

November 2018

TaxTalk Monthly

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



Corporate Tax Update

Targeted amendments to Division 7A

Treasury has released a [consultation paper](#) on the Government's proposed implementation of the amendments to Division 7A of the *Income Tax Assessment Act 1936* (Cth). The amendments incorporate the Government's response to the findings and recommendations of the Board of Taxation in their final report on the 'Post Implementation Review of Division 7A of Part III of the *Income Tax Assessment Act 1936*' and include:

- simplified Division 7A loan rules to make it easier for taxpayers to comply;
- removal of the distributable surplus concept;
- a self-correction mechanism to assist taxpayers to promptly rectify breaches of Division 7A;
- safe harbour rules for the use of assets to provide certainty and simplify compliance for taxpayers;
- technical amendments to improve the integrity and operation of Division 7A while providing increased certainty for taxpayers; and
- clarification that unpaid present entitlements (UPEs) are within the scope of Division 7A (although it is noted that the treatment of pre-16 December 2009 UPEs and existing sub-trust arrangements remain uncertain at this stage).

Comments are due on 21 November 2018. For further information, refer to the Government's [media release](#).

Accelerated company tax rate reductions

The newly enacted [Treasury Laws Amendment \(Lower Taxes for Small and Medium Businesses\) Act 2018](#) accelerates the reduction of the corporate tax rate for 'base rate entities'. Specifically, the corporate tax rate for base rate entities has now reduced from 27.5 per cent to 26 per cent for the 2020-21 income year and to 25 per cent for the 2021-22 income year and later income years.

Income year	Former rate	Amended rate
2018-19 to 2019-20	27.5%	27.5%
2020-21	27.5%	26%
2021-22 to 2023-24	27.5%	25%
2024-25	27%	25%
2025-26	26%	25%
2026-27	25%	25%

Draft law improves integrity of treatment of concessional loans following privatisation

Treasury has released [exposure draft legislation](#) to improve the integrity of the existing tax rules which apply to tax exempt entities that become taxable in the context of concessional loans, as announced in the 2018-19 Federal Budget. Currently, when applying the law that applies to the privatisation of a government owned entity, loans issued on concessional terms (including when the parties to the arrangement are not dealing at arm's length or if the interest rate under the arrangement departs from the benchmark rate of return) can unintentionally result in a tax deduction on the repayment of the loan principal. The proposed new law will disallow these tax deductions which would otherwise arise. Comments on the draft law are due by 5 November 2018. For further information, refer to the Government's [media release](#).

Further draft law for Corporate Collective Investment Vehicle

Treasury has released the [third tranche](#) of law in relation to the new Corporate Collective Investment Vehicle (CCIV) regime. This latest tranche includes the independence requirement for the depositary (whose responsibility it is to safeguard the fund's assets and oversee some of the activities of the fund), arrangements and reconstructions, receivership and winding up, deregistration of sub-funds and CCIVs, takeovers, compulsory acquisitions and buy-outs, and disclosure requirements, and other consequential amendments to the Asia Region Funds Passport, the ASIC Act and the *Personal Property and Securities Act 2009* (Cth) to accommodate the new CCIV regime. Comments were due by 12 October 2018.

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Employment Taxes Update

FBT compliance cost review

The Board of Taxation is conducting a [survey](#) as part of its comprehensive review of the compliance costs associated with obligations under Fringe Benefits Tax (FBT) legislation. The survey will help the Board estimate and identify reasons for compliance costs which will be used to formulate its recommendations to be provided to Government in early 2019. The survey will be open until midnight on Tuesday, 6 November 2018.

Commissioner of State Revenue v The Optical Superstore Pty Ltd (VIC)

An application for Leave to Appeal the decision made in The Optical Superstore case was filed on 19 October 2018 by the Commissioner of State

Revenue. The submission challenged the appeal judge's approach to statutory interpretation. The Commissioner's appeal relates to the learned appeal judge's reason for concluding that a return of money held under an express trust isn't an amount that is 'paid or payable' within the meaning contained in the *Pay-Roll Tax Act 1971* (VIC) and *Payroll Tax Act 2007* (VIC). The Optical Superstore has until 16 November to file their reply.

Payroll tax developments in South Australia

The [Payroll Tax \(Exemption for Small Business\) Amendment Bill 2018](#), which proposes a payroll tax exemption for South Australian businesses with annual taxable wages of up to AUD1.5 million, has passed Parliament and awaits Assent.

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Global Tax Update

Latest news from international tax and transfer pricing

‘Royalty’ payments assessable under Australia-India double tax agreement

The Full Federal Court in [*Satyam Computer Services Limited \(now an amalgamated entity Tech Mahindra Limited\) v Commissioner of Taxation \[2018\] FCAFC 172*](#), the latest in a series of tax decisions concerning the company, has found that payments received by the Indian resident company from its Australian clients were assessable in Australia.

In the case, the Court considered whether, having regard to the sourcing rules, Australia had a right to tax the income derived by the company from computer technology services that were performed partly by employees in India through its Australian offices to local customers. This issue was not previously considered or challenged in prior appeals (see [*Tech Mahindra Limited v Commissioner of Taxation \[2016\] FCAFC 130*](#)).

The taxpayer had argued that although Australia is allocated the right to tax the ‘royalties’ by the Australia-India double tax agreement (DTA), it can only exercise that right if it has the right to impose tax on those amounts under Australia’s domestic law.

The Full Federal Court held that although the payments received by the taxpayer from its Australian clients were not royalties under Australian domestic law, they were royalties for the purposes of Article 12 of the Australia-India DTA, and consequently had a deemed Australian source by virtue of Article 23 of the DTA.

In summary, the Court stated that “the text of Article 23(1) of the Indian Agreement is not ambiguous. Its ‘effect’ is given paramountcy by s4(2) of the Agreements Act [*International Tax Agreements Act 1953*] and that effect is recognised and affirmed by s3AA(2) of the Agreements Act.”

Having regard to the *International Tax Agreements Act 1953*, since the payments were deemed to have an Australian source under the DTA, they were included in the taxpayer’s assessable income under section 6-5(3)(a) of the *Income Tax Assessment Act 1997*.

Reminder – Australia’s hybrid rules apply soon

Australia’s hybrid mismatch rules are now law ([*Treasury Laws Amendment \(Tax Integrity and Other Measures No. 2\) Act 2018*](#)) and have effect for income years commencing on or after 1 January 2019. With time ticking away, particularly for December balancers, we recommend that all Australian taxpayers with cross-border transactions consider the potential impact of the hybrid mismatch rules sooner rather than later. From our experience to date, identifying potential hybrid mismatches is not straightforward in many cases, and once identified, restructuring out of hybrid arrangements into alternative arrangements will be a necessity. Refer to our [TaxTalk Alert](#), published in May 2018, for further information about the new rules.

In addition, the Australian Taxation Office (ATO) has finalised its guidance (PCG 2018/7) on the application of the general anti-avoidance provisions (Part IVA of the Income Tax Assessment Act 1936) in the context of restructures to deal with the new rules for hybrid mismatch arrangements. Refer to our [TaxTalk Alert](#), published on 31 October 2018 for further information.

ATO issues final guidance on non-core procurement offshore hubs

The ATO has finalised a new Schedule to its Practical Compliance Guideline, [PCG 2017/1](#) (which deals with Australian tax risk assessments for offshore hubs), that specifically addresses offshore non-core procurement arrangements, ie arrangements for the centralised procurement of goods or services that support the operations of a business. The ATO provides a framework for taxpayers to assess the risk of a centralised offshore non-core procurement arrangement ranging from ‘green zone’ (low risk) to ‘red zone’ (high risk). The key drivers of risk to be assessed under this framework are the offshore hub’s profit margin on its operating expenses and the materiality of the Australian tax deductions claimed. For further insights, refer to our [TaxTalk Alert](#), which was published on 12 October 2018.

ATO releases MAP guidance

The ATO has published [new guidance](#) on the mutual agreement procedure (MAP) covering both transfer pricing and non-transfer pricing cases. The guidance provides updated information on information requirements for MAP requests, MAPs arising from self-amendments, multilateral MAPs and several other related areas. The ATO has indicated that it will withdraw Taxation Ruling [TR 2000/16](#).

US tax reform developments

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

- [House passes 'tax reform 2.0' bills](#) – that would make permanent certain 2017 tax reform act provisions affecting individuals, including income tax cuts, the new Section 199A deduction for certain pass-through business income, and revenue-raising provisions such as the cap on the federal deduction for state and local taxes.
- [Tax reform readiness – Third-quarter financial reporting considerations](#)
- [Tax reform readiness: Deeper dive on Section 199A proposed regulations](#) – which provides many non-corporate taxpayers a 20 per cent deduction for qualified business income from a trade or business operated directly or through a pass-through entity.
- [IRS issues proposed rules on global intangible low-taxed income \(GILTI\)](#) – which require a US shareholder to pay a minimum aggregate US and foreign tax on its share of the earnings of its controlled foreign corporation.
- [IRS provides guidance on treatment of business meal expenses under tax reform](#).

OECD and BEPS developments

The Organisation for Economic Cooperation and Development (OECD) has [announced](#) that the [Global Forum on Transparency and Exchange of Information for Tax Purposes](#) has published seven peer review reports assessing compliance with the international standard on transparency and exchange of information on request. Two jurisdictions, Bahrain and Singapore, received an overall rating of 'Compliant'. Five others – Austria, Aruba, Brazil, Saint Kitts and Nevis and the United Kingdom – were rated 'Largely Compliant'.

In other developments:

- The OECD has [released](#) the 2017 global mutual agreement procedure (MAP) statistics which cover 85 jurisdictions and almost all MAP cases worldwide. They contain detailed information on each jurisdiction as well as aggregated global information.
- The Dominican Republic has [joined](#) the Inclusive Framework on base erosion and profit shifting (BEPS).

OECD targeting CRS avoidance through residence and citizenship by investment schemes

The OECD has [announced](#) a clamp down on common reporting standard (CRS) avoidance through residence and citizenship by investment scheme, and [published the results of its analysis](#) of over 100 schemes offered by CRS-committed jurisdictions, identifying those schemes that potentially pose a high-risk to the integrity of CRS. Following the announcement, an [update](#) was issued for financial institutions on residence by investment and citizenship by investment schemes.

Draft French Budget includes ATAD and BEPS provisions

The French Government has released its draft Budget for fiscal year 2019, which notably includes corporate tax measures designed to transpose into French law the European Union anti-tax-avoidance directive (ATAD) with respect to interest limitation (Article 4) and general anti-abuse rules (Article 6). It also proposes to amend the French tax consolidation and participation exemption regimes and reform the French patent box regime pursuant to the nexus approach of OECD BEPS Action 5. If enacted as proposed, most of the measures will apply for tax years beginning on or after 1 January 2019, and could affect multinational enterprises with French operations or subsidiaries. For further information, refer to PwC's [Global Tax Insights](#).

UK Autumn Budget 2018

On 29 October 2018, the Chancellor of the Exchequer delivered the [UK Autumn Budget 2018](#). Key measures announced include:

- A Digital service tax - from April 2020, a new 2 per cent interim tax will apply to annual 'UK revenues' above GBP£25m derived from in-scope business models (i.e. search engines, social media platforms and online marketplaces) of businesses with in-scope annual global revenues of more than GBP£500m.

- Changes to the intangibles regime - there will be relief for the cost of goodwill in acquiring businesses with eligible Intellectual Property (IP) from April 2019, the de-grouping charge rules will be reformed from 7 November 2018 and the tax on income from IP held in low-tax jurisdictions to the extent referable to UK sales will apply from April 2019.
- Avoidance and evasion provisions – legislation will be introduced to address

profit fragmentation to prevent UK businesses from avoiding tax by arranging for their UK-taxable business profits to accrue to entities resident in territories where significantly lower tax is paid than in the UK.

For a detail analysis of the budget, refer to the [PwC UK budget website](#).

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

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Indirect Tax Update

ATO finalises guidelines on inbound tour operators

The Australian Taxation Office (ATO) has finalised its Practical Compliance Guideline ([PCG 2018/6](#)) which provides guidance to inbound tour operators providing or arranging Australian tour packages including accommodation and non-accommodation components for non-residents. In recognition of the complexities in determining whether an inbound tour arrangement is one of agent or principal, the Guideline describes circumstances in which the Commissioner of Taxation will not apply compliance resources to examine whether an entity acts as an agent for non-resident clients for the purposes of the goods and services tax (GST) law.

Reform to distribution of GST

The Federal Government has introduced law into Parliament (refer to the Legislative Updates section of this document for further details) which proposes to give effect to announced reforms to address the

distribution of the GST to the States and Territories. This includes introducing a new Horizontal Fiscal Equalisation (HFE) benchmark, introducing a permanent in-system GST relativity floor and providing transitional assistance. For further information, refer to the Government's [media release](#).

GST exemption for feminine hygiene products

To progress the proposal to exempt feminine hygiene products from the GST, Treasury has released a [consultation paper](#) to seek comments on the proposed draft definition of 'feminine hygiene products'. Comments were due 22 October 2018. The exemption is proposed to take effect from 1 January 2019. For further information, refer to the Government's [media release](#).

Draft law to extend support for craft brewers and distillers

Treasury has released [draft legislation](#) to support the 2018-19 Federal Budget announcement to extend the concessional draught beer excise rate to smaller kegs (eight litres or greater individual containers). In addition, a separate measure, to be addressed by Regulation, will increase the alcohol excise refund scheme cap from AUD30,000 a year to AUD100,000 for all eligible brewers and distillers. The measures are proposed to apply from 1 July 2019. For further information, refer to the Government's [media release](#). Comments were due on the draft law by 31 October 2018.

Update on Trans-Pacific Partnership agreement

The [Customs Tariff Amendment \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation\) Bill 2018](#) and [Customs Amendment \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation\) Bill 2018](#), which implement the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the TPP-11) and introduce new rules of origin for goods imported into Australia from a party to the TPP-11, have received Royal Assent. The agreement, which covers Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam, will enter into force 60 days after six countries have ratified the Agreement.

European Union – Australia framework agreement

A new Framework Agreement between the European Union (EU) and Australia applies on a provisional basis as of 4 October 2018. The Agreement, which was signed in August 2017, enhances EU-Australia cooperation and will enable the EU and Australia to address various challenges including economic and trade matters. The Agreement will enter into force once it has been ratified by all Member States of the EU. For further information, refer to the Government's [media release](#).

Canada agrees to revise NAFTA

Canada, the United States, and Mexico have agreed to a revision of the North American Free Trade Agreement (NAFTA) that preserves tariff-free access across North American borders, puts in place some new regulatory requirements especially for the automotive sector, and otherwise makes minor tweaks to existing market access and trade rules that should have limited impacts on most companies. The new trade pact will be called the United States-Mexico-Canada Agreement (USMCA). Ratification is possible in 2019, with the agreement entering into force as early as 2020. For further information, refer to PwC's [Global Tax Insights](#).

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Personal Tax Update

Enhanced small business tax offset

In addition to an acceleration of the company tax rate reductions (enacted by [Treasury Laws Amendment \(Lower Taxes for Small and Medium Businesses\) Bill 2018](#)), the small business income tax offset rate will increase to 13 per cent of an eligible individual's basic income tax liability that relates to their total net small business income for the 2020-21 income year. The offset rate will then be increased to 16 per cent for the 2021-22 income year and later income years. The small business income tax offset continues to be capped at AUD1,000 per individual per year.

Income Year	Former Rate	Amended Rate
2018-19 to 2019-20	8%	8%
2020-21	8%	13%
2021-22 to 2023-24	8%	16%

Income Year	Former Rate	Amended Rate
2024-25	10%	16%
2025-26	13%	16%
2026-27	16%	16%

Tribunal finds taxpayer subject to PSI provisions

The Administrative Appeals Tribunal in [Douglass v Commissioner of Taxation \[2018\] AATA 3729](#) has affirmed the Commissioner's objection decisions, finding that the taxpayer, an electronics engineer, was subject to the 'personal services income' (PSI) provisions as the business did not pass the various 'results test' criteria set out in the relevant tax law. The Tribunal also did not exercise its discretion to remit the imposed shortfall penalty as the taxpayer's conduct was reckless.

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State Taxes Update

Foreign Purchaser Stamp Duty and Land Tax webinar

PwC will be hosting the inaugural webinar – *Australian Foreign Purchaser Stamp Duty and Land Tax* – on Wednesday 14 November 2018. The Webinar is a 'must attend' for any foreign or domestic persons and entities (with overseas investors) acquiring or holding Australian real estate, particularly in the infrastructure and property industries. The webinar will be a great opportunity for affected landowners to better understand Australia's Foreign Purchaser Stamp Duty and Land Taxes and their filing obligations. To register for this event, please click [here](#).

New foreign buyers surcharge in WA

The [Duties Amendment \(Additional Duty for Foreign Persons\) Bill 2018](#), which amends the *Duties Act 2008* to implement in Western Australia (WA) a 7 per cent foreign buyers surcharge on the direct or indirect acquisition of residential property in WA by foreign persons, has passed the WA parliament and is now enacted into law. The surcharge applies from 1 January 2019.

Updated guidelines on Victorian duty exemptions for build-to-rent sector

The Victorian State Treasurer's [guidelines](#) have been updated to clarify the application of exemptions to the build-to-rent sector in relation to the application of the Absentee Owner Land Tax Surcharge and the Foreign Purchaser Additional Duty. For land tax, the updated guidelines operate from the 2019 land tax year.

Victorian Tribunal rules on consideration for imposition of duty

The Victorian Civil and Administrative Tribunal in [Parklea \(Estates\) Pty Ltd v Commissioner of State Revenue \[2018\] VCAT 1439](#) has found for the taxpayer and set aside the duty decision of the Commissioner, finding that consideration paid by the taxpayer to purchase property from the vendor, who was a forced seller, did not represent the unencumbered value of the property. The Tribunal accepted evidence of a valuer for the amount of the unencumbered value of the property for purposes of assessing duty. The Tribunal also set aside the penalty decision finding the taxpayer took reasonable care.

Land tax decisions

The following land tax decisions have been handed down since the October edition of TaxTalk Monthly:

- The WA State Administrative Tribunal in [Intercorp Pty Ltd ATF Intercorp Trust v Commissioner of State Revenue \[2018\] WASAT 90](#) has affirmed land tax assessments, finding that the relevant land was not used solely for a primary production business and therefore was not exempt from land tax. The Tribunal held that neither the sheep, alpaca and horse breeding nor macadamia tree production activities undertaken by the taxpayer constituted a primary production business under section 30B of the *Land Tax Assessment Act 2002* (WA).
- The Victorian Supreme Court in [MD Commercial Pty Ltd v Commissioner of State Revenue \[2018\] VSC 560](#) has dismissed the taxpayer's appeal against the decision of the [Victorian Civil and Administrative Tribunal](#), which held that transfers of land for development purposes pursuant to the terms of a trust deed were not exempt from duty under s35 of the *Duties Act 2000* (VIC). The matter arises from an assessment to duty of two transfers of land, by which a 50 per cent interest as tenant in common in the subject land was transferred to each of the taxpayers as trustee for a named beneficiary pursuant to a Deed of Trust, which empowered the trustee to hold the land for the beneficiary and also, where a direction was given by the beneficiary, obliged the trustee to develop, subdivide and sell the land to third parties. The Court found that this was not a 'bare' trust in which the trustee had no active duties or obligations to perform. It is implicit in the arrangements that the two trustees, and therefore the beneficiaries, would be required to act together in exercising many of the powers conferred by the trust deeds, particularly in relation to the contemplated subdivision, development and sale of the land.
- The ACT Civil and Administrative Tribunal in [Zimmermann v Commissioner for ACT Revenue \[2018\] ACAT 93](#) has found the taxpayer was not liable to pay land tax in relation to a property as it was not 'rented residential land'. The Tribunal found that payments made by the taxpayer's son under a family arrangement were voluntary and not in consideration for the right to live in the property, and that there was no residential tenancy agreement. As such, the payments did not meet the definition of 'rent' as defined in the *Land Tax Act 2004* (ACT).

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Superannuation Update

Draft law to relax work test for recent retirees

Treasury has released [draft legislation and regulations](#) which provide a one-year exemption from the work test for superannuation contributions to allow recent retirees to boost their superannuation balances. Under the current law, the work test requires that individuals aged 65-74 years must work a minimum of 40 hours in any 30-day period in the financial year in order to be able to make contributions to superannuation. Under the new proposed law, the work test will be removed for those individuals with a total superannuation balance below AUD300,000 and will enable them to make voluntary contributions for 12 months from the end of the financial year in which they last met the work test.

The amendments are proposed to apply in relation to contributions made in the 2019-20 financial year and later financial years.

Comments were due on the draft measures by 26 October 2018. For further information, refer to the Government's [media release](#).

ATO's addendum on capped defined benefit income streams ruling

The Australian Taxation Office (ATO) has issued an [Addendum](#) to Law Companion Ruling [LCR 2017/1](#) which provides guidance on capped defined benefit income streams – pensions or annuities paid from non-commutable, life expectancy or market linked products. The addendum amends the ruling to correct a statement that suggests a transfer balance credit, with respect to a market linked pension commenced on or after 1 July 2017, will be calculated by reference to a special value. It also clarifies the position concerning a transfer balance credit that arises in respect of a reversionary life expectancy or market linked pension or annuity in certain circumstances.

Administration issues under the transfer balance cap

ATO Assistant Commissioner, Tara McLachlan, [discussed](#) at the Tax Institute Sixth National

Superannuation Conference the various administrative issues arising from the transfer balance cap regime which commenced on 1 July 2017. Issues relating to the various reporting obligations of funds, commutation of benefits and minimum pension requirements were raised.

Event-based reporting for SMSFs

The ATO has provided [guidance](#) for the event-based reporting (EBR) framework for self-managed super funds (SMSFs) which commenced on 1 July 2018. EBR is used to record and track an individual's superannuation balance for both their transfer balance cap and total superannuation balance.

Reporting under the EBR framework generally commences when the first member commences a retirement phase income stream. However, ongoing reporting may be required outside the normal SMSF annual return in relation to certain events including lump sum withdrawals, commutations and new or additional income streams.

SMSF quarterly statistical report June 2018

The ATO has released its [SMSF quarterly statistical report](#) for June 2018. Highlights include:

- the total number of SMSFs is now 596,225
- the total number of members in SMSFs is now 1,118,650
- the total estimated SMSF assets is now AUD750 billion
- the top asset types held by SMSFs, by value, are listed shares and cash and term deposits, making up 31 per cent and 23 per cent of total estimated SMSF assets, respectively
- 53 per cent of SMSF members are male and 47 per cent are female
- 84.3 per cent of SMSF members are 45 years or older.

The report also provided an update of the annual SMSF population analysis tables for 2013 to 2017.

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Legislative Update

Commonwealth revenue measures introduced into (and still before) Parliament since the October edition of TaxTalk Monthly include:

- [*Treasury Laws Amendment \(Making Sure Every State and Territory Gets Their Fair Share of GST\) Bill 2018*](#), introduced into the House of Representatives on 18 October 2018, proposes to reform Australia's goods and services tax (GST) distribution system. Refer to the Government's [media release](#) for further information.

The following key tax Bills have also completed their passage through Parliament:

- [*Treasury Laws Amendment \(Lower Taxes for Small and Medium Businesses\) Bill 2018*](#), which was introduced into the House of Representatives on 16 October 2018, accelerates both the reduction of the corporate tax rate for 'base rate entities' and the increase in the small business income tax offset rate for eligible individuals.
- [*Customs Amendment \(Collecting Tobacco Duties at the Border\) Bill 2018*](#), which requires tobacco importers to pay import duty on tobacco products from 1 July 2019 upon importing tobacco products into Australia.
- [*Customs Tariff Amendment \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation\) Bill 2018*](#) and [*Customs Amendment \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation\) Bill 2018*](#), which seek to implement the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the TPP-11) and introduce new

rules of origin for goods imported into Australia from a Party to the TPP-11. Refer to the Government's [media release](#) for further information.

Other Commonwealth revenue measures registered as legislative instruments or regulations since the October edition TaxTalk Monthly include:

- [*Foreign Acquisitions and Takeovers Amendment \(Amendments of Singapore – Australia Free Trade Agreement\) Notice 2018*](#), which announces the 'Agreement to Amend the Singapore – Australia Free Trade Agreement', done at Canberra, Australia, on 13 October 2016, entered into force for Australia on December 2017.
- [*Foreign Acquisitions and Takeovers Amendment \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation\) Regulations 2018*](#), which amends the *Foreign Acquisitions and Takeovers Regulation 2015* to implement Australia's obligations with respect to the regulation of foreign investment under the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (TPP-11).
- [*Treasury Laws Amendment \(2018 Measures No. 2\) Regulations 2018*](#), which amends the *Superannuation Industry (Supervision) Regulations 1994* to extend the operation of SuperStream to cover self-managed superannuation funds, but no earlier than 30 November 2019.
- [*Foreign Acquisitions and Takeovers Amendment \(Peru-Australia Free Trade Agreement Implementation\) Regulations 2018*](#), which

amends the *Foreign Acquisitions and Takeovers Regulation 2015* to implement Australia's obligations with respect to the regulation of

foreign investment under the Free Trade Agreement between Australia and the Republic of Peru.

Let's talk

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Other News

Targeted access to small business CGT concessions for partners in a partnership

Treasury has released [draft legislation](#) on an integrity measure targeting access to small business CGT concessions for partners in partnerships that was announced by the Government in the 2018-19 Australian Federal Budget. Specifically, the changes seek to prevent partners that alienate their income by creating, assigning or dealing in rights to the future income of a partnership from accessing the small business CGT concessions on the capital gain that arises from the disposal of the right. Comments were due by 31 October 2018. For further information, refer to the Government's [media release](#).

Draft law to deny deductions for vacant land

Treasury has released [draft legislation](#) to deny certain tax deductions for expenses related to holding vacant land, giving effect to the announcement made in the 2018-19 Australian Federal Budget. The proposal is to apply to expenses incurred on or after 1 July 2019, irrespective of the acquisition date of the land, and will potentially affect individuals, self-managed super funds and discretionary trusts that hold vacant land.

Importantly, the measure will not apply to deny deductions in respect of vacant land held by the owner or a related entity for the purpose of carrying on a business. For instance, the measure will not apply to a primary production business or a property developer that is holding land for the purpose of carrying on a business.

An exception will apply to corporate tax entities, managed investment trusts, public unit trusts and unit trusts that will be excluded from this measure.

Comments were due 31 October 2018.

Draft law to extend anti-avoidance rules for circular trust distributions

Treasury has released [draft legislation](#) giving effect to the 2018-19 Australian Federal Budget announcement to extend the trustee beneficiary non-disclosure tax for closely held trusts to family trusts that engage in circular trusts distributions (or 'round robin' arrangements) from 1 July 2019. The amendments ensure that trustee beneficiary non-disclosure tax applies at the top marginal tax rate plus the rate of Medicare levy to the untaxed part of a circular trust distribution to which a trustee of a family trust becomes presently entitled. Comments were due on 31 October 2018.

Capital or revenue?

In a majority decision, the Full Federal Court in [Commissioner of Taxation v Sharpcan Pty Ltd \[2018\] FCAFC 163](#) has dismissed the Commissioner's appeal against the decision of the [Administrative Appeals Tribunal](#), finding that a trustee was entitled to claim deductions for amounts paid in acquiring Victorian gaming machine entitlements under Section 8-1 of the *Income Tax Assessment Act 1997*. The Tribunal had held that the outgoing for the gaming machine entitlements in the trustee's business was akin to a fee paid for the regular conduct of a business rather than the acquisition of a permanent or enduring asset, and as such the outgoing was not capital in nature.

Expansion of ATO's small business independent review pilot

The ATO has expanded its [12-month pilot](#) for an independent review service to eligible small businesses nationally (previously the pilot only applied in Victoria and South Australia). In an independent review, an independent technical officer from outside the ATO's audit area reviews the merits of an audit position before the assessment or amended assessment is issued. Disputes relating to GST, superannuation, fringe benefits tax (FBT), fraud and evasion findings and interest are excluded. Eligible businesses with an audit in progress are expected to be contacted directly by their case officer and offered the opportunity to participate in the pilot.

ATO ruling on travel deductions relating to investment properties

The ATO has finalised Law Companion Ruling [LCR 2018/7](#), which provides guidance on travel deductions relating to residential rental investment properties. The ruling considers the new rule which operates from 1 July 2017 to deny deductions for travel expenditure incurred in gaining or producing assessable income from certain uses of residential premises as residential accommodation. The Ruling considers the nature of residential premises and the exception which ensures that an affected taxpayer can continue claiming travel deductions if they carry on a business of property investing or a business of providing retirement living, aged care, student accommodation or property management services.

Modernising business registers

Treasury has released [draft legislation](#) to give effect to the Government's 2018-19 Federal Budget announcement to modernise business registers and provide a legal framework for the introduction of

Director Identification Numbers (for further information, refer to the Government's [media release](#)). Comments were due by 26 October 2018.

Resources 2030 Taskforce report

Following an examination of how Australia's resources sector can remain globally competitive and sustainable, the [Resources 2030 Taskforce](#) has delivered its [final report](#) which includes a broad reform agenda with 29 recommendations. Notably, from a tax perspective, it recommends that Governments should investigate the fiscal and regulatory frameworks (such as fringe benefits tax and zonal tax incentives) that encourage or discourage individuals to live and work, and businesses to locate and operate, in rural and regional areas associated with resource activities. The Government will use the proposals put forward by the taskforce as a basis to develop a National Resources Statement by the end of 2018. For further information, refer to the Government's [media release](#).

Australian Labor Party's tax policies

With a Federal election due to be held by 18 May 2019, it is worth considering the tax-related policies that the Australian Labor Party has announced to date. Summarised below are some of the key measures proposed.

Transparency

- Mandatory reporting by companies to shareholders of 'Material Tax Risk' if the company conducts business in a tax haven.
- All firms tendering for Australian Government contracts worth more than AUD200,000 to state their country of domicile for tax purposes.
- Establish a publicly accessible central register of beneficial ownership of Australian companies, trusts and other corporate structures.
- Require the ATO's annual report to provide information on the number and size of tax settlements (above AUD50 million) and reporting of aggressive tax minimisation.
- Make Country-By-Country reports (excerpts) publicly accessible with reporting of where, and how much, tax was paid by a large corporation (over AUD1 billion in global revenue)
- Restore the AUD100 million threshold for public reporting by the Commissioner of Taxation of tax data for private companies (currently this only applies to Australian-owned resident private

companies with total income of AUD200 million or more).

- Establish a mandatory Extractive Industries Transparency scheme.

Multinationals

- Remove the thin capitalisation safe harbour and arm's length debt tests, leaving only the worldwide gearing ratio available for thin capitalisation purposes.
- Remove tax advantages and inconsistencies between multiple entry consolidated groups and ordinary tax consolidated groups.

Personal tax and privately owned groups

- Reduce the CGT discount for individuals to 25 per cent for all assets purchased after a yet-to-be-determined date after the next election, and reform negative gearing, including limiting it to new housing investment.
- From 1 July 2019, impose a AUD3,000 cap on an individual's claim for managing taxation affairs (subject to a carve-out for certain individual small businesses).
- Introduce a minimum 30 per cent tax rate for certain discretionary trust distributions to mature individual beneficiaries (aged 18 years and over) with effect from 1 July 2019.
- From 1 July 2019, prevent cash refunds of excess franking credits for individuals and superannuation funds, with an exception for Australian Government pension or allowance recipients and self-managed superannuation funds which have at least one Australian Government pensioner or allowance recipient before 28 March 2018.
- Repeal the latter stages of the legislated personal income tax cuts and ensure that individuals earning less than AUD125,000 a year receive a tax cut, and increase the top marginal tax rate (effectively a reinstatement of the additional tax payable under the Temporary Budget Repair Levy).
- Individual Australian taxpayers will need to notify and declare to the ATO if they have residency or citizenship of any other jurisdiction.

- Automatically deny claims for unsubstantiated tax-free allowances for travel to tax havens, with exceptions requiring a detailed application to the Commissioner of Taxation.

Superannuation

- Oppose currently enacted catch up concessional contributions measure.
- Oppose the currently enacted changes to tax deductibility on personal superannuation (concessional) contributions (i.e. the 10 per cent maximum earnings condition).
- Lower the annual non-concessional contributions cap to AUD75,000 (currently AUD100,000).
- Lower the Division 293 superannuation contribution tax threshold to AUD200,000 (currently AUD250,000).
- Increase the superannuation guarantee to 12 per cent when fiscal circumstances allow.
- Phase out the AUD450 minimum monthly income threshold for eligibility for the superannuation guarantee and make it easier for employers to make extra payments into a woman's superannuation fund.

Other

- From 1 July 2020, introduce an Australian Investment Guarantee to allow all Australian businesses to immediately deduct 20 per cent of the value of investment in eligible depreciating assets with a value of more than AUD20,000, with the balance depreciated in line with normal depreciation rates.
- Appoint a community sector representative to the Board of Taxation.
- Provide protection and incentive/rewards for whistleblowers who report on entities evading tax to the ATO.
- Establish a new position within the ATO – Second Commissioner Appeals – to ensure all taxpayers are provided with a fair appeals process.
- Increase promoter penalties.

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TaxTalk Monthly

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