proposes, amongst other things, to increase the maximum number of allowable members in Self-Managed Superannuation Funds (SMSFs) from four to six and in conjunction with [Excise Tariff Amendment \(Supporting Craft Brewers\) Bill 2019](#), proposes to extend concessional rates of excise to brewers that supply draught beer in kegs or other containers that have a capacity of 8 litres or more that are designed for use with a pressurised gas delivery system or pump delivery system.

- [Treasury Laws Amendment \(2019 Petroleum Resources Rent Tax Reforms No 1\) Bill 2019](#), which was introduced into the House of Representatives on 13 February 2019, includes the first tranche of measures to implement the Government's response to the Review of the Petroleum Resource Rent Tax (PRRT). Specifically, the Bill includes measures to lower the uplift rates that apply to certain categories of carried-forward expenditure and to remove onshore petroleum projects from the scope of the PRRT.

In addition, the following measures have completed their passage through Parliament in the first week of the Autumn session:

- [Treasury Laws Amendment \(2018 Measures No. 5\) Bill 2018](#), which, among other things, makes technical amendments to the managed investment trust (MIT) and attribution managed investment trust (AMIT) rules.
- [Treasury Laws Amendment \(2017 Enterprise Incentives No. 1\) Bill 2017](#) which introduces the 'similar business test' as an alternative test for companies to potentially access tax losses and net capital losses (and tax losses for listed widely held trusts) where they have changed their ownership. Refer to our [TaxTalk Alert](#) further detail.
- [Treasury Laws Amendment \(Protecting Your Superannuation Package\) Bill 2018](#) which gives effect to the 2018-19 Federal Budget announcements relating to the protection of individuals' retirement savings from erosion such as the capping of the amount of fees that can be charged annually to certain low value superannuation balances and measures to deal with inactive low-balance accounts.
- [Treasury Laws Amendment \(2018 Measures No. 4\) Bill 2018](#) which implements measures to strengthen compliance with taxation and superannuation guarantee obligations, enable

the sharing and verification of tax file numbers, and to make a number of miscellaneous amendments to taxation, superannuation and other laws.

- [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Bill 2017](#) which extends the corporate whistleblower protection regime and introduces new protections for tax whistleblowers.

Federal Parliament will now not sit until Tuesday 2 April 2019, which is also the day that the 2019-20 Federal Budget will be delivered.

Let's talk

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

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

David Ireland, Sydney
Financial Services Corporate Tax Leader
+61 (2) 8266 2883
david.ireland@pwc.com

Kirsten Arblaster, Melbourne
Infrastructure & Urban Renewal Corporate Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

James O'Reilly, Brisbane
Brisbane Corporate Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Rob Bentley, Perth
Perth Corporate Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Jason Karametos, Melbourne
Industries Corporate Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Other News

ATO assistance for people impacted by North Queensland floods

The Australian Taxation Office (ATO) has [announced](#) that people impacted by the recent floods in North Queensland will be granted extra time to deal with their tax affairs. Taxpayers in impacted local government areas will automatically get an additional four weeks to lodge and pay activity statements, tax returns and fringe benefits tax returns that would normally be due in February 2019. Refunds that are due will also be fast-tracked by the ATO.

Measures to simplify and resolve tax disputes for small business

The Government has [announced](#) measures to make it simpler for small businesses to resolve tax disputes with the ATO. A small business concierge service within the Australian Small Business and Family Enterprise Ombudsman's office is to be created to support small businesses without legal representation. The package of changes will

commence on 1 March 2019 and include the following additional features:

- Prior to applying to the Administrative Appeals Tribunal (AAT), unrepresented small business can receive one hour of legal advice on payment of a AUD 100 co-payment.
- After paying the AAT a reduced application fee to review an adverse ATO decision, such as affirming an audit or cancelling an ABN registration, the small business will have a dedicated case manager throughout the process. Unrepresented small businesses may receive an additional hour of free legal advice to be administered by the Australian Small Business and Family Enterprise Ombudsman's office.

Reporting regime for sharing economy platform providers

Treasury has [released](#) a consultation paper which discusses the existing arrangements for reporting sharing economy information and seeks views on the possible design characteristics for a sharing economy reporting regime which was announced in

the 2018-19 Budget as part of the Black Economy Taskforce recommendations. Although there is no universally accepted definition of the sharing economy, understanding its scope is a key objective of the consultation. Examples of the sharing economy would include ride sharing or short-term accommodation services that are facilitated through a website or application software (app) operated by the platform provider with payment by the consumer being facilitated by the platform.

The Taskforce recommended that sharing economy websites should be required to report payments made to their users to the ATO and other government agencies as appropriate. Comments were due on the consultation paper by 22 February 2019.

Productivity Commission to examine remote area tax concessions and payments

The Productivity Commission has [announced](#) that it will examine the operation and impacts of the zone tax offset and related remote area tax concessions and payments, and provide recommendations on the appropriate form and function of such assistance into the future. An issues paper is expected to be released in March 2019, with initial submissions due by early May 2019.

Parliamentary Committee report into the ATO's 2016-17 Annual Report

The House of Representatives Standing Committee on Tax and Revenue has released its [report](#) into the ATO's 2016-17 Annual Report. The Committee made various recommendations including, among others, the following:

- Improvements should be made to the ATO's communications and information strategies
- The ATO should review the case law and practice notes governing the Commissioner's discretion on fraud or evasion to ensure that fairness is preserved under the self-assessment system, and that the basis of the Commissioner's determinations are both clear and accountable to the taxpayer.
- ATO Taxpayer Alerts should provide updates on changes to law and rulings that might impact on particular taxpayer segments, and that any important changes be promptly cited and identified on the ATO website and promulgated to tax professionals.
- The Government should review and publicly consult on proposals to establish a new and dedicated scheme for consideration of compensation claims against defective tax administration to reduce perceptions of conflicts of interest and improve taxpayer confidence in the fairness and probity of decisions made.
- The ATO adopt a reframed 'Australian Taxation Office Charter' which not only provides that taxpayers be fair, honest and timely in engagement with the ATO and the tax system, but which also sets equivalently high service obligations for ATO staff and policy makers in tax administration.
- An autonomous appeals group, headed by an independent Second Commissioner, should be established to focus solely on tax dispute processes.
- The Inspector-General of Taxation should be renamed the Taxation Ombudsman to reflect an expanded and fully operational complaints assistance role.

Let's talk

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

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

David Ireland, Sydney
Financial Services Corporate Tax Leader
+61 (2) 8266 2883
david.ireland@pwc.com

Kirsten Arblaster, Melbourne
Infrastructure & Urban Renewal Corporate Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

James O'Reilly, Brisbane
Brisbane Corporate Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Rob Bentley, Perth
Perth Corporate Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Jason Karametos, Melbourne
Industries Corporate Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Contacts

To discuss how recent updates in the areas of corporate tax, employment tax, international tax, indirect tax, personal tax, state taxes, superannuation or legislation might affect you, please contact:

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

David Ireland, Sydney
Financial Services Corporate Tax Leader
+61 (2) 8266 2883
david.ireland@pwc.com

James O'Reilly, Brisbane
Brisbane Corporate Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Kirsten Arblaster, Melbourne
Infrastructure & Urban Renewal Tax
Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Jason Karametos, Melbourne
Industries Corporate Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Hayden Scott, Brisbane
Tax Controversy & Dispute Resolution
Leader
+61 (7) 3257 8678
hayden.scott@pwc.com

Rob Bentley, Perth
Perth Corporate Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
robert.k.bentley@pwc.com

Norah Seddon, Sydney
People & Organisation Tax Leader
+61 (2) 8266 5864
norah.seddon@pwc.com

Chris Morris, Sydney
M&A Tax Leader
+61 (2) 8266 3040
chris.j.morris@pwc.com

Michelle Tremain, Perth
Indirect Tax Leader
+61 (8) 9238 3403
michelle.tremain@pwc.com

Editorial

TaxTalk Monthly is produced by the PwC's Financial Advisory Marketing and Communications team, with technical oversight provided by PwC's Tax Markets & Knowledge team.

Editorial

Erin Richardson
Director, Marketing &
Communications
+61 (3) 8603 0360
erin.richardson@pwc.com

Kate Fawcett
Manager, Communications
+61 (3) 8603 0986
kate.a.fawcett@pwc.com

Lynda Brumm
Principal, Tax Markets &
Knowledge
+61 (7) 3257 5471
lynda.brumm@pwc.com

Abdur Mohamed
Manager, Tax Markets &
Knowledge
+61 (2) 8266 2176
abdur.mohamed@pwc.com

TaxTalk Monthly

© 2019 PricewaterhouseCoopers. All rights reserved. PwC refers to the Australia member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details. This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors. Liability limited by a scheme approved under Professional Standards Legislation. At PwC Australia our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 236,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.au.