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TaxTalk Monthly

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



Corporate Tax Update

Exposure draft law to clarify company tax rate cuts

The Government has [released exposure draft legislation](#) for consultation to clarify that passive investment companies cannot access the lower company tax rate of 27.5 per cent.

The exposure draft law proposes amendments, which will apply retrospective effect from the 2016-17 income year, to ensure a corporate tax entity will not qualify for the lower corporate tax rate if 80 per cent or more of its assessable income is of a specifically defined 'passive' nature (including non-portfolio dividends and interest). Submissions close 29 September 2017.

Refer to our [TaxTalk Alert](#) which considers the proposed changes in further detail.

Extension of time for Senate inquiry report into Corporate Tax Avoidance

The Senate has granted the [Senate Economics Committee inquiry on Corporate Tax Avoidance](#) a further extension of time to report by 28 November 2017.

Consolidation integrity measures released for comment

The Government has [released](#) for consultation [exposure draft legislation](#) regarding the outstanding tax consolidation measures relating to the tax cost setting rules when an entity leaves or joins a tax consolidated group. These measures:

- Prevent a double benefit from arising in relation to deductible liabilities when an entity joins a group.
- Disregard deferred tax liabilities when an entity joins or leaves a group.
- Remove anomalies that arise when an entity holding securitised assets joins or leaves a group.
- Prevent unintended benefits from arising when a foreign resident ceases to hold membership interests in a joining entity in certain circumstances.

- Clarify the outcomes that arise when an entity holding an intra-group financial arrangement leaves a group.
- Clarify the treatment of intra-group liabilities when an entity leaves a group.

Where appropriate, transitional rules ensure that taxpayers who have entered into arrangements prior to commencement are not disadvantaged, are not able to obtain windfall gains, or do not have to change a position they have taken under the current law. Comments on the draft legislation can be made until 6 October 2017. Refer to our [TaxTalk Alert](#) which explores the exposure draft law in further detail.

Junior Mineral Exploration Tax Credit

The Government has [announced](#) the introduction of the Junior Mineral Exploration Tax Credit (JMETC) which will allow the tax losses in greenfield exploration companies to be distributed as a credit to Australian resident shareholders.

JMETC builds upon the Exploration Development Incentive which ceased on 30 June 2017. Only newly issued shares relating to capital raising for investment in new greenfields exploration activity will be eligible for the JMETC. Credits of up to AUD100 million over four years will be made available from this financial year on a first-in, first served basis, consistent with arrangements to be administered by the Australian Taxation Office (ATO).

Share capital - High Court refused special leave application

The High Court has refused the taxpayer's special leave application to appeal against the Full Federal Court's decision in [Cable & Wireless Australia & Pacific Holding BV \(in liquidatie\) v Commissioner of Taxation \[2017\] FCAFC 71](#). The Full Federal Court held that a 'buy-back reserve' account was not a share capital account such that the debit entry to the buy-back reserve did not record a transaction reducing share capital. Accordingly, the transaction was correctly treated as a dividend that was subject to withholding tax. Refer to the June 2017 edition of [TaxTalk Monthly](#) for background.

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Employment Taxes Update

Reforms for greater accountability over employee superannuation

In response to increased media scrutiny on the superannuation guarantee gap in recent financial years, the Federal Government **announced** a number of significant reforms to superannuation during September.

The first package of reforms will give the Australian Taxation Office (ATO) near real-time visibility over superannuation guarantee (SG) compliance by employers. The Government will provide the ATO with additional funding for a SG Taskforce to crackdown on employer non-compliance. The package also includes measures to:

- Require superannuation funds to report contributions received more frequently, at least monthly, to the ATO.
- Bring payroll reporting into the 21st century through the rollout of Single Touch Payroll (STP). Employers with 20 or more employees will transition to STP from 1 July 2018 with smaller employers coming on board from 1 July 2019.
- Improve the effectiveness of the ATO's recovery powers, including strengthening director penalty notices and use of security bonds for high-risk employers.

- Provide the ATO the ability to seek court-ordered penalties in the most egregious cases of non-payment.

The Government has also **announced** a number of changes to promote high standards of transparency and accountability within the superannuation system. These changes, which apply equally to all Australian Prudential Regulation Authority (APRA) regulated superannuation funds, include:

- Making super funds more transparent and accountable for how they spend members' money through new reporting of expenses, annual member meetings and a portfolio holdings disclosure regime.
- Strengthening APRA's powers to regulate funds and take preventative or corrective action where a fund is not acting in the best interests of members.
- Giving more than one million workers the right to choose their own superannuation fund if they are currently prevented from doing so because of enterprise bargaining agreements or workplace determinations.
- Closing a legal loophole being used by some unscrupulous employers to short-change workers of their full superannuation guarantee entitlements.
- Legislating a consistent minimum standard for one-third independent directors, including an

independent chair, to facilitate more diversity and skills and to improve governance by strengthening conflict management across the entire industry.

- Strengthening all default MySuper products offered across the industry, which, at June 2016, included 46 retail, 43 industry, 15 corporate and 11 public sector fund MySuper Products.

The legislation in relation to these reforms is currently being debated before Parliament (refer to the Legislative Update section for further information).

Western Australian 2017-18 State Budget

The Western Australian (WA) Government released its State Budget for the 2017-18 financial year in September. As part of the budget announcements, a temporary progressive payroll tax rate increase will apply to large businesses from 1 July 2018 to 30 June 2023.

During this period, WA employers with an Australia-wide payroll in excess of AUD100 million will pay a marginal tax rate of 6 per cent (up from 5.5 per cent), while those employers with an Australia-wide payroll over AUD1.5 billion will be subject to a marginal rate of 6.5 per cent.

No changes will be made to the calculation of the diminishing tax-free threshold, which will continue to gradually phase out for employers (or groups of employers) with annual taxable wages in Australia between AUD850,000 and AUD7.5 million. Employers with annual Australian taxable wages of AUD7.5 million or more will pay payroll tax on their entire taxable wages.

Increased access to the Small Business Superannuation Clearing House

The ATO has [announced](#) that more employers will now have access to the Small Business Superannuation Clearing House free online service. The service is intended to help reduce red tape and superannuation compliance costs for small businesses.

Employers can now use the ATO's Small Business Superannuation Clearing House if they either have:

- 19 or less employees; or
- an annual aggregated turnover of \$10 million or less.

For eligible employers, super guarantee contributions for all employees can be made as a single electronic payment to the Small Business Superannuation Clearing House. The clearing house will then distribute the payment to employees' super funds on the employer's behalf.

Revenue NSW Ruling on the value of fringe benefits for payroll tax purposes

Revenue NSW has updated its [Revenue Ruling PTA 003](#), which outlines how the value of fringe benefits is to be declared for payroll tax purposes. The updated ruling addresses the following:

- Calculating the value of fringe benefits for payroll tax purposes.
- Clarifying the treatment of fringe benefits with a nil taxable value and exempt benefits where such benefits also fall within another part of the definition of wages.
- Explaining the requirements of the alternative method of declaring fringe benefits.
- Explaining the method of calculating the NSW component of fringe benefits when they are not readily identifiable.
- The adoption of ATO fringe benefits tax rulings.

Failing to remit PAYG withholding

The High Court in [Panayi v Deputy Commissioner of Taxation \[2017\] HCA 238](#) has refused the taxpayer's application for special leave to appeal against the decision of the Supreme Court of NSW in relation to director penalties. The Supreme Court of NSW (Court of Appeal) previously [upheld](#) the decision of the District Court of NSW, which found that the taxpayer, as the director of a company, was personally liable to pay director penalties for failing to remit PAYG withholding from wages and salaries of the employees of the company.

Non-profit association not exempt from payroll tax

The Supreme Court of South Australia has held that a non-profit association was not exempt from payroll tax under the charitable purpose exemption as it failed to prove on a holistic assessment that its dominant purpose was to advance trade and commerce in South Australia ([South Australian Employers' Chamber Of Commerce & Industry](#)).

Incorporated v Commissioner of State Taxation [2017] SASC 127.

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Global Tax Update

Latest news from international tax and transfer pricing

ATO Review of pharmaceutical companies

The Australian Taxation Office (ATO) is conducting a broad [review](#) of the transfer pricing practices of Australian-based multinational subsidiaries in the pharmaceutical industry. This review seeks to ensure the pharmaceuticals sector is meeting its tax obligations under Australian law. The ATO plans to assess a range of domestic and international tax risks associated with related party financing, thin capitalisation, intellectual property migration, consolidation, business restructures and research and development.

New Zealand's BEPS journey

The New Zealand Government recently announced a number of significant Base Erosion and Profit Shifting (BEPS)-related policy decisions. The Government plans to strengthen New Zealand's transfer pricing rules, tighten rules around interest deductibility, counteract permanent establishment avoidance and hybrid mismatches, and introduce new administrative measures focused on large multinationals. Refer to PwC Global's [Tax Insights](#) which provides an overview of these policy decisions.

UK's yield from DPT

The United Kingdom's (UK) Her Majesty's Revenue and Customs (HMRC) has released a [report](#) which

sets out how it measures the yield from its Diverted Profits Tax (DPT). According to the report, the UK's DPT raised £31 million in 2015/16 and £281 million in 2016/17. The yield amount includes amounts received as a result of DPT charging notices issued by HMRC, and additional amounts of corporation tax collected from businesses which have changed their behaviour because of the introduction of DPT. The DPT was introduced in the UK on 1 April 2015 to address tax avoidance by multinational enterprises.

OECD BEPS developments

The Organisation of Economic Co-operation and Development (OECD) has [released](#) guidance to give greater certainty to tax administrations and multinational groups on the implementation and operation of Country-by-Country (CbC) reporting (BEPS Action item 13).

Specifically, it has updated the existing [guidance on the implementation of CbC Reporting](#) to address the definition of revenues, the treatment of groups with a short accounting period, and the treatment of the amount of income tax accrued and income tax paid. Guidance has also been released on the [appropriate use of the information](#) contained in CbC Reports, including the consequences of non-compliance with the appropriate use condition and approaches that may be used by tax administrations.

Further to our commentary in the September edition of [TaxTalk Monthly](#) about the release of the OECD's [final report on branch mismatch structures](#) (BEPS Action item 2), PwC Global's [Tax Insights](#) provides further information.

In other OECD developments:

- The OECD has [released](#) updated and new IT-tools and guidance to support the technical implementation of the exchange of tax information under the Common Reporting Standard (CRS), CbC Reporting, and in relation to tax rulings.
- The OECD has [announced](#) that exchanges between 49 jurisdictions took place under the CRS Multilateral Competent Authority Agreement. In total, there are now more than 2,000 bilateral relationships for the automatic exchange of CRS information in place across the globe. Find the [full list of automatic exchange relationships](#) currently in place under the CRS agreement online.
- Brunei has [signed](#) the Multilateral [Convention on Mutual Administrative Assistance in Tax Matters](#).
- Greenland, Cambodia, Madagascar and Haiti have [joined](#) the [Global Forum on Transparency and Exchange of Information for Tax Purposes](#).

OECD reports on global tax trends

The OECD has [released](#) the [Tax Policy Reforms 2017 – OECD and Selected Partner Economies Report](#), which provides comparative information on the tax reforms that were implemented, legislated or announced in 2016 in the 35 OECD countries, and in Argentina and South Africa. The report tracks reforms to personal income tax, social security contributions, corporate income tax, value-added/general sales tax, excise duties, environmental taxes and property taxes across countries, as well as key tax policy trends in these areas over time.

OECD working paper on role of business in tax system

An OECD [working paper](#) examines the role of businesses in the tax system. The paper develops

two measures of the contribution of businesses to the tax system and applies both these measures to 24 OECD countries. The paper also highlights that the economic incidence, or burden, of a tax is not necessarily borne by the person on whom the tax is imposed under legal statute, but may be passed on to others in the economy, whether it be owners of capital, workers or consumers.

Ireland publishes independent review of corporation tax code

In an independent report on Ireland's corporation tax code, the overarching message is that the current Irish corporate tax system is transparent and appropriate for enterprises in Ireland. However, the report includes a number of recommendations for the Irish Department of Finance to consider. For further information, refer to PwC US' [Tax Insights](#).

EU proposes mandatory tax information disclosure

The European Commission (EC) has published a draft Directive *Proposal for a Council Directive* amending Directive 2011/16/EU, which further amends the European Union's (EU's) Directive on administrative cooperation in the field of taxation. The draft Directive seeks to impose mandatory reporting by taxpayers and intermediaries to the tax administrations of EU Member States for various cross-border transactions and arrangements. It also addresses the consequent automatic exchange of information on those transactions and arrangements across the EU. For further information, refer to PwC Global's [Tax Insights](#).

France's tax action plan

The French Prime Minister has announced a new action plan to support investment in France and boost business growth. The plan's five fundamental actions include two items related to corporate taxation that may interest multinational enterprise with operations in France: a gradual decrease of the French corporate income tax rate and the transformation of the competitiveness and employment (CICE) tax credit (an existing payroll tax credit) into a permanent decrease in employers' charges. The plan also provides for the elimination of the 3 per cent tax on dividend distributions. Refer to PwC US' [Tax Insights](#) for further details.

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

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Indirect tax update

ATO's practical guidance on GST for customer owned banking institutions

The Australian Taxation Office (ATO) has released a Practical Compliance Guideline, [PCG 2017/15](#), dealing with the application of the goods and services tax (GST) for customer owned banking institutions. The Guideline is intended to remove complexity and minimise compliance costs for customer owned banking institutions in relation to apportionment of their partly creditable acquisitions. Specifically, the Guideline explains when the Commissioner of Taxation will accept, as a matter of practical administration, a rate of no more than 18 per cent as the extent of creditable purpose for certain acquisitions in relation to tax periods starting on and from 1 July 2017.

Supply of a going concern

The Administrative Appeals Tribunal (AAT) in [MSAUS Pty Ltd as the Trustee for the Melissa Trust v Commissioner of Taxation \[2017\] AATA 1408](#) has held that, based on analysis of the contract of sale for an apartment which was subject to a lease, the transaction was not a 'supply of a going concern'. Accordingly, Division 135 of the [A New Tax System \(Goods and Services Tax\) Act 1999](#) did not operate to impose an increasing adjustment on the purchaser, and instead as agreed by the parties to the contract, the margin scheme applied to the sale of the apartment

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State Taxes Update

WA Budget 2017-18

On 7 September 2017, the Western Australian (WA) Treasurer handed down the [2017-18 WA Budget](#). Key measures announced included:

- A temporary progressive payroll tax scale for 'large business' to apply from 1 July 2018 to 20 June 2023.
- A tiered gold royalty rate to be introduced from 1 January 2018.
- A 4 per cent Foreign Owner Duty Surcharge to apply on purchases of certain residential property by foreign individuals, corporations and trusts with effect from 1 January 2019.

For further information, see the Employment Taxes Update section of this report.

NSW revenue ruling on the application of the foreign purchaser and land tax surcharge to discretionary trusts

Revenue NSW has issued [Revenue Ruling No. G 010 v2](#), which sets out circumstances when the Chief Commissioner of State Revenue will give retrospective effect to the amendments of trust deeds which remove the trustee's power to make distributions to any person who is a foreign person, such that the trustee of the discretionary trust is not liable to the surcharge. The ruling also provides the Chief Commissioner of State Revenue with the discretion to exempt the trustee of a discretionary testamentary trust from the surcharge where the deceased was not a foreign person at the time of death. The ruling operates with retrospective effect from 21 June 2016, until retrospective legislation is passed.

Tasmanian revenue ruling on penalty tax on duty instruments

The Tasmanian Commissioner of State Revenue has released Revenue Ruling [PUB-GEN-2017-2](#), which ensures that Tasmanian Revenue Online agents and their clients are placed in the same position with respect to the imposition of penalty tax as those who lodge duty instruments directly with the Commissioner of State Revenue for assessment.

Victorian State Revenue – smart forms update

The Victorian State Revenue Office has replaced the following paper-based forms with [online SmartForms](#):

- [Application for refund](#) – GEN Form 01.
- [Change of contact details](#) – GEN Form 03, which also incorporates [Authorisation for change of postal address](#) (LTX Form 13).
- [Change of use motor vehicle notice](#) – Duties Form 51.

Valuation of mining company for WA duty

In [Placer Dome Inc v Commissioner of State Revenue \[2017\] WASCA 165](#), which concerned whether a gold mining company was a 'listed landholder corporation' for WA stamp duty purposes, the Supreme Court of WA (Court of Appeal) has allowed the taxpayer's appeal, and remitted the matter to the State Administrative Tribunal for reconsideration. The case primarily concerned the valuation of the company and its land, with the Court finding the Tribunal (at first instance) adopted the incorrect valuation methodology, failing to distinguish between the value of the land held by the company and the value of the business which it conducted using that land. The Court also held that the Tribunal had erred in accepting the valuation evidence adduced by the Commissioner. Refer to our [TaxTalk Alert](#) which considers the case in further detail, including the broader implications on the identification and valuation of goodwill, particularly for mining companies.

NSW duties decisions

The following decisions concerning the application of NSW stamp duty were recently handed down by the NSW Civil and Administrative Tribunal:

- [Valencia v Chief Commissioner of State Revenue \[2017\] NSWCATAD 261](#). The Tribunal held that the Applicants were not entitled to the principal place of residence exemption as they failed to actually use and occupy the 'unoccupied land' as their principal place of residence within the relevant four-year period. The Tribunal also held that the Chief Commissioner of State Revenue did not have discretion to extend the period of non-use and occupation under the law.

- *Al-Jaafariya Society Incorporated v Chief Commissioner of State Revenue [2017] NSWCATAD 283*. The Tribunal held that the Applicant was not entitled to an exemption from stamp duty as a charitable or benevolent body under section 275 (3)(b) of the *Duties Act 1997 (NSW)* in relation to the purchase of a property.

Victorian land tax decisions

The following cases were considered by the Victorian Civil and Administrative Tribunal in relation to Victorian land tax matters:

- *Carvalho v Commissioner of State Revenue (Review and Regulation) [2017] VCAT 1295*. The Tribunal found that the Applicants were not

exempt from land tax as they failed to discharge the onus of proof that the relevant property was their principal place of residence.

- *Australian Investment and Development Pty Ltd v Commissioner of State Revenue (Review and Regulation) [2017] VCAT 1418*. The Tribunal found that for one of the land tax assessments issued to the Applicant, substantial activities were conducted on one of the properties which qualified for the primary production exemption. However, in relation to the other land tax years, the Tribunal confirmed the land tax assessments as it was not satisfied that the property was used for primary production purposes.

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Superannuation update

Superannuation guarantee compliance reform package

The Government has [announced](#) a further package of reforms to give the Australian Taxation Office (ATO) near real-time visibility over superannuation guarantee (SG) compliance by employers. Not only will the Government provide the ATO with additional funding for a SG Taskforce to crackdown on employer non-compliance, it will also implement measures to:

- Require superannuation funds to report contributions received more frequently, at least monthly, to the ATO.
- Rollout Single Touch Payroll (STP), so employers with 20 or more employees will transition to STP from 1 July 2018, with smaller employers coming on board from 1 July 2019.
- Improve effectiveness of the ATO's recovery powers, including strengthening director penalty notices and the use of security bonds for high-risk employers.
- Provide the ATO with the ability to seek court-ordered penalties in the most egregious cases of non-payment.

These measures should help eliminate non-compliance in regards to SG contributions.

In addition, the ATO has released its [estimate of the Superannuation Guarantee \(SG\) gap](#). The gap is the difference between the theoretical amount payable by employers to be fully compliant with their SG obligations, and actual contributions received by funds. The ATO estimates the net SG gap to be 5.2 per cent, or AUD2.85 billion, of the total estimated AUD54.78 billion in SG payments that employers were required to pay in 2014-15.

ATO releases SuperStream program benefits report

The ATO has released the [SuperStream Benefits program report](#), which illustrates the implementation of SuperStream between July 2012 and December 2016 has delivered a range of benefits that have fundamentally improved the superannuation system experience for fund members, employers and funds. The report shows

SuperStream outcomes of lower cost, ease of operation, and increased retirement savings can be traced to these benefits.

Visa checks for DASP application

On 14 August 2017, the ATO updated its website with respect to online applications for a Departing Australia superannuation payment (DASP).

The ATO has indicated that they hold online DASP applications for 14 days before sending them to super funds for processing. During this period, the ATO will validate the visa information and check with the Department of Immigration and Border Protection, as needed.

New laws enacted

The [Treasury Laws Amendment \(2017 Measures No 4\) Bill 2017](#) passed both Houses of Parliament on 17 August 2017, and received Royal Assent on 23 August 2017. The Bill contained the rollover relief provisions relating to mandatory transfers within a superannuation fund in the transition to a MySuper product, undertaken by 1 July 2017.

First home super saver scheme and downsizer contributions - ATO consultation

Consultation meetings are being set up between superannuation funds and industry stakeholders to discuss administration options relating to the Government's proposed First Home Super Saver Scheme (FHSSS) and the measures relating to 'downsizing contributions into superannuation'. As reported in the Legislative Update section, the legislation to implement the measures is currently before Parliament. The ATO discussions are intended to consider:

- Administrative design.
- Reporting requirements.
- Law companion guidelines.
- Other specific implementation issues.

The ATO expects to complete its consultation during October 2017.

Legislative instrument: variation to the rate of withholding for certain superannuation beneficiaries

This variation to the rate of withholding for certain superannuation beneficiaries legislative instrument, which commenced on 1 July 2017, ensures that amounts of 'non assessable non exempt' (NANE) income paid to a superannuation beneficiary are not subject to withholding when the payee has not quoted their tax file number (TFN). The instrument ensures that payees are not subject to withholding from superannuation payments which are not subject to tax, when those payments are made in conjunction with other assessable amounts and the recipient has not quoted their TFN.

This change may require system updates to ensure withholding tax is not deducted from NANE income where a TFN is not provided by the beneficiary.

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Legislative update

Commonwealth revenue measures introduced into Parliament, or registered as legislative instruments or regulations since the September edition of TaxTalk Monthly, include:

- The following Bills, which were introduced into the Senate on 14 September 2017, as part of a package of reforms to the superannuation system (refer to the [media release](#) issued by The Hon Kelly O'Dwyer MP, Minister for Revenue and Financial Services, for further details):
 - [*Superannuation Laws Amendment \(Strengthening Trustee Arrangements\) Bill 2017*](#), which proposes to amend the *Superannuation Industry (Supervision) Act 1993* to introduce new trustee arrangements requiring registrable superannuation licensees to have at least one-third independent directors, and for the Chair of the Board of directors to be one of these independent directors.
 - [*Treasury Laws Amendment \(Improving Accountability and Member Outcomes in Superannuation Measures No. 1\) Bill 2017*](#), which proposes a range of amendments intended to modernise and increase confidence within the superannuation system.
 - [*Treasury Laws Amendment \(Improving Accountability and Member Outcomes in Superannuation Measures No 2\) Bill 2017*](#), which proposes amendments to the *Superannuation Guarantee (Administration) Act 1992* to ensure employees under workplace determinations or enterprise agreements have an opportunity to choose the superannuation fund for their compulsory employer contributions.

- The following Bills, which were introduced into the House of Representatives on 7 September 2017 to give effect to certain measures **announced** as part of the housing affordability package in this year's Federal Budget:
 - [*Treasury Laws Amendment \(Reducing Pressure on Housing Affordability Measures No 1\) Bill 2017*](#), which proposes to establish the First Home Super Saver Scheme (in conjunction with the [*First Home Super Saver Tax Bill 2017*](#)), and to allow individuals aged 65 years and over to use the proceeds from the sale of their main residence to make 'downsizer contributions' of up to AUD300,000 to their superannuation.
 - [*Treasury Laws Amendment \(Housing Tax Integrity\) Bill 2017*](#) (the Bill), which proposes to deny deductions for travel expenditure incurred on or after 1 July 2017, and deny depreciation deductions for 'previously used' depreciating assets in relation to residential rental property in income years commencing on or after 1 July 2017 (subject to transitional relief). The Bill also proposes to establish an annual 'vacancy fee' for foreign owners of residential real estate (in conjunction with [*Foreign Acquisitions and Takeovers Fees Imposition Amendment \(Vacancy Fees\) Bill 2017*](#)).
- The [*Customs Amendment \(Singapore-Australia Free Trade Agreement Amendment Implementation\) Bill 2017*](#) and [*Customs Tariff Amendment \(Singapore-Australia Free Trade Agreement Amendment Implementation\) Bill 2017*](#), which were introduced into the House of

Representatives on 6 September 2017. The Bills propose to give effect to new Chapters and Annex in the Singapore-Australia Free Trade Agreement.

- The [*Customs Amendment \(Anti-Dumping Measures\) Bill 2017*](#), which was introduced into the House of Representatives on 13 September 2017, proposes to address potential behaviours by foreign exporters which operate against the intent of Australia's anti-dumping system. This legislation will establish an expanded range of methods that can be used by the Anti-Dumping Commission to determine appropriate export prices and ensure effective measures remain in place, where such measures are appropriate. Refer to the [media release](#) issued by The Hon Craig Laundry MP, Assistant Minister for Industry, Innovation and Science, for further details.
- [*Treasury Laws Amendment \(2017 Measures No 6\) Bill 2017*](#), which was introduced into the House of Representatives on 14 September 2017, proposes to amend the *A New Tax System (Goods and Services Tax) Act 1999* to ensure that from 1 July 2017, supplies of digital currency receive equivalent goods and services tax (GST) treatment to supplies of money, and to update the list of deductible gift recipients. For further information, refer to the [media release](#) issued by the Treasurer, the Hon. Scott Morrison MP.

[Notice of Substituted Rates of Customs Duty for Excise-Equivalent Goods](#) for various tobacco goods, which came into effect on 1 September 2017.

Let's talk

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Other news

Draft law to support Government's affordable housing agenda

The Government has [released exposure draft legislation](#) to implement further elements of its housing affordability plan including:

- Increasing the capital gains tax (CGT) discount to 60 per cent from 1 January 2018 for residents investing in eligible affordable housing if they hold the investment either directly or indirectly through certain trusts, for at least three years.
- Amending the law so that from 1 July 2017, managed investment trusts (MITs) can hold affordable housing for the purpose of deriving long-term rent. The draft legislation also clarifies that MITs will be able to construct or develop the affordable housing property.
- Consistent with current MIT withholding tax rules, eligible foreign residents will generally be able to take advantage of a reduced withholding tax of 15 per cent on investment returns from affordable housing, including income from capital gains. However, this concessional rate will not apply to capital gains income derived from selling affordable housing held for less than 10 years.
- An integrity measure applies from 4:30pm AEST on 14 September 2017, providing that a MIT cannot acquire investments in residential property, except where it is affordable housing or commercial residential premises. MITs currently holding residential property will be provided with a transitional period until 1 October 2027.

Refer to our [TaxTalk Alert](#) which considers the proposed measures in further detail.

Consultation on legislative framework for Asia Region Funds Passport and Collective Investment Vehicles

The Australian Government recently sought [comment](#) on the proposed [core legislative frameworks](#) to give effect to the Asia Region Funds Passport and the Corporate Collective Investment Vehicle (CCIV) regime.

The Passport is a common framework of coordinated regulatory oversight to facilitate the cross border issue of managed investment funds, whilst the CCIV regime will offer an internationally-recognisable investment vehicle which can be readily marketed to foreign investors, including through the Passport.

The draft legislation for the CCIV does not cover taxation of the vehicle or its investors - these rules are expected to follow shortly.

ATO's practical guidance on fixed trusts

The Australian Taxation Office (ATO) has released Practical Compliance Guideline [PCG 2016/16](#) which deals with fixed entitlements and fixed trusts. Being treated as a 'fixed trust' has important tax implications, including the ability for certain trusts to carry forward and utilise tax losses from year to year. This Guideline discusses factors the Commissioner will consider when determining whether to exercise his discretion to treat a trust as a fixed trust.

Importantly, the PCG sets out a 'safe harbour compliance approach' to allow certain trusts to manage their tax affairs as if the Commissioner has exercised his discretion. Refer to our [TaxTalk alert](#) for further details.

Proposed remedial power for small business restructure roll-over

The ATO has released [CRP 2017/D2](#): Draft Taxation Administration (Remedial Power - Small Business Restructure Roll-over) Determination 2017. This draft determination, once finalised, will ensure that no direct income tax consequences arise from the transfer of depreciating assets undertaken as part of a transaction that otherwise qualifies for the small business restructure roll-over relief.

This modification will most commonly apply where the restructure involves the transfers of depreciating assets by the trustees of trusts to beneficiaries, by companies to shareholders, and other associated persons. In the absence of the modification, such transfers could give rise to assessable income in the hands of the transferee. Comments are due 3 October 2017.

Reforms to address illegal phoenixing

The Government has [announced](#) a package of reforms including the introduction of a Director Identification Number (DIN), and a range of other measures, to both deter and penalise phoenix activity (the stripping and transfer of assets from one company to another by individuals or entities to avoid paying liabilities). It is proposed the DIN will interface with other Government agencies and databases to allow regulators to map the relationships between individuals and entities.

In addition to the DIN, the Government will consult on implementing a range of other measures to deter and disrupt the core behaviours of phoenix operators, including non-directors such as facilitators and advisers. The Government will also consult on how best to identify high risk individuals who will be subject to new preventative and early intervention tools such as allowing the ATO to retain tax refunds and commence immediate recovery action following the issuance of a Director Penalty Notice. Consultation on the non-DIN measures will commence in coming weeks.

Consultation on Tax Expenditures Statement

Treasury has released a [consultation paper](#) on the Tax Expenditures Statement (TES). The consultation is part of a review of the presentation and contents of the TES in response to a House of Representatives Committee on Tax and Revenue inquiry into the publication. The purpose of the consultation is to ensure the contents of the TES publication provides a strong and relevant contribution to the public debate on tax policy. Comments can be made until 16 October 2017.

Commissioner not prohibited from recovering accruing GIC

The Full Federal Court in [Bazzo v Commissioner of Taxation \[2017\] FCAFC 139](#) has dismissed the taxpayers' appeal, finding there was no basis or reason to construe the terms of the deeds of agreement with the Commissioner of Taxation in relation to taxation debts to extend the restraint to any other liability arising after a specific date. The Federal Court held that the Commissioner was not prohibited by the deeds of agreement from recovering accruing General Interest Charge (GIC) after the date specified in the Deed.

Federal Court dismisses application for judicial review of GIC decision

The Federal Court in [Pintarich v Deputy Commissioner of Taxation \[2017\] FCA 944](#) has dismissed the taxpayer's application for judicial review of a decision by the Deputy Commissioner to grant partial remission of the imposed GIC. The taxpayer argued the Deputy Commissioner had made an earlier decision to remit the GIC in full. The Court found that an earlier letter from the ATO stating a 'payout figure' did not purport to be the communication of a decision relating to the GIC remission application, and as such the decision to only partly remit the charge should stand.

ATO's Corporate Plan for 2017–18 and beyond

The ATO has released its [Corporate Plan](#) for the period 2017–18 to 2020–21. The corporate plan describes how the ATO proposes to administer the tax and superannuation systems, and sets out the framework in which it will operate and monitor its day-to-day operational performance and achieve its longer term strategic intent.

Some strategic objectives highlighted in the plan include the following:

- Individuals' risks – develop mitigation strategies to address emerging individuals' risks such as work related expenses.
- Assurance – obtain independent advice through a range of channels, including external scrutineers, the General Anti-Avoidance Rules Panel and independent assurance of settlements.
- Justified trust – implement a program to increase confidence in the level of assurance overall taxpayers' affairs.
- Tax gap analysis – use insights from analysis of tax gaps to ensure fairness in the tax system and inform future changes to client experiences.
- Dispute resolution – provide earlier and more open engagement to prevent disputes and litigate the right disputes.
- Public advice and guidance – improve public advice and guidance to provide taxpayers with greater certainty.
- Pre-emptive advice – tailor and increase ATO use of proactive advice and information.

- Single Touch Payroll – streamline business reporting obligations to align with payroll events.
- Technology platforms – modernise and improve the ATO’s technology platforms, to ensure they meet expectations of the community and ATO staff.

Government calls for submissions to inform next Federal Budget

The Federal Government is [inviting submissions](#) from individuals, businesses and community groups on their views regarding priorities for the 2018-19 Federal Budget. Submissions are due 15 December 2017.

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