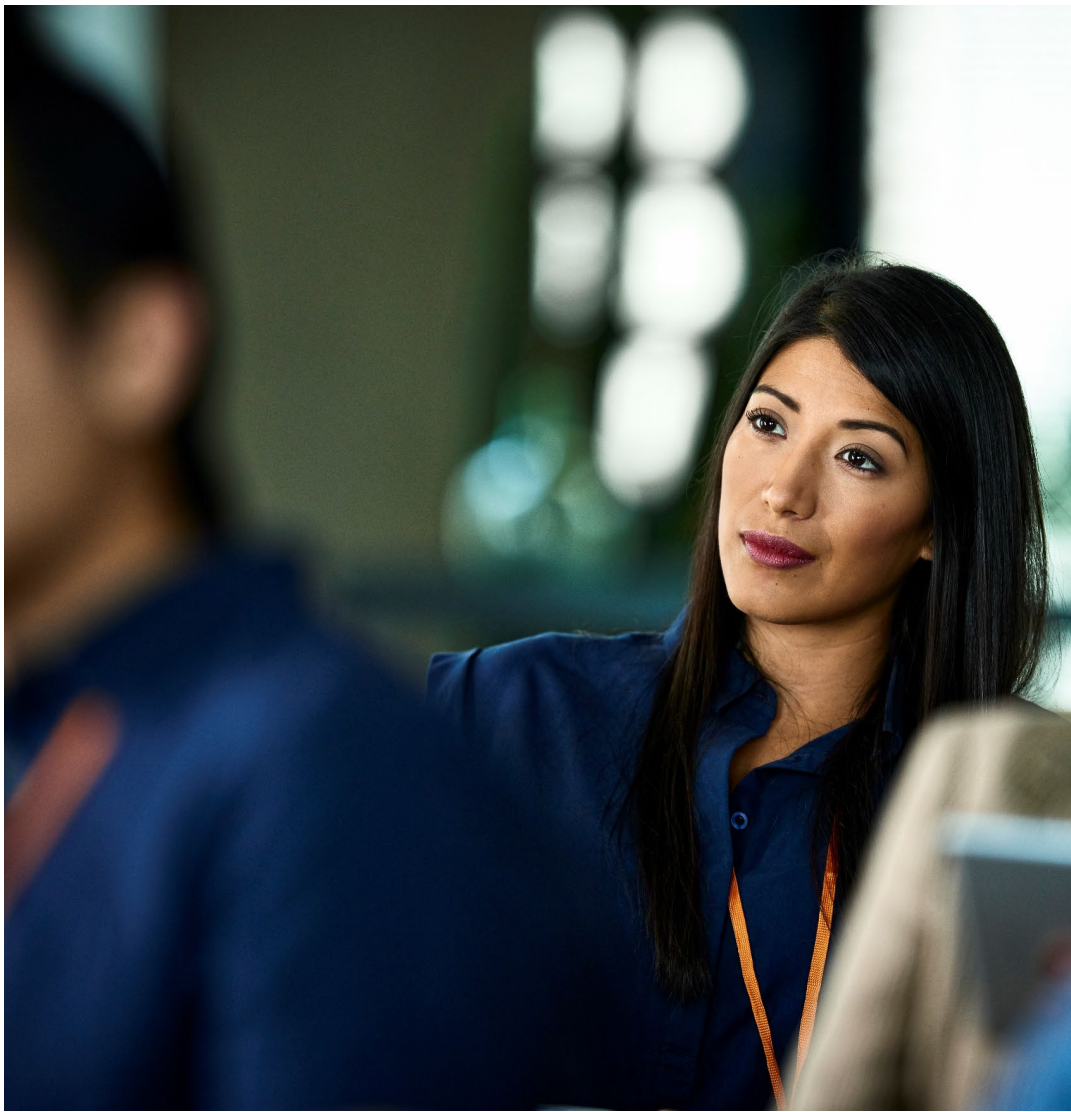
www.pwc.com.au

TaxTalk Monthly

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

March 2020



pwc

Corporate Tax Update

Buy-back or redemption of certain hybrid securities

The Australian Taxation Office (ATO) has released a discussion paper seeking views on a potential practical compliance approach for determining the market value of certain hybrid securities when they are bought back or redeemed (as relevant) from an investor holding their hybrid securities on capital account.

The paper has issued as the ATO has become aware of some uncertainty and inconsistent tax treatment in relation to the redemption or buy-back of hybrid securities. In particular, some taxpayers have either assumed it is not necessary to determine the market value of the security or the market value has been assumed to be its face value (ie the actual proceeds received) on redemption or buy-back of the security. The ATO also recognises the practical problems for investors in determining the market value of the securities for the purposes of calculating their capital gain or capital loss on these transactions.

The ATO has noted that depending on the feedback received, it may publish a practical compliance guideline. Comments are due on 11 March 2020.

Certain exploration activities not core R&D activities

The Administrative Appeals Tribunal in Coal of Queensland Pty Ltd and Innovation and Science Australia [2020] AATA 126 has held that certain exploration activities (seismic survey, drilling to validate survey results and providing samples for analysis) undertaken by a coal exploration company in Queensland were not "core R&D activities". Specifically, the Tribunal was satisfied that the activities undertaken were all generic exploration activities undertaken in the initial exploration stages which a company with a mining tenement would undertake in order to ascertain the location, quality and size of the coal resources so it can progress to being able to mine the coal.

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

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

Sarah Hickey, Sydney
Sydney Tax Market Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

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

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

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

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

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

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Rebecca Cohen, Sydney
IUR Tax Leader
+61 (2) 8266 8476
rebecca.cohen@pwc.com

Amy Etherton, Newcastle
Partner
+61 (2) 4925 1175
amy.etherton@pwc.com

Employment Taxes Update

Time to act on historical super guarantee non-compliance

Uncertainty over the future of the once-off amnesty for Superannuation Guarantee (SG) non-compliance is over with the relevant amending Bill completing its passage through Federal Parliament on 24 February 2020.

This now clears the way for affected employers to take advantage of the amnesty which will cover SG contribution entitlements referable to the period from 1 July 1992 through to 31 March 2018 provided that

the voluntary disclosure is made to the Australian Taxation Office (ATO) in the period up to six months after the legislation is enacted.

Employers who take advantage of the SG amnesty will receive the following:

- The removal of the administrative penalty of the SG Charge of AUD$20 per employee per quarter;
- The ability to claim a tax deduction for the payment of underpaid SG during the amnesty period;
- A full reduction of penalties that may otherwise apply (up to 200 percent of the SG Charge); and
- The ability to pay amounts directly into employees' funds, rather than channelling these through the ATO.

The new law also provides for diminished discretion to reduce penalties for any historical quarters covered by the amnesty where the employer did not voluntarily disclose the shortfall before the amnesty cut-off date, effectively imposing a minimum 100 percent penalty except in 'exceptional circumstances'.

For further detail, refer to this TaxTalk alert.

Payroll tax applied to facility and administration style arrangements

The High Court has dismissed the taxpayer's application for special leave to appeal against the decision of the Supreme Court of Victoria – Court of Appeal in Commissioner of State Revenue v The Optical Superstore Pty Ltd [2019] VSCA 197 on the grounds that there was not considered to be sufficient doubt to warrant the grant of special leave to appeal.

In the earlier Court of Appeal decision, it was found that certain net consultation fees paid to optometrists by the owner of the clinic at which the optometrists used to treat patients were 'payments' for the purpose of the 'relevant contract' provisions and were subject to payroll tax. This was notwithstanding the taxpayer had collected and held the monies 'on trust' for the optometrists.

Following the dismissal of the taxpayer's appeal, it is recommended that taxpayers with facility and administration agreements conduct a comprehensive review of their circumstances to understand whether this decision may trigger a payroll tax obligation within their business.

Parliamentary inquiry into tax treatment of ESS

The House of Representatives Standing Committee on Tax and Revenue has announced that it will inquire and report on the tax treatment of Employee Share Schemes (ESS). In particular, the Committee will inquire into the effectiveness of the legislative changes made in 2015 to the ESS tax rules and examine:

- how effective the changes have been in their goal of bolstering entrepreneurship in Australia and supporting start-up companies
- the costs and benefits of these concessional taxation treatments, and deferred taxing points for options, to the broader community
- whether the current tax treatment of ESS remains relevant to start-up companies and whether any changes are appropriate to ensure the taxation treatment remains relevant
- how companies currently structure their ESS arrangements and how taxation treatment affects these decisions; and
- the challenges faced by companies in setting up an ESS arrangement and how the standard documents by the Australian Taxation Office, and introduced in 2015, assist this process and whether additional improvements should be made.

Submissions to the inquiry are due by 19 March 2020.

Ruling on genuine redundancy payments amended

The ATO has issued an addendum to Taxation Ruling TR 2009/2 dealing with genuine redundancy payments.

The addendum amends TR 2009/2 to recognise law changes made by the *Treasury Laws Amendment (2019 Measures No 2) Act 2019* and applies on and from 29 October 2019 to payments made to employees who are dismissed or retire on or after 1 July 2019. These changes extend the age at which employees can access concessional tax treatment for genuine redundancy and early retirement scheme payments. The former age-based limit of 65 years has been replaced with the phrase "Pension age", which ranges from 65 years for individuals born before 1 July 1952, up to 67 years for individuals born on or after 1 January 1957.

Victoria – Payroll tax objections

The State Revenue Office of Victoria has issued Payroll Tax Exemption PTX-02-20 which deals with a number of practical issues for objecting to penalty tax on payroll tax assessments.

Let's talk

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

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

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

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

Anne Bailey, Melbourne
Partner
+61 (3) 8603 6818
anne.m.bailey@pwc.com

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

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

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

Lisa Hando, Perth
Partner
+61 (8) 9238 5116
lisa.hando@pwc.com

Global Tax Update

Latest news from international tax and transfer pricing

Expanded concept of significant global entity now before Parliament

The Australian Government has introduced legislation which expands the scope of what is a significant global entity (SGE) and introduces the new concept of a Country by Country Reporting Entity (CbCRE). The new rules 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 as the new rules are proposed to apply to income years commencing on or after 1 July 2019. For further insights refer to our TaxTalk Alert.

Discounted capital gains and FITO claims

The High Court of Australia has dismissed the taxpayer's application for special leave to appeal against the decision of the Full Federal Court Burton v Commissioner of Taxation [2019] FCAFC 141. The majority of the Full Federal Court had held that the taxpayer, who derived assessable capital gains from investments made in the United States (US), was not entitled to a full foreign income tax offset (FITO). Specifically, the taxpayer was not entitled to a FITO in respect of that part of the capital gain that was not included in the assessable income due to the capital gains tax discount.

In response to the High Court's decision, the ATO has released a statement welcoming the decision and encouraging taxpayers to review any prior year FITO claims and make necessary voluntary amendments such that the FITO claim is limited to the extent of the assessable amount of the capital gain in Australia, even though foreign tax may have been paid on the whole of the gain in the foreign jurisdiction. The ATO has indicated that it intends to commence compliance activity on this issue in the near future.

ATO finalises compliance approach for offshore drilling rig projects

The Australian Taxation Office (ATO) has released Practical Compliance Guideline PCG 2020/1 which sets out its compliance approach to transfer pricing issues for projects involving the use in Australian waters of non-resident owned mobile offshore drilling units (MODUs), such as drill-ships, drilling rigs (including but not limited to submersibles, semi-submersible and jack-up rigs), pipe-laying vessels and heavy-lift vessels. Note the guideline was previously issued in draft form as Draft Practical Compliance Guideline (PCG 2019/D5) and is substantially the same.

In summary, the Guideline seeks to provide a framework for taxpayers to:

- assess the compliance risk of the transfer pricing outcomes of offshore drilling and associated activities in accordance with the ATO's risk framework

- understand the compliance approach that the ATO is likely to adopt having regard to the risk profile of the taxpayer's offshore drilling and associated activities, and
- understand the type of analysis and evidence the ATO will use when assessing the transfer pricing outcomes of the relevant offshore drilling and associated activities.

The Guideline recognises that affected taxpayers may review their arrangements for offshore drilling and associated activities and consequently may adjust the pricing of their arrangements going forward to fall within the ATO's low risk "green zone". In this respect, the ATO has indicated that it is willing to work with the taxpayer to resolve the 'back years' in a cooperative, practical manner and for the period of 12 months from the date of publication of the Guideline (ie until 19 February 2021), it will consider remitting shortfall penalties to nil and the shortfall interest charge to the base rate if certain pre-conditions are met, including making a voluntary disclosure in relation to all income years where arrangements are in place and adjusting historic and prospective pricing to reflect an appropriate transfer pricing outcome based on the law.

Update from Joint Chiefs of Global Tax Enforcement

Leaders of tax authorities from Australia, Canada, the Netherlands, the United Kingdom (UK) and the United States (US) as part of the joint operational alliance known as the Joint Chiefs of Global Tax Enforcement (J5) recently met in Sydney to review their progress against transnational tax crime and set priorities for the year ahead.

The J5 also conducted a globally coordinated day of action to put a stop to the suspected facilitation of offshore tax evasion which involved evidence, intelligence and information collection activities such as search warrants, interviews and subpoenas as part of a series of investigations in multiple countries into an international financial institution located in Central America, whose products and services are believed to be facilitating money laundering and tax evasion for customers across the globe. Significant information was obtained as a result and investigations are ongoing. It is expected that further criminal, civil and regulatory action will arise from these actions in each country.

OECD update on international tax agenda

The report of the Secretary General to the Organisation for Economic Co-operation and Development (OECD) has been released to the G20 Finance Ministers and Central Bank Governors on the progress of various Base Erosion and Profit Shifting (BEPS) initiatives. The report provides an update on the activities to address the tax challenges arising from digitalisation of the economy, tax transparency developments and implementation of other BEPS measures. It also reports on the activities and achievements of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Importantly, Part I of the report discussed the statement of the G20/OECD which endorsed the Unified Approach on Pillar One as the basis for the negotiations of a consensus-based solution to the tax challenges arising from the digitalisation of the economy, and which will work towards an agreement by the end of 2020. The Statement recognises concerns about the proposal to implement Pillar One (allocation of profits and new nexus rule) on a "safe harbour" basis. It also highlights other critical policy issues that must be agreed to under Pillar One before a decision can be made. For further details refer to PwC Global Tax Insights.

In addition, the OECD also provided an update on the economic analysis and impact assessment of the Pillar 1 and Pillar 2 proposals related to the digitalisation of the economy including comments that the combined effect of Pillars 1 and 2 would lead to a significant increase in global tax revenues.

Transfer pricing guidance on financial transactions

The OECD has released the Transfer Pricing Guidance on Financial Transactions: Inclusive Framework on BEPS: Actions 4, 8-10 report which represents one of the last missing pieces of the BEPS project. The report summarises key issues surrounding intercompany financial transactions and provides helpful commentary on the use of credit ratings, use of market data, uniqueness of cash pools to multinational groups, and proposed methods applicable to transactions. For further details refer to PwC Global Tax Insights.

Other OECD developments

The OECD has released a consultation document which seeks to address the implementation and operation of the BEPS Action 13 minimum standard on country-by-country reporting (CbCR) of tax information to tax authorities. The review is to consider whether changes should be made to require reporting of additional data, the appropriateness of the applicable revenue threshold, and the effectiveness of filing and dissemination mechanisms. Comments are due on 6 March 2020 For further details refer to PwC Global Tax Insights.

In other OECD developments:

- North Macedonia has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).
- Palau and VietNam joined the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes.
- Togo signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which enables jurisdictions to exchange information, conduct tax examinations abroad, conduct simultaneous tax examinations and assist in tax collection.

Arrival of Brexit puts US treaty claims at risk

Brexit – the United Kingdom's departure from the European Union (EU) – took effect at 11pm UK time on 31 January 2020. While this development has many social, political, and economic implications, one seemingly collateral effect is its potential impact on qualification for treaty benefits for some United Kingdom-parented groups under certain United States (US) income tax treaties. For further details refer to PwC Global Tax Insights.

President Trump's State of the Union address

In his third State of the Union address, President Trump highlighted the effects of the 2017 tax cuts in promoting continued economic growth and low unemployment in the US. During his remarks to a joint session of Congress covering a broad range of topics, President Trump also called for legislative action to increase spending on infrastructure and reduce the price of healthcare. For further details refer to PwC Global Tax Insights.

India 2020 Budget impacts foreign investors and multinationals

The Indian Finance Minister presented the Union Budget 2020 on 1 February 2020. The Budget included various proposals affecting foreign investors and multinational enterprises doing business in India, including a reduction in tax rates for lower-income individual taxpayers, abolishment of the dividend distribution tax (DDT), introduction of a safe harbor and Advance Pricing Arrangement (APA) to attribute profits, and a corporate tax litigation amnesty. For further details refer to PwC Global Tax Insights.

High Court dismisses Comptroller-General's appeal in customs case

The High Court of Australia has dismissed the Comptroller General of Customs appeal against the decision of the Full Federal Court in Comptroller General of Customs v Pharm-A-Care Laboratories Pty Ltd [2018] FCAFC 237. The Full Court had found that vitamins and weight loss products were both classifiable as medicaments (free from customs duty) and not as food supplements for the purposes of imposing customs tariffs.

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

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

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

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

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

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

Jayde Thompson, Sydney
Partner
+61 403 678 059
jayde.thompson@pwc.com

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

Gary Dutton, Brisbane & Sydney
Australian Trade Leader
+61 (7) 3257 8783
gary.dutton@pwc.com

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

Indirect Tax Update

Full Federal Court rules on timing of entitlement to interest on overpaid GST

The majority of the Full Federal Court in Commissioner of Taxation v Travelex Limited [2020] FCAFC 10 has dismissed the Commissioner of Taxation's appeal against the decision of the Primary judge regarding the taxpayer's entitlement to interest payable by the Commissioner of Taxation in respect of an amount of goods and services tax (GST) that was found to be overpaid as a result of an earlier High Court decision. The Court, in the first instance, found for the taxpayer and granted a declaration that interest was payable by the Commissioner from the fourteenth day after the day on which the relevant surplus arose (ie when it lodged the applicable Business Activity Statement (BAS)) and not the much later date as the Commissioner had contended. For further details regarding the Federal Court's decision refer to this summary in the August 2018 edition of TaxTalk monthly.

Tribunal denies taxpayer input tax credits on scrap gold

The Administrative Appeals Tribunal in ACN 154 520 199 Pty Ltd (In Liq) v Commissioner of Taxation [2019] AATA 5981 has held that the taxpayer, which processed scrap gold, did not refine it, and as such, the subsequent supply of the precious metal to bullion dealers was not GST-free. The Tribunal said that section 38-385 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) does not confer GST-free supply status to the first (or any) supply made by a refinery when it converts 'precious metal' – this is because GST-free status is limited to the first supply after "its refining". Having regard to the facts, the production of new investment-grade bars after their conversion was, therefore, not GST-free supplies, notwithstanding they are new 'precious metal'. On this basis, the taxpayer was not entitled to claim input tax credits in relation to the acquisition of gold. The taxpayer has since appealed to the Federal Court.

GST legislative determination – corporate card holders

The ATO has issued WTI 2020/1 – Goods and Services Tax: Waiver of Tax Invoice Requirement (Visa Purchasing Card) Determination 2020 which allows Visa Purchasing Card cardholders to claim input tax credits without holding a tax invoice in certain circumstances. Instead electronic data files can be used provided they include the required information. This determination is substantially the same as the previous determination that it replaces (Goods and Services Tax: Waiver of Tax Invoice Requirement (Visa Purchasing Card) Determination 2018).

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

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

Suzanne Kneen, Melbourne
Partner
+61 (3) 8603 0165
suzanne.kneen@pwc.com

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

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

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

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

Personal Tax Update

Bushfire tax assistance measures in effect

The Federal Government's package of bushfire tax assistance measures have now been enacted.

These measures make government support payments to volunteer firefighters and relief and recovery payments and non-cash benefits provided by Australian governments non-assessable non-exempt income.

Let's talk

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

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

Martina Crowley, Melbourne
Partner
+61 (3) 8603 1450
martina.crowley@pwc.com

Amy Etherton, Newcastle
Partner
+61 (2) 4925 1175
amy.etherton@pwc.com

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

Matt Gurner, Perth
Partner
+61 (8) 9238 3458
matthew.gurner@pwc.com

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

State Taxes Update

Update on NSW Surcharge Land Tax for discretionary trusts

The State Revenue Legislation Further Amendment Bill which was introduced into the NSW Parliament on 22 October 2019 was debated in the NSW Legislative Assembly during February 2020 and amendments were made. The Bill amends the Duties Act 1997, the Land Tax Act 1956 and the Land Tax Management Act 1956 to "address anomalies in revenue legislation, close tax loopholes and align the technicalities of certain NSW revenue legislation with other jurisdiction's laws", including amendments to the surcharge purchaser duty and landholder duty provisions of the Duties Act 1997. The Bill as originally introduced, proposed 31 December 2019 as the cut-off date for trustees of discretionary trusts to amend their trust deed to remove foreign beneficiaries and therefore limit the application of surcharge purchaser duty to acquisitions of residential property in NSW. Since that date has now passed, the Legislative Assembly proposed, and both sides of the lower chamber accepted, that the cut-off date be extended to 31 December 2020. The now amended Bill has been returned to the Legislative Council for second reading. The next sitting day for the Council is Monday, 2 March 2020, however, budget estimates are scheduled from that date through to 17 March 2020. Accordingly, the next earliest sitting date that the Bill is likely to be considered in the Council is Tuesday, 24 March 2020.

Victoria – foreign purchaser additional duty and discretionary trusts

For the past four years, the Victorian State Revenue Office (SRO) has applied a 'practical approach' in determining if a discretionary trust is a foreign trust for purposes of the foreign purchaser additional duty. Under this approach, trusts that had foreign beneficiaries who had not and who were, based on available information, unlikely to receive any distributions in the future, were not treated as foreign trusts.

However, the Victorian SRO has announced that from 1 March 2020, it will no longer apply this 'practical approach' in determining if a discretionary trust is a foreign trust for purposes of the foreign purchaser additional duty. Instead, the special rules for discretionary trusts will be applied to all discretionary trusts (including family discretionary trusts), so that if the discretionary trust has any potential foreign beneficiary, the trust will generally be a foreign trust for the purpose of the foriegn purchaser additional duty provisions. The practical approach will only apply to dutiable transactions where contracts of sale were entered into (or nominations were made in a sub-sale context) before 1 March 2020.

Victoria – Objecting against penalties on land tax assessments

The State Revenue Office of Victoria has issued Land Tax Exemption LTX-02-20 which covers a

range of frequently asked questions in relation to objecting against penalty tax on land tax assessments.

NSW – New duties rulings

Revenue NSW has issued the following duties rulings:

- Revenue Ruling DUT 045v2 is a revised version of the Commissioner's previous ruling relating to the impact of GST on determining the unencumbered market value for NSW duties purposes. The Commissioner has clarified that the mischief intended to be addressed is largely situations where GST is sought to be deducted from the value determined and most of the guidance is focused on where the comparable sales methodology or hypothetical sales methodology is adopted. The ruling sets out the Commissioner's view on the appropriate GST treatment across a number of different circumstances.
- Revenue Ruling DUT 046 which provides guidance on how the concession for transfers of dutiable property by the legal personal representative of a deceased person to a beneficiary under section 63 of the *Duties Act 1997* (NSW) operates.

NSW Review of Federal Financial Relations

The NSW Federal Financial Relations Review panel has released its consultation findings report in response to its 2019 review paper which sought feedback about how state governments can sustainably fund and deliver the services and infrastructure that citizens expect and need. The findings report provides a snapshot of key themes raised during the consultation. In particular, it is reported that the state taxes that received the most mentions from the consultation activity were transfer duty (stamp duty), payroll tax and insurance-based taxes. More than half of all submissions raised transfer duty, with the majority of people calling for the tax to be replaced, while others suggested the tax rate be reduced or thresholds increased.

In relation to the next steps, the review will investigate a number of ways in which the federation can support a stronger economy, better services and better outcomes for all Australians, including, among other things:

- how to support a strong NSW economy and improve the tax mix to be fairer, simpler, more efficient, and sustainable
- alternatives to stamp duty on property to make the tax burden fairer and to give people greater flexibility to move house
- options to address the erosion and volatility in the GST revenue base so that governments can sustainably plan and deliver services and infrastructure into the future, and
- whether payroll tax arrangements can be streamlined to work better for businesses across the country while retaining a sustainable revenue source.

Insurance duty on premiums paid to non-registered insurers

NSW Revenue Authority has recently launched an initiative to identify insureds that have a stamp duty obligation on the basis that they have paid premiums to a non-registered insurer. The approach adopted is to seek information from branches and subsidiaries of offshore companies operating in Australia, with an initial focus on financial institutions.

The issue concerns the potential requirement for the insured to report and pay insurance duty in circumstances where premiums are paid to an insurer that is not listed as a registered insurer in Australia. If the insurance is taken out through an Australian broker it is likely (but not guaranteed) that they may have paid the insurance duty and relevant taxes on behalf of the insured.

Given that information sharing takes place between Revenue Authorities, this initiative may raise awareness of insurance duty obligations in other states / territories. In addition to the insurance duty obligations, there may be a requirement to lodge separate tax returns (on behalf of the non resident insurer), report and pay income taxes and fire service levy (in NSW) on those premiums.

Let's talk

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

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

Cherie Mulyono, Sydney
Partner
+61 (2) 8266 1055
cherie.mulyono@pwc.com

Superannuation Update

No change to transfer balance cap for 2020-21 financial year

The Australian Taxation Office (ATO) has confirmed that the general transfer balance cap will remain at AUD1.6m for the 2020-21 financial year. This is because the consumer price index (CPI) for the December 2019 quarter was below 116.9. The cap is now anticipated to be indexed on 1 July 2021. The transfer balance cap is the limit on the total amount of superannuation that can be transferred into the retirement phase.

Draft Intermediary LRBA determination

The ATO has released in draft Superannuation Industry (Supervision) In-house Asset Determination — Intermediary Limited Recourse Borrowing Arrangement Determination 2020 which seeks to ensure that certain investments by a self-managed superannuation fund (SMSF) in a related trust that is in connection with an Intermediary Limited Borrowing Recourse Arrangement (Intermediary LRBA) is excluded from being an in-house asset of the fund in the circumstances described in the instrument. An important requirement for the exclusion is that the arrangement complies with section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth), ie that the rights of the holding trustee, the lender and any other party against the trustee of the fund under the borrowing arrangement is limited to only the acquirable asset for which the LRBA amount was borrowed. Comments on the draft are due on 13 March 2020.

Update to TRIS compliance guidelines

The ATO has updated Practical Compliance Guideline PCG 2017/3 which outlines the ATO's compliance approach for some APRA regulated superannuation funds, pooled superannuation trusts (PSTs) and life insurance companies that hold segregated pension assets and are facing practical difficulties in complying with recent legislative amendments affecting various transition to retirement income streams (TRIS) products during the transition period. The Guideline has been updated to reflect amendments to the law by the *Treasury Laws Amendment (2017 Measures No. 2) Act 2017* (Cth) and the *Treasury Laws Amendment (2018 Measures No. 4) Act 2019* (Cth). The updated PCG only applies for the 2017-18 income year and to funds that hold assets in segregated current pension asset pools or segregated exempt asset pools before the 2017-18 income year and those assets include assets supporting the payment of TRIS that is not in the retirement phase that are unable to be transferred or otherwise distinguished from the segregated asset pool(s) at the start of the 2017-18 income year and that have deployed a full system solution by the end of 30 June 2018.

Permanent tax relief for merging superannuation funds

Legislation is now before Federal Parliament to extend the current tax relief (ie loss relief and asset roll-over) for merging superannuation funds so that it will be made permanent from 1 July 2020, ensuring that superannuation fund member balances are not affected by tax when superannuation funds merge. This should remove tax as an impediment to mergers and facilitate industry consolidation. Self-managed superannuation funds are excluded from this tax relief.

Reuniting super balances

To facilitate the closure of eligible rollover funds by 30 June 2021 and allow the Commissioner to reunite amounts received from eligible rollover funds with a super fund member's active account, new law is currently before Parliament. An eligible rollover fund is a fund that is eligible to receive superannuation benefits rolled over from another fund without member consent. This Bill amends the relevant law to require the balance of all accounts less than AUD6,000 held by eligible rollover funds on 1 June 2020 to be transferred to the ATO by 30 June 2020 and the balance of all remaining accounts held by eligible rollover funds be transferred to the ATO by 30 June 2021.

Let's talk

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

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

Mark Edmonds, Sydney
Partner
+ 61 (2) 8266 1339
mark.edmonds@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 resume for the Autumn sittings on 4 February 2020. The following tax and superannuation Bills were introduced:

- Treasury Laws Amendment (2019-20 Bushfire Tax Assistance) Bill 2020, which was introduced into the House of Representatives on 5 February 2020, provides an income tax relief for certain payments in relation to the 2019-20 bushfires and to update the list of deductible gift recipients to include the Australian Volunteers Support Trust and the Community Rebuilding Trust. This Bill has since been enacted.
- Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020, which was introduced into the House of Representatives on 6 February 2020, facilitates the closure of eligible rollover funds by 30 June 2021 and enables the Commissioner to reunite amounts received from eligible rollover funds with a member's active account.
- Treasury Laws Amendment (2020 Measures No. 1) Bill 2020, which was introduced into the House of Representatives on 12 February 2020, broadens the definition of a significant global entity (SGE), modifies the rules that identify which entities must undertake country by country (CBC) reporting and provides permanent tax relief for merging superannuation funds.

Commonwealth revenue measures that were registered as legislative instruments or regulations since the last edition, include:

- Income Tax Assessment Amendment (Exploration for Minerals) Regulations 2020 amends the regulations to maximise the utilisation of exploration credits under the junior minerals exploration incentive (JMEI) by increasing the amount of the annual exploration cap for the 2020-21 income year by AUD5 million that is available to be allocated by the Commissioner under the incentive. The increase in the cap arises from the amount of unused credits from the 2017-18 income year. This brings the total exploration cap for the 2020-21 income year to be AUD40 million.
- Taxation Administration Declaration 2019 outlines the class of entities whose tax debt information may be disclosed to credit reporting bureaus by taxation officers under the exception to the confidentiality of taxpayer information provisions in the tax law. Entities that have been declared are those that are registered in the Australian Business Register (other than as deductible gift recipients), complying superannuation funds, registered charities or government entities; and that have one or more tax debts, the total of which is at least AUD100,000, that have been overdue for more than 90 days; and after taking reasonable steps, the Commissioner of Taxation has been able to confirm with the Inspector-General of Taxation that no complaint remains active by the entity concerning the disclosure of tax debt information of the entity that is, or could be, the subject of an investigation.
- Taxation Administration (Remedial Power — Disclosure of Protected Information by Taxation Officers) Determination 2020 allows a taxation officer to disclose protected information to the registered tax agent or BAS agent, or legal practitioner of an executor or administrator of an estate of an individual who has died.

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

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

Sarah Hickey, Sydney
Sydney Tax Market Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

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

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

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

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

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

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Rebecca Cohen, Sydney
IUR Tax Leader
+61 (2) 8266 8476
rebecca.cohen@pwc.com

Other News

CGT concessions denied following market valuation of shares sold

The Administrative Appeals Tribunal (AAT) in Miley v Commissioner of Taxation (Taxation) [2019] AATA 5540 has held that a taxpayer, who owned shares in a company, was not entitled to the small business capital gains tax (CGT) concessions on the sale of the shares as the net value of the taxpayer's assets for the purposes of the maximum net asset value (MNAV) exceeded the AUD6 million threshold. The main issue in question in this matter was determining the value of the company that was sold, where as part of the sale transaction, restrictive covenants were put in place. The Tribunal agreed that the restrictive covenants were integral to the taxpayer maximising the value of his share sale, such that without the covenants, the taxpayer would have sold the shares for less. However, the value of the shares just before their sale, which is the relevant time to assess their value for the purposes of the asset test, was impacted by the terms of the deal that was formally struck immediately thereafter.

Board of Taxation's review of rollovers

As previously reported, the Board of Taxation is undertaking a review into Australia's system of capital gains tax (CGT) rollovers and associated provisions with a focus on considering practical ways to simplify existing rollovers. To assist stakeholders seeking to contribute to the review, the Board has prepared a consultation guide. The guide sets out the current suite of roll-overs and the policy considerations that are central to evaluating and improving the framework of roll-over relief. It also poses a number of questions to consider when formulating input to the review. Submissions on the consultation guide are due by 30 April 2020.

ATO draft effective lives of assets in certain industries

The Australian Taxation Office (ATO) has released draft effective life determinations for depreciating assets used in the following industries:

- aircraft manufacturing and repair services
- childcare services industry
- funeral crematorium and cemetery services, and
- the general practice medical services industry.

Once finalised the effective life determinations are proposed to apply to assets purchased (or otherwise first used or installed ready to use) on or after 1 July 2020. Comments were due on 28 February 2020.

Updated Taxpayer Alert on stapled structures

The ATO has updated Taxpayer Alert TA 2017/1 on re-characterisation of income from trading businesses to reflect recently enacted measures in the *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019* (Cth). The updated Alert expressly carves out rental staples, such that it does not apply to transactions or

structures which relate to cross-staple rental arrangements as the mischief associated with these arrangements are addressed in the new law. Importantly, the ATO will continue to apply the Taxpayer Alert to other staple structures that are not covered by the new law. The ATO is also seeking to develop public guidance for particular industries of the type described under rental staples, where the focus will be on cross-staple transactions rather than the stapled structure itself.

Government responds to report on taxpayer engagement

The Federal Government has released its response to the House of Representatives Committee report on taxpayer engagement. The Government has agreed to or noted the various recommendations including that a review of Australia's tax system should be undertaken before 2022, that Treasury considers an ABN withholding tax system at source for all industries, work-related deduction be reformed by introducing a standard deduction. In relation to recommendations concerning the ATO, among other things, the ATO has agreed to adopt a roadmap for the abolition of paper-based returns, and to deploy and make greater use of behavioural insights to increase taxpayer engagement, and also review the functionality of the contractor assessment tool for accuracy and utility to taxpayers by reference to the functionality of the tool deployed in the United Kingdom.

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

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

Sarah Hickey, Sydney
Sydney Tax Market Leader
+61 (2) 8266 1050
sarah.a.hickey@pwc.com

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

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

Kirsten Arblaster, Melbourne
Melbourne Tax Market Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Rob Bentley, Perth
Perth Corporate Tax Leader
+61 (8) 9238 5202
robert.k.bentley@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
Sydney Tax Leader
+61 (2) 8266 2883
david.ireland@pwc.com

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

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

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

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

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

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

Rebecca Cohen, Sydney
IUR Tax Leader
+61 (2) 8266 8476
rebecca.cohen@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
Deals & Stamp Duty 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

Stevie Pitcher
Manager, Communications
+61 (3) 8603 1806
stevie.pitcher@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

WL 127076071