

TaxTalk Monthly

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

May 2019



Corporate Tax Update

ATO's updated GPFS guidance

The Australian Taxation Office (ATO) has published its [final guidance](#) on the provision of General Purpose Financial Statements (GPFS) to the ATO by corporate tax entities that are Significant Global Entities (SGEs). Changes to the initial guidance include:

- clarification of the requirements and options available to those companies that have or do not have a Part 2M.3 obligation under the Corporations Act 2001, and for those that are a member of a group of entities
- accounting principles the ATO consider to be commercially accepted accounting principles (CAAP)
- an explanation of the phrase 'effective consolidation or aggregation of the operations of your entire multiple entry consolidated (MEC) group' and provide a further explanation in respect of financial statements that are compiled under a compilation engagement.
- further clarify what the term 'financial year most closely corresponding to the income year' means and added examples to better explain and demonstrate the meaning of the phrase, and
- make it clear that the GPFS need to be in English.

In addition, in spite of the ATO's transitional approach that applied to the first year of GPFS lodgment obligations, the ATO has confirmed in this current guidance that this transitional approach will no longer apply and that it will now strictly follow the requirements as set out in section 3CA of the *Taxation Administration Act 1953* (Cth). However, taxpayers that are continuing to experience difficulties complying with their GPFS obligations beyond the first year, can contact the ATO to discuss their circumstances so the ATO can work together to solve the particular issues which may include a practical compliance approach.

When does a company carry on business?

The ATO has finalised its Tax Ruling [TR 2019/1](#) which considers when a company carries on a business for purposes of accessing the lower company tax rate for the 2015-16 and 2016-17 income years, and more broadly under the small business entity definition in section 328-110 of the *Income Tax Assessment Act 1997* (ITAA 1997) (Cth). Although there is no significant change in the overall substance of the Ruling as compared to its draft, it is now made clear that it only applies to

activities undertaken by a company on its own behalf (eg not as a corporate trustee) and, in particular, the specific examples in the draft ruling dealing with unpaid present entitlements have now been replaced with a broader general discussion of corporate beneficiaries. For further insights refer to our [TaxTalk Alert](#).

Investment properties and CGT small business concessions

The ATO has released draft Taxation Determination [TD 2019/D4](#) which confirms that a company that carries on a business in a general sense as described in Taxation Ruling [TR 2019/1](#) but whose only activity is renting out an investment property cannot claim the capital gains tax (CGT) small business concessions in Division 152 of the ITAA 1997 in relation to that investment property. Comments on the draft are due by 10 May 2019. For further information refer to our [TaxTalk Alert](#).

Consolidation exit issues affecting retirement village operators

The ATO has issued a draft Practical Compliance Guideline [PCG 2019/D1](#) which sets out the Commissioner's administrative approach to the treatment of certain resident liabilities on the exit of a subsidiary member of a tax consolidated group where that member had entered into a lease premium or participating loan/lease occupancy agreement to which Taxation Ruling TR 2002/14 applies. Where the Guideline applies, the Commissioner accepts the change in value of the lease surrender liability or increase entry price liability are amounts that are taken into account for income tax purposes at a later time than under accounting principles for the purposes of applying subsection 711-45(5) of the ITAA 1997. Comments are due by 3 May 2019.

Deductibility of environmental protection expenditure

The ATO has released Draft Taxation Ruling [TR 2019/D3](#) which provides guidance on claiming deductions for expenditure on environmental protection activities. The draft ruling specifically explains what activities constitute 'environmental protection activities', when expenditure is considered to be incurred for the 'sole or dominant purpose' of carrying on those activities, the limits on the amount that can be deducted, and the assessability of recouped expenditure on environmental protection activities. Comments are due by 17 May 2019.

Receiver's obligation to retain money for post-appointment tax liabilities

The ATO has released Draft Taxation Determination [TD 2019/2](#) which explains the Commissioner's view in relation to a receiver's obligation to retain money for post-appointment tax liabilities under section 254 of the *Income Tax Assessment Act 1936* (Cth) (ITAA 1936). The Commissioner is of the view that where income, profits or capital gains are derived by an entity through the actions of a receiver acting as its agent, the receiver must retain enough money to pay the tax that has been assessed on such income, profits or gains. This obligation to retain only applies to money that has come to the receiver in their capacity as agent for the entity. Comments were due on 26 April 2019.

Trust found to be a public trading trust

The Federal Court in [Trustee for the Michael Hayes Family Trust v Commissioner of Taxation \[2019\] FCA 426](#) has allowed the taxpayer's appeal and has found that the taxpayer as the trustee of a trust was not presently entitled to the income of the trust and

was not assessable under section 99A of the ITAA 1936. In finding that the relevant trust was a public trading trust, the Court considered the application of the now-removed 20 per cent superannuation fund rule and whether the trust controlled a trading business. Accordingly, the trust was liable to be assessed and pay tax at the corporate tax rate.

Taxpayer Alert on MEC groups avoiding CGT

The ATO has released Taxpayer Alert [TA 2019/1](#) which expresses the ATO's concerns about multiple entry consolidated (MEC) groups avoiding CGT through intra-group debt. The ATO is reviewing arrangements where a MEC group sells a CGT asset with a large unrealised capital gain by way of moving the relevant asset into an "eligible tier-1 company" (ET-1 company) with significant (existing or newly created) intra-group debt and then selling the shares in the ET-1 company to a third party purchaser. As part of the arrangement, the purchaser undertakes to ensure the ET-1 company's intra-group debt is extinguished on completion of the sale. The arrangements are, in substance, a sale of the asset by the MEC group to the purchaser.

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Employment Taxes Update

FBT rates and thresholds for 2019-20

The Australian Taxation Office (ATO) has released the following tax determinations which provide the fringe benefits tax (FBT) rates and thresholds for the 2019-20 FBT year commencing on 1 April 2019:

- [TD 2019/3](#) which provides the rates to be applied on a cents per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car.
- [TD 2019/4](#) which provides that the record keeping exemption threshold is AUD8,714.
- [TD 2019/5](#) which provides the indexation factors for valuing non-remote housing.
- [TD 2019/6](#) provides that the benchmark interest rate to be used is 5.37 per cent per annum.
- [TD 2019/7](#) which sets out the amounts that the Commissioner of Taxation considers reasonable for food and drink expenses incurred by employees receiving a living-away-from-home allowance (LAFHA) fringe benefit.

FBT issues on ATO's radar

With many employers currently in FBT return preparation mode for the FBT year ended 31 March 2019, it is worth noting the following matters that the ATO has [listed](#) as compliance risks that attract its attention:

- failing to report motor vehicle fringe benefits, incorrectly applying exemptions for vehicles or incorrectly claiming reductions for these benefits
- mismatches between the amount reported as an employee contribution on an FBT return compared to the income amounts on an employer's tax return
- claiming entertainment expenses as a deduction but not correctly reporting them as a fringe benefit, or incorrectly classifying entertainment expenses as sponsorship or advertising
- incorrectly calculating car parking fringe benefits due to:
 - significantly discounting market valuations
 - using non-commercial parking rates
 - not being supported by adequate evidence
- not reporting fringe benefits on business assets that are provided for the personal enjoyment of employees or associates, and
- not lodging FBT returns (or lodging them late) to delay or avoid payment of tax.

Proposed superannuation guarantee amnesty now on hold

Although the proposal Superannuation Guarantee (SG) amnesty is scheduled to end on 24 May 2019, the relevant legislation did not complete its passage through Parliament before the calling of the Federal election. This means that the ATO will continue to [apply](#) the current law including applying the mandatory administration component (AUD20 per employee per period) to SG charge statements lodged by employers. The fate of any proposed amnesty will be determined after the results of the Federal election.

SG support and ATO enforcement

With the recent enactment of new laws to strengthen compliance with SG obligations, the ATO is providing more education, strengthened enforcement and increased visibility. In summary, from April 2019, the ATO has [indicated](#) that it will provide the following:

- access to a new, free, online education course (and assessment) that they can complete at a time that suits them or on direction from the ATO for employers who are not meeting their SG obligations, and
- information to employees regarding the non-payment of SG by employers, including the actions the ATO is taking to recover the outstanding amounts.

Importantly, under the new measures, business owners/directors may be held personally liable for amounts owing through the issue of Director Penalty Notices and security deposits.

Employee share scheme (ESS) reporting deadlines coming

All employers that operate an employee share scheme (e.g. Share Options, Performance Rights, Restricted Stock Units/Shares) are likely to be subject to ESS reporting requirements.

Specifically, affected employers are required to provide ESS statements to employees by 14 July 2019 that includes an estimate of the taxable value of employee equity awards during the 2019 tax year. In addition, a collated report of all taxing events for all employees needs to be provided to the ATO by 14 August 2019. Note that failure to provide relevant documents to the Commissioner by the required deadline are subject to penalties, including the higher penalties that apply to significant global entities.

TPRS exemptions

The ATO has issued [TPRS 2019/D1: Taxable Payments Reporting System – Reporting Exemptions for Certain Entities Determination 2019](#) which applies from 1 July 2019 to exempt entities that meet specific criteria from having to prepare and lodge reports relating to payments to third party contractors for courier, cleaning, information technology, security, investigation, surveillance, or road freight services under the taxable payments reporting system (TPRS). The exemptions are available for entities whose supply of relevant services covered by the TPRS makes up only a small part of their overall business activities. The instrument also repeals, remakes and consolidates the existing exemptions applicable to the TPRS.

Single touch payroll

The ATO has released the following single touch payroll (STP) legislative instruments:

- [Taxation Administration – Single Touch Payroll – Exemption for Insolvency Practitioners and Employers subject to their appointment](#) exempts insolvency practitioners from mandatory reporting through single touch payroll for the 2018-19 financial year for the entities they administer. The instrument also exempts from reporting under STP for the 2018-19 financial year those employers subject to the appointment of an insolvency practitioner in relation to payments they make after the commencement of the appointment.
- [Taxation Administration – Single Touch Payroll – Exemption for payments made to Members by Portable Long Service Leave and Portable Redundancy Scheme Providers](#) exempts entities that administer a Portable Long Service Leave scheme or a Portable Redundancy scheme from reporting under STP in respect of payments made to members of the scheme for the 2018-2019 and 2019-2020 financial years.
- [Taxation Administration – Single Touch Payroll – Exemption for Employers Having a Seasonal Workforce \(Repeal\)](#) repeals the *Taxation Administration – Single Touch Payroll – Exemption for Employers Having a Seasonal Workforce* for income years beginning on or after 1 July 2019, noting that STP reporting to all entities from 1 July 2019, including those with less than 20 employees.
- [Taxation Administration – Single Touch Payroll – Exemption for Employers with a Withholding Payer Number](#) exempts from STP reporting obligations for the 2018-19 and 2019-20 financial years for employers who do not have an Australian Business Number (ABN) but instead

have a Withholding Payer Number (WPN). These entities are required to commence reporting payments through STP from 1 July 2020.

Payments from redundancy trust

The ATO has issued [Income Tax: Employment Termination Payments Redundancy Trusts \(12 month rule\) Determination 2019](#) which extends the definition of employment termination payment to include certain payments from redundancy trusts that are received more than 12 months after the termination of a person's employment. Some minor changes have been made to this instrument which had previously applied to: update the definition of 'redundancy trust' to take into account changes to the underlying definition in the *Fringe Benefits Tax Assessment Act 1986*; and to remove a provision concerning transitional arrangements for redundancy trust entitlements that arose prior to 1 July 2007.

Entertainment and sports: PAYG withholding variation

The ATO has issued [PAYG Withholding – Variation to the rate of withholding for certain foreign resident staff who provide support to those engaged in entertainment or sports activities](#) determination which removes the requirement to withhold amounts from payments made to support staff who are engaged in entertaining and sports activities, and who are resident of a country with which Australia has an international tax agreement, and are present in Australia for a period not exceeding 183 days in the financial year. The instrument removes the need for payers and payees to complete unnecessary paperwork in relation to payments which will not be subject to tax in Australia.

QLD payroll tax rulings

The Queensland Office of State Revenue has issued the following payroll tax public rulings:

- [PTA005.4 – Exempt allowances: motor vehicle and accommodation](#) explain the Commissioner of State Revenue's position regarding motor vehicle and overnight accommodation allowances which are not subject to payroll tax to the extent that each of these allowances does not exceed the relevant exempt component/rate.

In relation to motor vehicle allowances, the Commissioner is of the view that car expense payment benefits reimbursed on a cents per kilometre basis that are exempt from fringe benefits tax under the *Fringe Benefits Tax Assessment Act 1986* (Cth) (FBT Act) are generally not wages for payroll tax purposes, and therefore are not subject to payroll tax. However,

an allowance that is paid as a flat or fixed amount is not an exempt car expense payment benefit under the FBT Act and will be subject to payroll tax, unless the employer maintains records to substantiate business kilometres travelled to calculate the exempt component (see PTA025.3 for motor vehicle allowances paid to real estate salespersons). Where an allowance is paid as a combination of a fixed amount plus a rate per kilometre, the taxable portion of the allowance is the amount the allowance exceeds the total of the exempt car expense payment under the FBT Act and the exempt component using the rate per kilometre.

In relation to overnight accommodation allowances, the ruling notes that these are provided to employees for temporary accommodation costs, and are subject to payroll tax to the extent that they exceed the exempt rate, which is determined by the Federal Commissioner of Taxation. The ruling also discusses the difference between an overnight accommodation allowance, accommodation expense payment (or reimbursement) and a living away from home allowance (LAFHA), noting that if a LAFHA does not qualify as a "living away from home allowance benefit" under the FBT Act, and is also not otherwise exempt as an accommodation allowance the Payroll Tax Act, it will be subject to payroll tax under the general definition of 'wages'.

- [PTA025.3 — Motor vehicle allowances paid to real estate salespersons](#) explains the payroll tax treatment of a motor vehicle allowance paid as a fixed amount to a real estate salesperson where no records of kilometres travelled are kept. The ruling recognises that real estate salespersons travel extensively to carry out their duties and it is difficult for them to maintain records. Where certain conditions are satisfied, the Commissioner considers 250 kilometres per week to be a reasonable amount of business travel by a real estate salesperson, and this should be used to determine the amount of the motor vehicle allowance that is exempt from payroll tax. If the motor vehicle allowance paid or payable to a real estate salesperson exceeds the exempt component, the excess is taxable.

Taxation and the future of work

The Organisation for Economic Cooperation and Development (OECD) has released a [working paper](#) on how tax systems influence choice of employment form. Recent policy discussion has highlighted the variety of ways in which the world of work is changing. Differences in tax treatment across employment forms may create tax arbitrage opportunities. This paper investigates the potential for such opportunities for eight countries. It models the labour income taxation, inclusive of social contributions, of standard employees and then of self-employed workers.

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Global Tax Update

Latest news from international tax and transfer pricing

Foreign corporate limited partnership taxed on gains from Australian investment

The Full Federal Court in [Commissioner of Taxation v Resource Capital Fund IV LP \[2019\] FCAFC 51](#) has held that gains made by a foreign corporate limited partnership on the sale of shares in an Australian company should be taxable in Australia as the gain was Australian sourced and there was no treaty relief.

Specifically, the Court confirmed that a corporate limited partnership is a taxable entity and that unpaid tax can be collected from individual partners in the event of non-payment by the partnership. Although the Full Court agreed that the underlying partners were able to claim the protection of the Australia-United States tax treaty, it concluded that RCF IV itself was not.

The case is important for foreign investors who are considering investing in Australia as it considers a number of issues which are relevant to a variety of taxpayers, including inbound investors through fiscally transparent entities, private equity investors, non-resident sellers and taxpayers in the energy and mining industry.

For further insights refer to our [TaxTalk Alert](#).

ATO guidance on the low tax lender rule

The Australian Taxation Office (ATO) has released Draft Law Companion Ruling [LCR 2019/D1](#) which discusses the hybrid mismatch targeted integrity rule (the low tax lender rule) that aims to prevent offshore multinationals from circumventing the hybrid mismatch rules by interposing an offshore entity incorporated in a low-tax (10 per cent or less) jurisdiction when investing or financing into Australia. Comments are due on the Draft by 10 May 2019.

The low tax lender rule, generally applicable to tax periods commencing on or after 1 January 2019, has the potential to effectively impose additional Australian tax on interest and derivative payments to foreign interposed zero or low rate related parties, irrespective of whether the arrangement involves a hybrid element.

The draft LCR provides welcome clarity in relation to a number of technical issues. However, many uncertainties remain and the practical application of the low tax lender rule will continue to present challenges for taxpayers. For further insights refer to our [TaxTalk Alert](#).

ATO views on applying the thin capitalisation arm's length debt test

The ATO has issued Draft Ruling [TR 2019/D2](#) which provides guidance on applying the arm's length debt test under the thin capitalisation rules as it applies to entities that are not authorised deposit-taking institutions. The draft ruling specifically covers key technical issues that arise when calculating the arm's length debt amount. Once finalised, the Draft Ruling will apply retrospectively and will replace the existing taxation ruling on the application of the arm's length debt test (TR 2003/1). Comments on the draft are due by 31 May 2019. For further insights refer to our [TaxTalk Alert](#).

Application of the CFC rules to money-lending

The ATO has issued Draft Taxation Determination [TD 2019/D3](#) which explains the Commissioner of Taxation's preliminary view on the concept of "a business whose income is principally derived from the lending of money" which is relevant to Australia's controlled foreign company (CFC) rules. According to the Determination, the concept of 'a business whose income is principally derived from the lending of money' is concerned with the character of the business that is being conducted. It contemplates a commercial or profit-making operation that involves scale, repetition and continuity of money-lending. It also requires a qualitative, rather than merely quantitative, analysis of how the business earns its income. Comments on the draft are due by 3 May 2019.

Australia and Israel sign new tax treaty

The Australian and Israeli Governments have signed a [*Convention between the Government of Australia and the Government of the State of Israel for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance*](#) and its associated Protocol on 28 March 2019. Key features of the treaty include:

- reduced withholding tax rates including 5 per cent for royalties and a cap of 15 per cent for dividends, and
- Organisation for Economic Cooperation and Development (OECD)/G20 base erosion and profit shifting (BEPS) recommendations.

The new treaty will enter into force after both countries have completed their domestic requirements and instruments of ratification have been exchanged. See also the Australian Government's [media release](#).

ATO releases synthesised text of Australia–Slovak Republic tax treaty under MLI

The ATO has released the [synthesised text](#) of the double tax treaty between Australia and the Slovak Republic as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI entered into force for Australia and the Slovak Republic from as early as 1 January 2019. Although

the synthesised text does not constitute a source of law, it helps users of the applicable tax treaty to understand how the MLI modifies the treaty.

OECD report on sharing economy

The OECD has issued a [report](#) on the effective taxation of platform sellers in the sharing/gig economy. It considers the different ways that tax administrations can best engage with platform sellers, sharing and gig economy platforms, and each other to enable more effective tax compliance.

EC final State aid decision on financing income exemption under UK's CFC rules

The European Commission (EC) announced that it has found the Group Financing Exemption (GFE) within the United Kingdom's (UK) controlled foreign company (CFC) rules is "partly justified". The EC will require the UK Government to determine affected taxpayers and the quantum of tax due. For further information refer to [PwC Global Tax Insights](#).

EU expands list of non-cooperative tax countries

The European Union (EU) has updated its so-called 'blacklist' of non-cooperative tax jurisdictions to encompass 15 countries, including Bermuda, Barbados and the United Arab Emirates (UAE). Jurisdictions on the blacklist face consequences including restrictions on accessing various EU funding, and more stringent reporting requirements by intermediaries and taxpayers of arrangements that involve deductible payments to these jurisdictions. For further details, refer to this [PwC Tax Policy Bulletin](#).

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

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Indirect Tax Update

Remade GST regulations

The [A New Tax System \(Goods and Services Tax\) Regulations 2019](#) remake and improve the prior 1999 Regulations relevant to the goods and services tax (GST) by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation. These changes do not affect the substantive meaning or operation of the provisions except in limited cases that are specifically identified in the regulations. The regulations commenced on 1 April 2019.

ATO updates ruling on securitisation arrangements

The Australian Taxation Office (ATO) released a draft update to [GSTR 2004/4](#) which deals with the GST treatment of the assignment of payment streams including under a typical securitisation arrangement. The changes are intended to provide clarity on when GST credits are available to home loan lenders that securitise their home loan arrangements exist, and to include additional examples of common acquisitions made by lenders. Comments are due 3 May 2019.

Addendum to GST rulings

The ATO has issued the following addenda to GST rulings to reflect the repeal of some legislative instruments that waived the tax invoice requirements:

- [GSTR 2013/1](#) which deals with tax invoices. and
- [GSTR 2013/2](#) which deals with adjustment notes.

Digital currency conversion

The ATO has issued [Goods and Services Tax: Digital Currency Conversion Determination 2019](#) which sets out the method to convert amounts of consideration that are expressed in digital currency into Australian currency for the purposes of working out the value of a taxable supply.

Wine equalisation tax guidelines

The ATO has released Practical Compliance Guideline [PCG 2019/3](#) which explains when the Commissioner will allow a taxpayer to attribute wine equalisation tax (WET) where they sell wine under a contract that includes an effective retention of title clause. The guideline replaces Law Administration Practice Statement PS LA 2013/1 (GA) *Attribution of wine equalisation tax (WET) where contracts include a retention of title clause and the purchaser sells or otherwise uses the wine before title passes*.

Tribunal finds claim for GST refund and input tax credits was out of time

The Administrative Appeals Tribunal in [Rosebridge Nominees Pty Ltd \(in liq\) v FC of T \[2019\] AATA 426](#) has affirmed the Commissioner of Taxation's decision to disallow input tax credits (ITCs) and the GST refunds claimed by the taxpayer. The Tribunal held that the taxpayer was out of time in claiming the GST refund and ITCs when its GST returns were lodged by the liquidator.

Role of digital platforms in the collection of VAT/GST on online sales

The Organisation for Economic Cooperation and Development (OECD) has released a [report](#) on the Role of Digital Platforms in the Collection of VAT/GST on Online Sales. OECD analysis shows that two-thirds of all cross-border e-commerce sales of goods are made via online marketplaces. The report includes new measures to make e-commerce marketplaces liable for the VAT/GST on sales made by online traders through their platforms. Other measures include data sharing and enhanced co-operation between tax authorities and online marketplaces.

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Personal Tax Update

One-off Energy Assistance Payment

The Government has [announced](#) that over 3.9 million pension, allowance and veteran payment recipients residing in Australia on 2 April 2019 will receive a one-off tax exempt energy Assistance Payment to assist with their next energy bill and cost of living expenses. The payment is AUD75 for eligible singles and AUD125 for eligible couples who are eligible for 'qualifying payments' as at 2 April 2019, and will be tax exempt.

Legislation to give effect to the measure has since been enacted and payments are expected to be made automatically before the end of the current financial year.

Personal tax rates

In the 2019-20 Federal Budget on 2 April 2019, the Government announced a range of personal income tax relief tax relief for low and middle income earners. This relief, which has not been enacted, proposes to be provided by way of:

- from 1 July 2018 until 30 June 2022, a significant increase in the Low and Middle Income Tax Offset (LMITO)
- from 1 July 2022, an increase in both the top threshold of the 19 per cent personal income tax bracket and an increase to the Low Income Tax Offset (LITO), and
- from 1 July 2024, a reduction in the 32.5 per cent marginal tax rate to 30 per cent.

For further details of the Federal Budget proposals affecting individuals, refer to PwC's [Federal Budget Insights](#).

In reply, the Australian Labor Party has [indicated](#) that it will deliver bigger tax cuts from 1 July 2019 for those earning less than \$125,000 a year and will not support the later phases of the Government's already legislated Personal Income Tax Plan (i.e. it will not support the later phases of the proposed tax cuts for workers earning between AUD45,000 and AUD200,000 from 2024-25), and intends to increase the top marginal tax rate from 47 per cent to 49 per cent.

Tax treatment of income from international organisations

The Australian Taxation Office (ATO) has issued Draft Taxation Ruling [TR 2019/D1](#) which provides guidance on the tax treatment of the income of international organisations and persons connected with them that is exempt income for tax purposes. The income is exempt by virtue of the *International Organisations (Privileges and Immunities) Act 1963* (Cth) which provides for the conferral, by regulation, of privileges and immunities (including specified tax exemptions) on international organisations and persons connected with them.

The draft ruling indicates that the Commissioner of Taxation will accept as documentary evidence that a person is connected with an international organisation, subject to any evidence to the contrary, a statement from the organisation that contains: the name of the person, a statement that

the person is connected with that organisation, and the capacity in which the person is connected (such as, high office or office holder).

Comments are due on the draft ruling by 28 May 2019.

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State Taxes Update

State tax legislative developments

The following State tax legislative developments occurred since our last update:

- The [Revenue Legislation Amendment Act 2019](#) (ACT) has received assent and amends the various Territory law to:
 - 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
 - realign the 25 per cent penalty tax rate as the based default rate from 1 July 2019
 - provide a new land tax exemption for land rented through a registered community housing provider
 - provide a new duty exemption for the surrender and re-grant of University of Canberra declared land subleases, and
 - make minor and technical amendments to clarify and simplify tax administration.
- The following Bills which were introduced into the Western Australian (WA) Parliament on 29 November 2018 have progressed and currently before the State Legislative Council, which will next sit on 7 May 2019:
 - [Revenue Laws Amendment Bill 2018](#) which seeks to address significant duty leakage, ensure certain taxpayer exemptions and concessions apply correctly, and improve the

efficiency of the State's taxation legislation (*Duties Act 2008 (WA)*, *Land Tax Assessment Act 2002 (WA)* and *Pay-roll Tax Assessment Act 2002 (WA)*).

- [Taxation Administration Amendment Bill 2018](#) which aims to improve the administrative and enforcement arrangements in the *Taxation Administration Act 2003 (WA)*.

Victorian ruling on duty concession for off-the-plan sales

The Victorian State Revenue Office has issued [DA-048v2: Duty concession for off-the-plan sales](#) which applies to contracts for off-the-plan sales. The ruling clarifies the off-the-plan duty concession and the methodology for calculating the concession. It incorporates a full explanation of the alternative method and reflects the established nature of the law surrounding the concession, including the fixed percentage method of calculation.

Duty decisions

The following duty decisions were handed down since our last update:

- The Supreme Court of QLD in [Wakefield & Ors v Commissioner of State Revenue \[2019\] QSC 85](#) has allowed the taxpayers' appeal and held that the Commissioner of State Revenue had incorrectly assessed duty on the transfer on various lots of land. The Court found that the dutiable transactions did not give effect to or arise from what is substantially one arrangement.

As such, the Commissioner had erred in applying section 30 of the *Duties Act 2001* (Qld) to aggregate the dutiable values of the various transfers. The Court found that the fact that although the transferor was the same in each land transfer, and all the parties were related, are relevant circumstances, this is not enough on its own to support a conclusion that the separate transfers are substantially one arrangement – there needs to be something more, some relationship or connection or interdependence between the transactions and not merely a relationship between the parties.

- The Victorian Civil and Administrative Tribunal in [Ford v Commissioner of State Revenue \[2019\] VCAT 405](#) has confirmed the decision of the Commissioner of State Revenue in relation to the imposition of duty on the transfer of a property. The Tribunal found that the taxpayer's acquisition of their half interest in the property was not exempt under section 42 of the *Duties Act 2000* (Vic) which provides an exemption for the transfer of a property from the legal personal representative of a deceased person to a beneficiary in certain circumstances. The transfer of the property was found not to have been in 'satisfaction' of any entitlement under the will.

Land tax decisions

The following land tax decisions were handed down since our last update:

- The High Court in [Living and Leisure Australia Ltd v Commissioner of State Revenue \[2019\] HCATrans 56](#) has refused the taxpayer's application for special leave to appeal against the decision of the [Supreme Court of Victoria – Court of Appeal](#) which had held that the taxpayer was liable to pay land tax in respect of land held under lease from the Crown.

- The Supreme Court of Victoria – Court of Appeal in [Australian Investment & Development Pty Ltd v Commissioner of State Revenue \[2019\] VSCA 69](#) has dismissed the taxpayer's appeal against the decision of the Victorian Civil and Administrative Tribunal which found the relevant land did not satisfy the exemption for primary production land outside greater Melbourne. The Court held that even if the relevant land was 'outside greater Melbourne', the requirements of section 65 of the *Land Tax Act 2005* (Vic) could not be satisfied, as the Tribunal had made findings of fact for the purposes of the primary production requirement in section 67 that were not challenged on appeal, as such, the land exemption did not apply.
- The Victorian Civil and Administrative Tribunal in [Winnett v Commissioner of State Revenue \[2019\] VCAT 403](#) has confirmed the decision of the Commissioner of State Revenue finding that the taxpayers were liable to land tax in respect of a jointly owned property. The Tribunal rejected the various grounds of appeal which related to determining the taxable value of the property, the joint ownership of the property, land valuation and, jurisdictional and procedural grounds.
- The ACT Civil and Administrative Tribunal in [Minh Ung v Commissioner for ACT Revenue \[2019\] ACAT 34](#) has confirmed the Commissioner for ACT Revenue's land tax assessment on land that was found to be 'rented residential land'. A property is 'rented' if subject to a tenancy agreement, even if rent is not being paid. The Tribunal did however reduce the penalty tax payable finding that the taxpayer's culpability arose because he did not exercise due care, and was not an intentional attempt at tax evasion.

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Superannuation Update

Proposed changes to super contribution rules

The Government has [announced](#) changes to the superannuation contribution rules to provide greater flexibility for individuals approaching retirement. These measures, along with other [superannuation proposals](#), were confirmed in the Federal Budget on 2 April 2019.

From 1 July 2020, individuals aged 65 and 66 years will be able to make voluntary superannuation contributions (both concessional and non-concessional) without meeting the “work test” requirements. The work test requires an individual to work at least 40 hours over a 30 consecutive day period for gain or reward before they are able to make voluntary contributions to superannuation.

In addition, the age limit for spouse contributions will be increased from 69 to 74 years. Currently, individuals aged 70 years and over cannot receive contributions made by another person on their behalf.

Access to the bring-forward arrangements which currently allows those aged less than 65 years to make three years’ worth of non-concessional contributions to their super in a single year will also be extended to those aged 65 and 66 years.

Note the Government has called a Federal election which will be held on 18 May 2019, as such, the Government announcement will need to be evaluated post the election.

New super contributions regulations

The [Superannuation Contributions Tax \(Assessment and Collection\) Regulations 2019](#) remake the prior

1997 Regulations, which sunset on 1 April 2019. The new Regulations omit redundant provisions, simplify language and restructure the provisions for ease of navigation. The remaking of the prior Regulations are not intended to affect the substantive meaning or operation of the remade provisions. The regulations commenced on 1 April 2019.

No increase to membership of SMSFs

The Government’s proposed amendments to allow for the membership of a self-managed superannuation fund (SMSF) to increase from four to six failed to be enacted. This means that the maximum number of members of a SMSF remains at four in the absence of a further attempt to amend the law.

Report on use of LRBAs

A report by the Council of Financial Regulators (CFR) and the Australian Taxation Office (ATO) has found that assets held by SMSFs under ‘limited recourse borrowing arrangements’ (LRBAs) are unlikely to pose systemic risk to the financial system at this time.

A LRBA involves a SMSF borrowing funds under a loan to purchase an asset(s) to be held in a separate trust. Any investment returns earned from the asset go to the SMSF. If the loan defaults, the lender’s rights are limited to the asset(s) held in the separate trust.

The Government [requested](#) that the CFR and the ATO continue to monitor LRBAs in the superannuation system and report back again in three years.

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Legislative Update

The Federal Government has called a Federal Election which will be held on 18 May 2019. As a result, Federal Parliament has been [prorogued](#) until Saturday, 18 May 2019, and the House of Representatives has also been dissolved. All unpassed legislation before Federal Parliament has now lapsed, including the following Bills:

- [Treasury Laws Amendment \(Combating Illegal Phoenixing\) Bill 2019](#), which proposed to implement 2018-19 Budget measures 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 \(Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures\) Bill 2018](#), which proposed a broad range of tax related amendments that were announced in the 2018-19 Federal Budget, including:
 - amendments to the thin capitalisation rules to require the alignment of the value of assets for thin capitalisation purposes with the value included in financial statements and ensure that foreign controlled Australian tax consolidated groups and multiple entry consolidated groups that have foreign investments or operations are treated as both outward investing and inward investing entities
 - extending the definition of significant global entity (SGE) and introduce the narrower concept of "country-by-country reporting entity"
 - the targeting the Research and Development (R&D) Incentive
 - amendments to the GST Act to ensure that offshore suppliers of rights or options to use commercial accommodation in Australia include these supplies in working out their GST turnover, and
 - removal of the liability for luxury car tax from cars that are re-imported following service, repair or refurbishment overseas.
- [Treasury Laws Amendment \(Putting Members' Interests First\) Bill 2019](#), which proposed 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 \(Reducing Pressure on Housing Affordability Measures No. 2\) Bill 2018](#), which proposed to:
 - remove the Capital Gains Tax (CGT) main residence exemption for foreign residents
 - provide an additional integrity rule in applying the principal asset test, applicable in working out for foreign resident CGT purposes whether a membership interest is an indirect Australian real property interest
 - make changes to the foreign acquisition and takeover rules by creating a reconciliation mechanism, and
 - provide an additional 'affordable housing' capital gains discount of up to 10 per cent for individuals in respect of CGT events occurring on or after 1 January 2018 for affordable housing tenancies that start before, on or after 1 January 2018.
- [Treasury Laws Amendment \(2018 Superannuation Measures No. 1\) Bill 2018](#), which proposed a number of measures to deal with superannuation, including:
 - a one-off 12-month amnesty to encourage employers to self-correct historical Superannuation Guarantee (SG) non-compliance
 - the 2018-19 Federal Budget measure to allow individuals to avoid unintentionally breaching their concessional contributions cap when they receive superannuation contributions from multiple employers, and
 - measures to ensure that the cap on tax-free retirement phase assets cannot be circumvented through the use of non-arm's length expenditure or certain strategies using limited recourse borrowing arrangements.
- [Treasury Laws Amendment \(2018 Measures No. 2\) Bill](#) which proposed measures relating to FinTech regulatory licensing exemptions, and also to make minor changes to venture capital and early stage investor tax concessions to ensure they operate as intended.

Whether the above measures will progress will depend on the outcome of the Federal election and the newly elected Government's priorities and policies.

The following tax-related Bills were introduced into Parliament and enacted since our last monthly update:

- [Treasury Laws Amendment \(Medicare Levy and Medicare Levy Surcharge\) Bill 2019](#), introduced into the House of Representative on 2 April 2019 and enacted on 5 April 2019, increases the Medicare levy and Medicare levy surcharge low-income thresholds and "phase-in" limits for individuals, families and seniors in line with movements in the consumer price index (CPI).
- [Treasury Laws Amendment \(North Queensland and Flood Recovery\) Bill 2019](#), introduced into the House of Representatives on 2 April 2019 and enacted on 5 April 2019, provides an income tax exemption for North Queensland flood and storm assistance support grants.

The following key tax Bills were given Royal Assent since our last monthly update:

- [Treasury Laws Amendment \(Increasing the Instant Asset Write-Off for Small Business Entities\) Bill 2019](#), introduced into the House of Representatives on 13 February 2019, amends the tax law to extend by 12 months until 30 June 2020 the period during which small business entities can access expanded accelerated depreciation rules. The Bill also increases the eligibility threshold to depreciating assets that cost less than AUD25,000 between the period 29 January 2019 until 2 April 2019, after which time the threshold increased to AUD 30,000 in accordance with the 2019-20 Federal Budget announcement. In addition, medium businesses (with aggregated annual turnover of between AUD 10 million up to AUD50 million) also benefit from the increased AUD30,000 instant asset write-off for depreciable assets first used, or installed ready for use, from 7:30pm (AEDT) on 2 April 2019 to 30 June 2020 (businesses with aggregated turnover of up to AUD10 million can access the increased threshold for any asset purchased before 2 April 2019, so long as it is first used, or installed ready for use, from 7:30pm (AEDT) on 2 April 2019). The threshold returns to AUD1,000 for income years ending on or after 1 July 2020.
- [Treasury Laws Amendment \(Making Sure Foreigners Pay Their Fair Share of Tax and Other Measures\) Bill 2018](#), which proposes a package of reforms to improve the integrity of the income tax law for arrangements involving

stapled structures and to limit access to tax concessions for foreign investors by:

- increasing the Managed Investment Trust (MIT) withholding rate on fund payments that are attributable to non-concessional MIT income to 30 per cent
- modifying the thin capitalisation rules to prevent double gearing structures
- limiting the withholding tax exemption for superannuation funds for foreign residents, and
- codifying and limiting the scope of the sovereign immunity tax exemption.
- [Income Tax Rates Amendment \(Sovereign Entities\) Bill 2018](#), which supports the above Bill and proposes consequential amendments to specify that sovereign entities are liable to income tax on taxable income at a rate of 30 per cent, unless another provision applies to set a different rate.
- [Income Tax \(Managed Investment Trust Withholding Tax\) Amendment Bill 2018](#), which was introduced into the House of Representatives on 20 September 2018, makes consequential amendments to specify that the MIT withholding rate on income attributable to non-concessional MIT income is 30 per cent.
- [Treasury Laws Amendment \(Improving Accountability and Member Outcomes in Superannuation Measures No 1\) Bill 2019](#) which amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act), the *Corporations Act 2001* (Cth) and the *Financial Services (Collection of Data) Act 2001* (Cth) to modernise and increase confidence within the superannuation system as part of a broader package of reforms focused on protecting members' money and members' interests.
- [Treasury Laws Amendment \(2019 Petroleum Resources Rent Tax Reforms No 1\) Bill 2019](#) which includes the first tranche of measures to implement the Government's response to the Review of the Petroleum Resource Rent Tax (PRRT) including measures to: lower the uplift rates that apply to certain categories of carried-forward expenditure; and remove onshore petroleum projects from the scope of the PRRT.
- [Treasury Laws Amendment \(2019 Measures No. 1\) Bill 2019](#) in conjunction with [Excise Tariff Amendment \(Supporting Craft Brewers\) Bill 2019](#), among other things, extends support for craft brewers.

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

- [Customs Amendment \(Collecting Tobacco Duties\) Regulations 2019](#) amend the *Customs Regulation 2015* and complements measures in the *Customs Amendment (Collecting Tobacco Duties at the Border) Act 2018* (Cth) and operates to ensure that duty free operators can continue to replenish tobacco stocks and offer the sale of duty free tobacco after 1 July 2019, allowing these operators to continue their business operations unaffected.
- [Developing Country Relief Funds – Notice Under subsection 30-85\(2\) of the Income Tax Assessment Act 1997](#) which declares that, under subsection 30-85(2) of the *Income Tax Assessment Act 1997* (Cth), MHI GIFT FUND is a developing country relief fund.
- [Excise \(Volume — Alcoholic Excisable Goods\) Determination 2019](#) which provides rules for working out the excisable volume of all alcoholic excisable goods that are being entered for home consumption in retail and bulk containers.
- [Excise \(Alcoholic Strength of Excisable Goods\) Determination 2019](#) which provides rules for working out the alcoholic strength of alcoholic excisable goods entered for home consumption.
- [Excise By-Law — Condensate](#) prescribes the circumstances under which condensate is classified to subitem 21.1 of the Schedule to the *Excise Tariff Act 1921* (Cth) (Excise Tariff Act).
- [Excise By-Law — Prescribed Condensate Production Area](#) prescribes condensate production areas for the purposes of section 6CA of the Excise Tariff Act.
- [Taxation Administration Amendment \(Serious Financial Crime Taskforce\) Regulations 2019](#) amends the *Taxation Administration Regulations 2017* to add the Serious Financial Crime Taskforce to the list of prescribed taskforces for a further four years from 1 July 2019 and which allow taxation officers to disclose relevant information to taskforce officers in the Serious Financial Crime Taskforce. The Taskforce will now be formally led by the Australian Taxation Office.
- [Treasury Laws Amendment \(Protecting Your Superannuation Package\) Regulations 2019](#) supplements and support the Protecting Your Super Package.

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Other News

Federal Election date announced

The Prime Minister Scott Morrison has [announced](#) that the Federal Election will be held on 18 May 2019. With the calling of the federal election, Federal Parliament has been prorogued and the House of Representatives has been dissolved, all unpassed legislation before parliament have now lapsed, refer to the Legislative Update section of *TaxTalk Monthly* for further details.

More Opposition tax policies

In the lead up to the Budget, the Australian Labor Party (ALP) will support the first phase of the personal tax cuts which are proposed in the 2019-20 Federal Bud also [announced](#) more details of its housing policies including confirmation that 1 January 2020 will be the start date of their proposed negative gearing and CGT discount changes. In addition, they have announced a new policy to reduce the managed investment trust withholding rate on tax distributions attributable to investments in build-to-rent housing from 30 per cent to 15 per cent.

In addition, it was also [announced](#) that an ALP government would provide AUD 5 million a year in funding to Tax Inspectors Without Borders, a joint initiative of the OECD and the United Nations. A portion of this will assist the ATO to send tax experts to developing countries. See this media release and speech for more details.

For a summary of other tax policies of the ALP, refer to PwC's [Federal Budget 2019-20 insights](#).

Budget in reply speech

The Leader of the Opposition, Bill Shorten, in his [budget reply speech](#), has confirmed that a future ALP government will support the first phase of the personal tax cuts which were proposed in the 2019-20 Federal Budget for low and middle income earners. Labor intends to increase the offset for workers earning up to AUD48,000 and will not support the later phases of the proposed tax cuts for workers earning between AUD45,000 and AUD200,000 from 2024-25. Mr Shorten also discussed previously announced Labor policies in relation to the Australian Investment Guarantee, and negative gearing and dividend imputation changes.

Commonwealth tenders – new satisfactory tax record requirements

From 1 July 2019, all businesses that tender for a new Commonwealth Government procurement contract over AUD 4 million will be required under a new [Procurement Connected Policy](#) to have a satisfactory Statement of Tax Record issued by the Australian Taxation Office (ATO), which focuses on up-to-date tax registrations, on-time tax lodgments and tax payment obligations being met. The new requirements also apply to first tier subcontractors where the estimated sub-contract value will be at least AUD 4 million. For further details, refer to our [TaxTalk Alert](#).

Extension of PDV and Location Offsets

The Government has [announced](#) that it will extend the Post, Digital and Visual Effects (PDV) and Location Offsets for online platforms such as Stan, Ten All-Access, Netflix and Amazon Prime. The changes have effect for eligible applications received from 11 April 2019.

Commissioner's remedial power

The ATO has released [details](#) of a number of situations in which the use of the Commissioner of Taxation's remedial power was considered but determined not to be applied. The Commissioner has limited powers to modify the operation of tax law in circumstances where entities will benefit, or at least be no worse off, as a result of the modification.

Gain on disposal of shares was not discount capital gain

The Federal Court in [Paule v Commissioner of Taxation \[2019\] FCA 394](#) has held that the gain on disposal of the shares acquired by a trust was not a "discount capital gain" under Subdivision 115-A of the Income Tax Assessment Act 1997 (ITAA 1997). The Court held that neither section 115-30 nor section 115-34 of the ITAA 1997 which provide special rules in relation to the timing of an acquisition, did not operate independently or together, to deem the shares to have been held by the trust for at least 12 months. Accordingly, the trust could not discount the relevant capital gain.

ATO process to remit GIC

The ATO has issued a [decision impact statement](#) (DIS) on the Full Federal Court's decision in [Pintarich v Deputy Commissioner of Taxation \[2018\] FCAFC 79](#). The case concerned whether, in circumstances where there has been no mental process of reaching a conclusion as to whether to remit general interest charge (GIC) by an ATO officer, can the terms of a letter issued to the taxpayer nonetheless manifest the making of a decision? According to the ATO, the Full Federal Court's decision confirms that both a mental process of reaching a conclusion and an act of communicating the decision to remit GIC was necessary. To reduce the likelihood of similar issues arising in the future, the ATO has removed the unclear language in the specific template used in this matter, and replaced it with language that is more appropriate for all circumstances when this template is issued. Comments on the DIS are due by 3 May 2019.

ATO draft effective lives of assets

The ATO was seeking comments on the draft list of effective lives for depreciating assets used in the following industries:

- [Accommodation for the aged operation industry and retirement village operation industry](#) (comments were due on 15 April 2019)
- [Banking industries](#) (comments were due on 26 April 2019)
- [Residential rental properties](#) (comments were due on 31 March 2019)
- [Wholesaling industries](#) (comments were due on 31 March 2019)
- [Working dogs](#) (comments were due 30 April 2019)

Newly appointed Inspector-General of Taxation

The Government has [announced](#) the appointment of Ms Karen Payne as the new Inspector-General of Taxation for a term of five years. Ms Payne will commence the position of Inspector-General on 6 May 2019.

Future of Tax profession review

The Inspector General of Taxation has [released](#) his review into the Future of the Tax Profession. The review examined the challenges and opportunities presented by new and emerging digital technologies, along with the accompanying social, policy and regulatory impacts on the administration of the tax system and the tax profession. It highlights the need for prompt and well-coordinated action by all within the tax system to manage the challenges and opportunities ahead. The review noted that the advancement of technology may create new complexities and that the services required from tax professionals may vary accordingly which could mean changes to their business models. Various recommendations were made to the Government, the ATO and the Tax Practitioners Board.

Donations to Men's and Women's Sheds

The Government has [announced](#) that it will introduce a new law which will from 1 July 2020, make donations (AUD2 0r more) to a Men's and Women's Sheds tax deductible. The Sheds will join charities including the Red Cross, World Vision and The Smith Family which are Deductible Gift Recipients.

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TaxTalk Monthly

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