

*October 2018*

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# TaxTalk Monthly

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



# Corporate Tax Update

## Government introduces law to give effect to R&D changes

The Government has introduced [Treasury Laws Amendment \(Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures\) Bill 2018](#) into Federal Parliament which, among other things, makes amendments to give effect to the 2018-19 Federal Budget proposal to better target the Research and Development (R&D) incentive. Specifically, the changes proposed to take effect for income years commencing on or after 1 July 2018 include:

- increasing the R&D expenditure threshold from AUD 100 million to AUD 150 million and making the threshold a permanent feature of the law
- for small R&D entities (with aggregated turnover of less than AUD 20 million):
  - linking the R&D tax offset for refundable R&D tax offset claimants to claimants' corporate tax rates plus a 13.5 percentage point premium
  - capping the refundability of the R&D tax offset at AUD 4 million per annum (however, offset amounts that relate to expenditure on clinical trials do not count towards the cap and remain refundable); and
- for large R&D entities (with aggregated turnover of AUD\$20 million or more), limit the amount of the R&D tax offset to their corporate tax rate plus a premium based on the level of their incremental R&D intensity for their R&D expenditure.

In addition, other amendments are proposed to enhance the integrity and improve the administrative framework of the R&D Incentive.

For more information, refer to our [TaxTalk Insights](#).

## ATO to publish corporate tax transparency data later this year

The Commissioner of Taxation is required to annually publish certain tax information for all corporate tax entities (companies and other entities taxed in a similar manner to companies) with total income of at least AUD 100 million (as disclosed in its income tax return), except Australian-owned private companies with total income of less than

AUD200 million. In addition, information will also be reported for an entity reporting petroleum resource rent tax (PRRT) payable.

The Australian Taxation Office (ATO) is preparing to publish the [corporate tax transparency data](#) of relevant entities later this year. Specifically, all identified entities should have received a letter in September 2018 advising of the details to be published for the 2016-17 income year, including entities whose tax returns were either lodged or processed after 1 September 2017 for the 2014-15 and/or 2015-16 years, if the information had not been published previously.

## Tribunal finds taxpayer not engaged in R&D activities

The Administrative Appeals Tribunal in [Moreton Resources Ltd v Innovation and Science Australia \[2018\] AATA 3378](#) has affirmed the decision of Innovation and Science Australia confirming that certain activities in respect of the design and development of an integrated underground coal gasification process which the taxpayer had applied for registration were not R&D activities as defined in s355-20 of the *Income Taxation Assessment Act 1997*.

## Inquiry into the implications of removing refundable franking credits

The House of Representatives Standing Committee on Economics has launched an [inquiry](#) for report on the use of refundable franking credits, their benefits and the implications of their removal. The [terms of reference](#) for the inquiry (which is seeking submissions before 2 November 2018) include:

- analysis of who receives refundable franking credits, the opportunities it provides to offer alternative savings and investment vehicles to low and middle income earners, and the impact it has on lowering tax
- consideration of how refundable franking credits support tax principles, particularly implications for tax neutrality, removal of double taxation and fairness
- if refundable franking credits are removed, who would be impacted, and the implications from expected behavioural change by investors.

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## Employment Taxes Update

### ***Payroll tax changes in 2018-19 South Australian State Budget***

The [2018-19 South Australian Budget](#) was delivered on 4 September 2018 and included, among other things, proposed changes to the application of South Australian payroll tax rules. Specifically, it was announced that from 1 January 2019, payroll tax for businesses with annual taxable payrolls below AUD 1.5 million will be abolished. Furthermore, payroll tax rates for businesses with annual taxable payrolls between AUD 1.5 million and AUD 1.7 million will be set from 0 per cent at AUD 1.5 million to increase proportionately to 4.95 per cent at AUD 1.7 million in taxable annual wages.

### ***Single Touch Payroll exemption for foreign employees***

The Australian Taxation Office (ATO) has released [guidance](#) for taxpayers which outline a number of circumstances in which Single Touch Payroll (STP) reporting exemptions can be accessed by employers in respect of a particular financial year, certain payments, or for certain employees.

Where an employer is eligible for an STP reporting exemption, they must continue to comply with their existing PAYG withholding obligations, including reporting and paying PAYG withholding liabilities, issuing payment summaries to employees, and lodging a payment summary annual report with the ATO at the end of the financial year.

This guidance indicates that an employer will be exempt from reporting payments to a foreign

employee via STP if **all** of the following requirements have been satisfied:

- 1 The employee is employed by an offshore entity.
- 2 The employee is present in Australia on a secondment.
- 3 All or part of the employee's base salary and other remuneration is paid by an offshore entity.
- 4 The employer maintains a shadow payroll arrangement for the employee and internal tax equalisation and protection policies.

Employers do not need to apply for this exemption or advise the ATO, however, if this exemption is used, the employer should keep records that support this decision.

The ATO has advised that further reporting relief is still being considered.

### ***Payroll tax appeal decision handed down concerning amounts distributed via express trust (VIC)***

In *Commissioner of State Revenue v The Optical Superstore Pty Ltd [2018] VSC 524*, the Supreme Court of Victoria upheld the earlier decision of the Victorian Civil and Administrative Tribunal, finding that payroll tax was not payable on certain net consultation fees made to optometrists by the owner of the clinic and premises at which the optometrists used to treat their customers.

In particular, the Supreme Court considered on appeal whether the amounts distributed to the

optometrists were amounts “paid or payable” for the purposes of the *Pay-Roll Tax Act 1971* (VIC) and *Payroll Tax Act 2007* (VIC) and whether the distributions were made “for or in relation to the performance of work” in accordance with the relevant contract provisions. The Court ultimately found that in circumstances where a distribution is made to a beneficiary under an express trust, the money distributed already belongs to the beneficiary and therefore cannot satisfy the requirements to be considered “paid or payable” under the Payroll Tax Acts. This was contrasted by the Court to a discretionary trust, where the declaration of the Trustee to make a distribution may be taken to constitute an amount that is “paid or payable” for payroll tax purposes.

Despite finding in favour of the taxpayer in this respect, the Court accepted the Commissioner’s submission that if the distribution under the express trusts had instead been found to constitute “payments” within the meaning of the Payroll Tax Acts, they would also be “payment for or in relation to the performance of work” under the relevant contract provisions.

### **Expansion of TPRS**

The legislation (*Treasury Laws Amendment (Black Economy Taskforce Measures No 1) Bill 2018*) to extend the existing Taxable Payments Reporting System (TPRS) so that it will apply to entities that provide courier or cleaning services has completed its passage through Parliament. Taxpayers affected by this new rule will need to review their payments made to contractors from 1 July 2018 and complete and subsequently lodge with the ATO a Taxable Payments Annual Report disclosing details of transactions that involve engaging other entities to undertake courier or cleaning services.

In addition, [legislation](#) to give effect to this year’s Federal Budget proposal to extend the TPRS to cover the road freight, information technology (IT), and security, investigation or surveillance services sector was introduced into Parliament and is proposed to apply from 1 July 2019.

### **Fringe Benefits Tax Working Group – Key messages**

The ATO has [released](#) during the month details of the Fringe Benefits Tax (FBT) Working initial meeting held on 11 July 2018. The group’s purpose is to explore areas of FBT compliance difficulties for employers and develop practical guidance on areas of FBT law where there is often uncertainty.

The group spoke about the need for improvements to ATO minor benefits exemption guidance and examples for taxpayers, the possibility of aligning the fourth quarterly FBT instalment with the FBT return lodgment due date. Further updates are expected at the next meeting of the working group.

### **ACT Tribunal considers ‘Beneficial Organisation Determination’ for payroll tax purposes**

The ACT Civil and Administrative Tribunal in *Australian Pork Limited v Commissioner for ACT Revenue* has confirmed the decision of the Commissioner which declined to make a ‘Beneficial Organisation Determination’ for payroll tax purposes. Although the organisation was one promoting trade, industry or commerce, it did not satisfy the requirements in s18F of the *Taxation Administration Act 1999* (ACT) to be granted an exemption from payroll tax.

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# Global Tax Update

## Latest news from international tax and transfer pricing

### **Government introduces law targeting foreign investors and multinationals**

The Australian Government has introduced into Federal Parliament various Bills which seek to target foreign investors and multinationals by giving effect to a number of 2018-19 Federal Budget measures (refer to the Government's [media release](#) for more detail).

Specifically, *Treasury Laws Amendment (Making Sure Foreign Nationals Pay Their Fair Share of Tax and Other Measures) Bill 2018*, 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 (subject to transitional rules, applicable to fund payments made on or after 1 July 2019 in respect of the 2019-20 or later income year)
- modify the thin capitalisation rules to prevent double gearing structures (applicable to income years starting on or after 1 July 2018)
- limit access to the withholding tax exemption for superannuation funds for foreign residents (applicable to income that is derived by a superannuation fund on or after 1 July 2019, subject to transitional rules), and
- codify and limit the scope of the sovereign immunity tax exemption (applicable from the 2019-20 income year, subject to transitional rules).

For further details on the above measures, refer to this [TaxTalk Alert](#).

In addition, *Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018* proposes, among other things, the following:

- *amendments to the thin capitalisation rules*

The Bill proposes to require entities to align the value of their assets for thin capitalisation purposes with the value included in their financial statements. This amendment applies from 7.30 pm (by legal time in the Australian

Capital Territory) on 8 May 2018, subject to a transitional rule to allow reliance on revaluations of assets made prior to that time until the last day before the start of the income year commencing on or after 1 July 2019.

In addition, amendments are proposed to ensure that for income years beginning on or after 1 July 2019, non-ADI foreign controlled Australian tax consolidated groups and multiple entry consolidated (MEC) groups that have foreign investments or operations are treated as both outward investing and inward investing entities. Entities that are classified as both outward investing and inward investing entities are disqualified from applying certain thin capitalisation rules (e.g. the worldwide gearing test).

- *amendments to extend the definition of Significant Global Entity (SGE)*

The expanded concept of a SGE will cover groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company and to ensure that the criteria for determining a SGE will not be affected by the exceptions to requirements applying to consolidated or materiality rules in the applicable accounting rules.

The Bill also introduces the narrower concept of "country-by-country reporting entity" which will also apply to certain corporate tax entities that are required to lodge general purpose financial statements with the Australian Taxation Office (ATO).

Entities that are SGEs are potentially subject to the Diverted Profits Tax, the Multinational Anti-Avoidance Law and higher administrative penalties.

The amendments will generally apply in relation to income years or other periods starting on or after 1 July 2018, subject to a transitional rule for the application of the higher penalties that can apply to an SGE.

### **Comments from ATO on its approach to transfer pricing and other global risks**

The ATO Deputy Commissioner, Mark Konza, in a speech, discussed the future of transfer pricing covering the Diverted Profits Tax and Multinational Anti-Avoidance Law. Comments were also provided on the ATO's bolstered ability to detect and deal with

cross-border misalignment of value and tax outcomes and its future focus on transfer pricing in the pharmaceutical industry. The speech also makes comments concerning the International Compliance Assurance Programme (ICAP), its focus on the energy and resources sector (exploration expenditure, hubs (particularly marketing hubs) and related party financing including the use of derivatives to avoid interest withholding tax and cross-currency interest rate swaps), and its expectation that taxpayers will shift to using the arm's length debt test for thin capitalisation purposes.

## 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:

- [Tax reform readiness – The politics of implementation](#).
- [Tax reform readiness – Implications of the Section 965 proposed regulations](#) (the 'toll charge' on deemed repatriated earnings).
- [Tax reform readiness – Understanding the Section 199A proposed regulations](#) (the deduction for qualified business income from a trade or business operated directly or through a passthrough entity).
- [Tax reform readiness – Do the proposed depreciation regulations provide a bonus?](#)
- [House Ways and Means Committee approves 'tax reform 2.0' bills](#).
- [IRS releases draft Section 59A form for computing BEAT](#).
- [IRS releases draft Section 965 forms and new election templates](#).
- [IRS advises REITs on income from non-US subsidiaries, qualification rules](#).
- [Preliminary highlights of the proposed GILTI regulations under Section 951A](#) (the determination of a US shareholder's global intangible low-taxed income (GILTI) inclusion).

## US Supreme Court decision triggers state tax consequences for US inbound companies

Following a recent United States Supreme Court decision (*South Dakota v Wayfair*), states are no longer restricted from imposing sales tax collection

responsibility only on entities with an in-state physical presence. The decision could have a significant impact on entities making sales into US states, and potentially imposes unique burdens and considerations for US inbound companies regarding both sales and income taxes imposed by US states. For further information, refer to PwC's [Global Tax Insights](#).

## US Court of Appeals decision concerning transfer pricing dispute

The US Court of Appeals for the Eighth Circuit vacated and remanded the Tax Court's memorandum opinion in *Medtronic, Inc. v. Commissioner*, which had found substantially in favour of medical device manufacturer Medtronic in its transfer pricing dispute with the US Internal Revenue Service. For further information, refer to PwC's [Global Tax Insights](#).

## OECD and BEPs developments

The Organisation for Economic Cooperation and Development (OECD) has [released](#) updated guidance for tax administrations and multinational groups on Country-by-Country reporting (base erosion and profit shifting (BEPS) Action 13). The new guidance includes questions and answers on the treatment of dividends received and the number of employees to be reported in cases where a multinational enterprise uses proportional consolidation in preparing its consolidated financial statements and contains a table that summarises existing interpretative guidance on the approach to be applied in cases of mergers, demergers and acquisitions.

The OECD has also [released](#) the fourth round of the BEPS Action 14 peer review reports on improving tax dispute resolution mechanisms. The reports of [Australia](#), [Ireland](#), [Israel](#), [Japan](#), [Malta](#), [Mexico](#), [New Zealand](#) and [Portugal](#) contain targeted recommendations that will be followed up in stage 2 of the peer review process.

The OECD has [published](#) new transfer pricing country profiles for Costa Rica, Greece, Republic of Korea, Panama, Seychelles, South Africa and Turkey. In addition, it has also updated the information contained in Singapore's profile. The OECD continues to publish and update the transfer pricing country profiles for OECD and all interested members of the [Inclusive Framework on BEPS](#) to reflect the current state of each country legislation and practice regarding the application of the arm's length principle and other key transfer pricing aspects

In other developments:

- The OECD has [released](#) public comments received on BEPS discussion draft on the transfer pricing aspects of financial transactions. PwC's global submission observes that while the discussion draft provides helpful and informative guidance to taxpayers and tax authorities, it also highlights areas where divergence of views of different local country tax authority interpretations may actually increase the risk of double-taxation.
- Saudi Arabia has [signed](#) the Multilateral (MLI) BEPS Convention. In addition, Israel and Lithuania have [deposited](#) their instruments of ratification for the MLI.
- The Former Yugoslav Republic of Macedonia has [joined](#) the Inclusive Framework on BEPS.

## OECD Tax Policy Reforms 2018

The OECD has [released](#) its publication '[Tax Policy Reforms 2018](#)' which describes the latest tax reforms across 35 OECD members, as well as in Argentina, Indonesia and South Africa. The report

identifies major tax policy trends and highlights that economic stimulus provided by fiscal policy, including to a large extent through tax policy, has become more significant. Significant tax reform packages were introduced in Argentina, France, Latvia and the United States.

## European Commission concludes that Luxembourg did not grant State aid

The European Commission (EC) issued a press release concerning its final decision in the State aid investigation into tax rulings granted by the Luxembourg tax authorities to a Luxembourg subsidiary of the McDonald's group related to the treatment of a branch established in the United States. The EC found that Luxembourg did not grant State aid and that Luxembourg correctly applied the Luxembourg-US tax treaty and domestic provisions. For further information, refer to PwC's [Global Tax Insights](#).

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# Indirect Tax Update

## Government introduces law to give effect to 2018-19 Federal Budget measures

The Government has introduced [Treasury Laws Amendment \(Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures\) Bill 2018](#) into Federal Parliament. The Bill makes a number of amendments to give effect to

the 2018-19 Federal Budget including application of the GST to online hotel bookings, and amendments to the luxury car tax on re-imported cars.

For more information, refer to our [TaxTalk Insight](#).

## ATO guidance on when supplies are connected to Australia

The Australian Taxation Office (ATO) has issued the following rulings which provide guidance on when

supplies of real property and goods are connected with Australia for purposes of the Goods and Services Tax (GST):

- GST Ruling [GSTR 2018/1](#) considers when supplies of real property are connected with the indirect tax zone (Australia). The Ruling, which applies from 22 August 2018, replaces GST determination [GSTD 2004/3](#) which has been withdrawn.
- GST Ruling [GSTR 2018/2](#) updates and replaces [GSTR 2000/31](#), and discusses when supplies of goods are connected with Australia. The Ruling applies from its date of issue, 18 September 2018. However, aspects of the Ruling that relate to supply by way of continued lease of goods, apply in working out net amounts for tax periods starting on or after 1 October 2016.

### ***GST property withholding regime - three months in***

The GST withholding regime (GSTW regime) came into effect from 1 July 2018 for supplies of certain types of real property made under Contracts of Sale entered into on or after that date. Under this regime, affected purchasers are required to withhold and remit to the ATO an amount on account of GST on the purchase of the relevant property.

A number of important practical issues have arisen over the course of the last three months since the GSTW regime was implemented that vendors and purchasers will need to be aware of. These are as follows:

- *GST Property Credit Withholding Account (GSTW Account).* Vendors are entitled to a credit (the GSTW Credit) for the GSTW amount paid by purchasers at settlement, which is paid into the GSTW Account and transferred to the Running Balance Account (RBA) upon lodgment of the Business Activity Statement (BAS). The GSTW Credit is transferred to the RBA in a lump sum with the description 'GST property credits automatic transfer' and will have an effective date of the BAS due date. While the GSTW Account has not been visible to date in either the business portal or tax agent portal, the ATO has advised that the GSTW Account should be visible from early October 2018. Until then, vendors will need to rely on the email confirmations that the ATO issues to the vendor once the GSTW Amount has been processed by the ATO. These notifications are sent to the email address currently registered with the ATO.
- *Vendor notifications and GST groups.* Where the vendor is a member of a GST group (but not the representative member), then the vendor

notification to the purchaser and the forms lodged by the purchaser to the ATO (referred to as Form 1 and Form 2 respectively) must state the name and ABN of the representative member of the vendor's GST group, rather than the name and ABN of the vendor itself. We have seen a number of instances where the vendor's details have been specified on the notifications and forms, which has resulted in the GST Credit being paid into a GSTW Account for the vendor rather than for the representative member and not being appropriately allocated to the representative member's RBA upon lodgment of the GST group BAS. It is necessary to correct this error for each property transaction by contacting the ATO and requesting that the GSTW Credit be transferred from the GSTW Account of the vendor to the GSTW Account of the representative member.

- *GSTW Credit Availability.* The 'effective date' of the GSTW Credit is the settlement date of the property, meaning that the GSTW Credit for settlements within a particular month is in the GSTW Account and available to be transferred to the RBA upon lodgment of the BAS for that month provided that the GSTW payment has been made by the purchaser and processed by the ATO by the time the vendor lodges its BAS for that tax period. Typically, the ATO requires four business days to process electronic payments. Cheque payments mailed to the ATO are subject to postal service delivery times, but should be processed within four business days once received by the ATO. Prior to lodging the BAS for the relevant tax period, vendors should undertake a month end reconciliation to ensure that all expected GSTW Credits are in the GSTW Account.
- *Cancelled Sales.* Current guidance published by the ATO states that the GST property settlement withholding notification (i.e. Form 1) does not need to be cancelled where the contract does not settle. Notwithstanding this published guidance, the ATO recently advised in its webinar that Form 1 is required to be cancelled where settlement has fallen through. Whilst there are no penalties for failing to cancel the form, we would expect that the ATO may pursue purchasers who do not make the GSTW amount on the settlement date specified on Form 1.

### ***ATO guidelines on inbound tour operators and agency***

The ATO has issued draft Practical Compliance Guideline ([PCG 2018/D7](#)) which provides



preliminary guidance to inbound tour operators providing or arranging Australian tour packages including accommodation and non-accommodation components for non-residents.

By way of background, where an entity acts as an agent of the non-resident to arrange an Australian tour package (when the non-resident is outside Australia), any commission that is charged to the non resident in respect of that package will be GST-free. This is contrasted with the outcome where an entity is acting as a principal, the entire supply (which includes any mark-up or profit margin) may be subject to GST.

In recognition of the complexities in determining whether an inbound tour arrangement is one of agent or principal, the draft 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 GST law. Comments were due on 21 September 2018.

## ***Tribunal finds no entitlement to input tax credits***

The Administrative Appeals Tribunal (AAT) has considered the taxpayer's entitlement to input tax in the following cases:

- *Mango Reef Pty Ltd v Commissioner of Taxation [2018] AATA 3091* – The Tribunal affirmed the Commissioner's objection and penalty decisions, and was not satisfied that the taxpayer had made creditable acquisitions of scrap gold. As such, they were not entitled to input tax credits.

*Sunlea Enterprises Pty Ltd as trustee for Drummond Cove Unit Trust v and Commissioner of Taxation [2018] AATA 2792* – The Tribunal affirmed the Commissioner's

decision that a trust involved in a property development joint venture was not entitled to input tax credits on project management costs charged by a related party. The AAT was not satisfied that the relevant invoices were valid tax invoices, and found there was insufficient evidence to establish that there was a real transaction behind the invoices.

## ***Indonesia-Australia sign CEPA***

Indonesia and Australia have signed a Comprehensive Economic Partnership Agreement (CEPA). The agreement provides the grains, live cattle, dairy and horticulture sectors with greater certainty of access and lower tariffs. The agreement will also support Australian industrial producers in areas such as steel, copper and plastics. Australian service industries including health, mining, telecommunications, tourism and education will also have greater access to Indonesia's growing economy.

## ***US trade developments***

Since our last update, the following trade developments by the United States have occurred:

- The United States further escalates tariffs against China. For further information, refer to PwC's [Global Tax Insights](#).
- The United States and Mexico negotiated terms for a new trade agreement that would replace the existing North American Free Trade Agreement (NAFTA), but would not include Canada. The United States and Canada continue talks to bring Canada back in to any revised trade arrangement, so that the new North American trading regime would remain tripartite. For further information, refer to PwC's [Global Tax Insights](#).

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# Personal Tax Update

## ATO's guidelines on deceased estates

The Australian Taxation Office (ATO) has issued the following Practical Compliance Guidelines on deceased estates:

- Practical Compliance Guideline [PCG 2018/4](#) enables a legal personal representative (LPR) of a small and less complex deceased estate to finalise the estate without concern that they may have to fund a liability of the deceased from their own assets, and provides guidance on when an LPR will be treated as having notice of a claim by the ATO.
- Draft Practical Compliance Guideline [PCG 2018/D6](#) identifies factors the ATO will consider when deciding whether to exercise the discretion to extend the two year period to dispose of a former main residence dwelling acquired from a deceased estate (for purposes of the capital gains tax exemption), and a safe harbour compliance approach that applies as if the ATO had exercised the discretion to allow the longer period. Comments were due 21 September 2018.

## Care with payments for exploitation of professional sportsperson's 'public fame' or 'image'

The ATO has withdrawn its Draft Practical Compliance Guideline [PCG 2017/D11](#) which provided the ATO's draft guidance on the treatment of payments for use and exploitation of a professional sportsperson's 'public fame' or 'image'.

Note that it was announced as part of the 2018-19 Federal Budget that from 1 July 2019, the law will be amended to ensure that high profile individuals will not be able to take advantage of lower tax rates by licencing their fame or image to another entity.

Although the ATO has indicated that it has concerns about the tax effectiveness of some of the arrangements it has observed, it has stated that given the withdrawal of the draft PCG, it will not apply compliance resources to review an arrangement entered into before 24 August 2018 (being the date of the withdrawal of the draft PCG) where that arrangement complies with the terms of this withdrawn draft Guideline, provided that the arrangement was entered into and carried out as a consequence of the taxpayer relying on the withdrawn draft Guideline in good faith.

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# State Taxes Update

## 2018-19 South Australian State Budget

The [2018-19 South Australian Budget](#) was delivered on 4 September 2018 by Treasurer Rob Lucas. A number of tax related budget measures were announced, including (amongst other things):

- Abolition of payroll tax from 1 January 2019 for businesses with annual taxable payrolls below AUD 1.5 million. For those businesses with annual taxable payrolls between AUD 1.5 million and AUD 1.7 million, payroll tax will be reduced.
- From 1 July 2020, land tax thresholds will increase from AUD 369,000 to AUD 450,000.

A new marginal tax rate of 2.9 per cent for land tax ownerships valued between AUD 1.2 million and AUD 5 million will also be introduced.

- Expansion of the current stamp duty exemption for family farm transfers to include companies in addition to individuals and trusts.

It was also announced in the Budget there will be a reduction to the Emergency Services Levy (representing AUD 90 million per annum, or around AUD 145 per South Australian household), as well as capping council rate increases and capping Natural Resources Management Levy increases at a rate set by an independent body, or according to the consumer price index.

## State tax legislative developments

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

- The [Revenue and Other Legislation Amendment Bill 2018 \(QLD\)](#) was introduced into Queensland Parliament, which among other things, amends:
  - the *Duties Act* to give retrospective legislative effect to a number of beneficial administrative arrangements including extending the transfer duty concession for family businesses of primary production to all types of dutiable property used to conduct a primary production business, and to ensure that certain deregistered managed investment schemes can be treated as exempt managed investment schemes in particular circumstances
  - the *Land Tax Act 2010* to give retrospective legislative effect to ensure that deceased estate land is assessed for land tax as intended, and
  - the *Payroll Tax Act 1971* to update the rate used to calculate the exempt component of a motor vehicle allowance.
- The [Duties Amendment \(Additional Duty for Foreign Persons\) Bill 2018 \(WA\)](#), which seeks to amend the *Duties Act 2008* to implement a 7 per cent foreign buyers surcharge on residential property acquired by foreign persons from 1 January 2019, was passed by the WA Legislative Assembly and is now before the Legislative Council.

## Stamp duty decisions

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

- The Queensland Civil and Administrative Tribunal in [Beach Energy Limited v](#)

### [Commissioner of State Revenue \[2018\] QCAT](#)

[270](#) has affirmed the decision of the Commissioner of State Revenue in relation to the assessment of transfer duty for the grant of a farm out agreement where the taxpayer sought reassessment of the duty paid on the basis the farmout agreement was a cancelled agreement under s115 of the *Duties Act 2001* (Qld).

- The Victorian Civil and Administrative Tribunal in [Nikoiee v Commissioner of State Revenue \[2018\] VCAT 1425](#) has confirmed the decision of the Commissioner of State Revenue, finding that the taxpayer was liable for duty on the transfer on a property as the requirements of s34(1)(b) of the *Duties Act 2000* (VIC) were not met. This provision provides an exemption for transfer of dutiable property from an apparent purchaser to a real purchaser where the property is vested in the apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the property.
- The Victorian Civil and Administrative Tribunal in [Astakhov v Commissioner of State Revenue \[2018\] VCAT 1363](#) has held that the taxpayer, a trustee of a discretionary trust, was not exempt from duty in relation to the transfer of beneficial interest in a property to themselves as a beneficiary of the trust, as the Tribunal was not ‘satisfied that the transfer is not part of a sale or other arrangement under which there exists any consideration for the transfer’ as required under s36A(1)(e) of the *Duties Act 2000* (VIC). Consideration was found to exist in the form of the waiver of loans.

## Land tax decisions

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

- The majority of the Supreme Court of Victoria – Court of Appeal in [Living and Leisure Australia Ltd v Commissioner of State Revenue \[2018\] VSCA 237](#) has dismissed the taxpayer’s appeal against a decision of the [Supreme Court of Victoria](#) in relation to whether the applicant was the “owner” of the land assessed to land tax in respect of land held under lease from the Crown. The Supreme Court had held that the taxpayer was subject to Victorian land tax as it was entitled to land under a lease of Crown land. The majority of the Supreme Court found that the taxpayer had a conferral of exclusive possession of the applicable property, and was the lessee of Crown land.
- The ACT Civil and Administrative Tribunal in [Marks & Anor v Commissioner for ACT Revenue \[2018\] ACAT 84](#) has varied the Commissioner of Revenue’s penalty decision by imposing a 25 per

cent (rather than 50 per cent) penalty tax for the taxpayer's failure to pay land tax and their failure to comply with s14 of the *Land Tax Act 2004* (ACT). The Tribunal was satisfied that the circumstances that resulted in the liability to pay land tax were 'exceptional', and that it would be fair and reasonable to remit the penalty tax.

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## Superannuation Update

### ATO releases superannuation fund income tax gaps

The Australian Taxation Office (ATO) has released the superannuation income tax gaps – ie the difference between the total income tax collected and the amount the ATO estimates would have been collected if every taxpayer was fully compliant – for the following:

- **Large super income tax gap** for 2015-16 – The ATO estimates the net gap for this sector to be AUD 127 million or 1.5 per cent of the theoretical tax liability. The ATO considers large super funds to have a relatively lower tax risk than other taxpayers.
- **Small super funds income tax gap** for 2014-15 – The ATO estimates this net gap to be AUD 39.9 million, or 3.2 per cent of the total theoretical liability. According to the ATO, overall compliance by small super funds is very good, with most errors identified through the random enquiry program not having a tax consequence.

### ATO speeches on SMSFs and superannuation

ATO Deputy Commissioner James O'Halloran gave an [opening address](#) to the Chartered Accountants Australia and New Zealand National SMSF Conference. Various self-managed superannuation fund (SMSF) matters were discussed including the

ATO's focus on total super balance and transfer balance caps, market-linked pensions, reserves and multiple SMSFs.

In addition, ATO Deputy Commissioner James O'Halloran and Assistant Commissioner Graham Whyte [delivered presentations](#) to the ASFA (Association of Super Funds of Australia) Policy Roadshow on super regulation including single touch payroll and the super guarantee gap.

### Labor policy on women's super security

The Australian Labor Party has [announced](#) that it will invest AUD 400 million to strengthen Australia's superannuation system and boost women's superannuation balances. As part of this policy it will ensure that recipients of Commonwealth Paid Parental Leave and Dad and Partner Pay payments continue to receive super contributions. Labor has also announced that it will phase out the AUD 450 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.



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## Legislative Update

Commonwealth revenue measures introduced into Parliament since the last issue of TaxTalk include:

- *Treasury Laws Amendment (Making Sure Foreign Nationals Pay Their Fair Share of Tax and Other Measures) Bill 2018*, which was introduced into the House of Representatives on 20 September 2018, 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 was introduced into the House of Representatives on 20 September 2018, 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 (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018*, which was introduced into the House of Representatives on 20 September 2018, proposes 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 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 \(Black Economy Taskforce Measures No 2\) Bill 2018](#), which was introduced into the House of Representatives on 20 September 2018, seeks to implement the Government's responses to the Black Economy Taskforce's final report which relate to denying deductions for certain non-compliant PAYG withholding payments, extending the Taxable Payment Reporting System and taxing tobacco at the time of manufacture (in conjunction with [Excise Tariff Amendment \(Collecting Tobacco Duties at Manufacture\) Bill 2018](#), which proposes to amend the Excise Acts and the *Taxation Administration Act 1953* to address and clarify the consequences of the principal changes set out in the main Bill).
- [Treasury Laws Amendment \(2018 Measures No. 5\) Bill 2018](#), which was introduced into the House of Representatives on 20 September 2018, proposes, among other things, to make technical amendments to the MIT and attribution managed investment trust (AMIT) rules, update the list of specifically listed deductible gift recipients (DGRs), and extend DGR status to entities promoting indigenous languages.

The following regulations have been remade which seek to improve the previous issued (and sunsetted) regulations by repealing redundant provisions, simplifying language, and restructuring provisions for ease of navigation. None of the changes are not intended to affect the substantive meaning or operation of the provisions:

- [Fringe Benefits Tax Assessment Regulations 2018](#)
- [Pooled Development Funds Regulations 2018](#)
- [Superannuation Guarantee \(Administration\) Regulations 2018](#)
- [Taxation \(Interest on Overpayments and Early Payments\) Regulations 2018](#)

Other Commonwealth revenue measures registered as legislative instruments or regulations since the last issue of TaxTalk include:

- [Corporations \(Passport\) Rules 2018](#) incorporate the Asia Region Funds Passport Rules, agreed by the participating economies in Annex 3 to the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport, into Australian law.
- [Corporations Amendment \(Asia Region Funds Passport\) Commencement Proclamation 2018](#) fixes 18 September 2018 as the day on which

Schedules 1, 2, 2A and 3 of the *Corporations Amendment (Asia Region Funds Passport) Act 2018* commence.

- [Corporations Amendment \(Asia Region Funds Passport\) Regulations 2018](#) make amendments to the *Corporations Regulations 2001* and other miscellaneous regulations which are needed to implement the Asia Region Funds Passport in Australia. This includes amendments to update the particulars that are included on ASIC's registers and ensure that the disclosure requirements for foreign passport funds products are the same as those that currently apply to managed investment products.
- [Foreign States Immunities \(Taxation\) Regulations 2018](#) enables relevant Australian Commonwealth, State and Territory agencies to enforce tax laws against foreign states by bringing a civil action in the event that a foreign state does not fulfil its obligations under a prescribed tax law. The regulation repeals the *Foreign States Immunities Regulations 1987* (Cth).
- [Treasury Laws Amendment \(Illicit Tobacco Offences\) Regulations 2018](#) prescribe how to work out the amount of duty that would be payable on an amount of tobacco leaf for offences relating to illicit tobacco.

The following key Bills have completed their passage through Parliament:

- [Treasury Laws Amendment \(Accelerated Depreciation for Small Business Entities\) Bill 2018](#) extends the period during which small business entities can access accelerated depreciation for assets costing less than AUD 20,000 until 30 June 2019. See also the Government's [media release](#).
- The [Medicare Levy Amendment \(Excess Levels for Private Health Insurance Policies\) Bill 2018](#) together with the Private Health Insurance Legislation Amendment Bill 2018 and A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Amendment (Excess Levels for Private Health Insurance Policies) Bill 2018, increase the maximum voluntary excess levels for private health insurance products providing individuals an exemption from the Medicare levy surcharge.
- [Treasury Laws Amendment \(Supporting Australian Farmers\) Bill 2018](#), which was introduced into the Parliament on 13 September 2018, allows primary producers to immediately deduct (rather than claim depreciation over three years) the cost of fodder storage assets, such as silos and hay sheds, used to store grain and other animal feed, that are first used or installed ready for use on or after 19 August 2018.

*Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018*, which includes the previously announced integrity measure to apply to the small business capital gains tax concessions, amendments to ensure that the Multinational Anti-avoidance Law (MAAL) can apply to arrangements involving trusts and partnerships, and measures to ensure that the venture capital tax concessions apply to fintech investments. During the

Bill's passage through Parliament, amendments were made to change the start date for the small business concession integrity measure to apply from 8 February 2018 (instead of 1 July 2017) and to ensure that there is an impact assessment of the operation of the venture capital tax concession within two years of enactment.

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## Other News

### Taxpayer engagement with the tax system

The House of Representatives Committee on Tax and Revenue has released its report on taxpayer engagement with the tax system. The Committee concluded that, under Australia's self-assessment model, more should be done to make tax obligations easier for taxpayers to understand and simpler to comply with. The Committee made 13 recommendations which include:

- a complete review of the tax system by 2022, to achieve a system that responds to the rapidly evolving digital environment, and is both easier to enforce and understand
- adoption by the Australian Taxation Office (ATO) of a Regulatory Philosophy to codify the principles on which it will administer tax laws and engage with taxpayers
- introduction of a standard workplace expense deduction scheme, where a standard deduction applies unless fully substantiated claims are made

- adoption by the ATO of a roadmap for the abolition of paper-based returns, including testing and trialling with user groups, and
- consideration of an ABN withholding tax system at source for all industries with the potential for the rates to be industry specific.

### Labor Party's new tax policies

The Shadow Treasurer in an address to the COSBA National Small Business Summit has indicated that a Labor Government will maintain the tax cuts that have been legislated and implemented to date (ie the reduction in the corporate tax rate to 27.5 per cent for businesses with a turnover up to AUD 50 million per annum).

In addition, it was indicated that the Labor party will seek to legislate to establish a new position of Second Commissioner – Appeals within the ATO with funding of AUD 1.5 million to be provided over the forward estimates.

In a subsequent speech to the Tax and Transfer Policy Institute, the Shadow Assistant Treasurer announced that a Labor Government will extend the application of the Tax Haven Blacklist, specifically

deny claims for unsubstantiated tax-free allowances paid for travel to tax havens (with exceptions requiring an application to be made to the ATO). If a claim cannot be substantiated and justified as incurred in the production of assessable income, it would attract a fringe benefits tax liability of 47 per cent. In addition, it will implement an integrity measure targeting 'passport shopping' in tax havens. Under this policy, it will also be a requirement that individual Australian taxpayers will need to notify and declare to the ATO if they have residency or citizenship of any other jurisdiction and the name of that jurisdiction.

## Consultation on reforming administration of DGR status

Treasury has released a [consultation paper](#) seeking views (comments were due 21 September 2018) on the [proposed design](#) for key components of the Government's package of reforms for administration and oversight of organisations with deductible gift recipients (DGR) status, including:

- requirement for non-government organisations with DGR status to register as a charity with the ACNC from 1 July 2019
- transition arrangements to support existing organisations with DGR status to register as a charity with the ACNC
- Commissioner of Taxation's discretion to exempt organisations with DGR status from the requirement to register as a charity in limited circumstances, and
- the abolishment of certain public fund requirements.

The submissions to this consultation paper will assist in developing the legislation to give effect to the reforms.

In addition, 30 recommendations were made in the [final report](#) on the Review of Australian Charities and Not-for-profits Commission legislation, including a long term goal of moving towards a national scheme.

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