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PwC's Monthly Tax Update

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

June 2022



Corporate Tax Update

ATO checking eligibility for lower corporate tax rate

The Australian Taxation Office (ATO) has [reported](#) that it has found that some corporate tax entities are incorrectly claiming to be a "base rate entity" (BRE) that is eligible to use the lower company tax rate (e.g. 25 per cent in the 2021-22 income year compared to the general company tax rate of 30 per cent). The ATO may contact entities that have claimed to be eligible for the lower company tax rate in recent income tax returns to verify that the entity satisfies the relevant eligibility criteria. The lower company tax rate is broadly applicable to a company with aggregated turnover of less than AUD 50 million, where no more than 80 per cent of its assessable income for the year comprises certain types of passive income.

End of financial year reminders for the R&D Tax Incentive

As we near the end of the financial year, entities that incur research and development (R&D) expenditure as a payment to an associate or associates should ensure that these amounts are fully paid by 30 June 2022 in order to be able to claim the R&D tax offset for these amounts. Where all or part of a payment to an associate is incurred but not paid in the income year, the R&D benefit can only be claimed in the future income year in which it

is paid (and on the condition that the company does not claim a deduction under the general income tax provisions for the unpaid amounts).

Entities seeking to obtain an Advance or Overseas Finding for R&D activities conducted in the year ending 30 June 2022 have until 30 June 2022 to submit an application.

AusIndustry service standards for processing of R&D Tax Incentive applications

AusIndustry has recently updated its service standards for processing R&D tax incentive applications. Its revised performance target is to have 95 per cent of applications for registration of R&D activities processed within:

- 40 business days for first time registrants
- 20 business days for applications submitted within six months of the end of an income period, and
- 80 business days for applications submitted six months or more after the end of an income period.

Applicants should be aware of these changes as this has the potential to cause delays if R&D tax incentive claimants lodge their application forms near the lodgement due date.

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Employment Taxes Update

Super guarantee changes coming

An increase to the superannuation guarantee (SG) rate to 10.5 per cent from the existing 10 per cent will take effect from 1 July 2022. This increase will require employers to contribute an additional half per cent to meet their SG obligations for quarters falling within the financial year ending 30 June 2023. Whether this constitutes an additional employer funding requirement or is funded from existing remuneration costs will depend on whether employers operate a 'salary plus superannuation' arrangement (incremental additional superannuation cost) or a 'total employment cost' arrangement (funds the superannuation increment by way of a reduction to existing salary entitlements).

In addition, from 1 July 2022, the SG will apply to more employees because the current AUD 450 per month eligibility threshold for when SG is required to be paid is being removed. However, payments relating to work performed by non-residents solely outside of Australia and work performed by individuals under the age of 18 years and employed for less than 18 hours per week, are still exempt from SG and will not be affected by these changes.

We strongly recommend that employers should start planning how these SG changes will be implemented and communicated to employees.

ANAO audit of SG compliance

The Australian National Audit Office (ANAO) has released its performance audit into the Australian Taxation Office (ATO) [Addressing Superannuation Guarantee Non-Compliance](#), finding that the ATO's activities are only partly effective. Specifically, the audit found that ATO activities in addressing SG non-compliance and its risk-based compliance framework are only partly effective, with compliance activities continuing to be mainly corrective and reactive.

The report recommends that the ATO implement a preventative compliance strategy, use enforcement and debt recovery powers more regularly and provide enhanced performance reporting in relation to SG non-compliance. The ATO agreed or partly agreed with all of the findings made by the ANAO with the ATO stating that it will make more use of its debt recovery powers and will explore opportunities to enhance performance measures and commentary on SG performance information. It is expected that Single Touch Payroll Phase 2 will play an important role in ATO efforts to identify and deter non-compliance. Read more in PwC's [Tax Alert](#).

SG charge penalties upheld

The Administrative Appeals Tribunal (AAT) has rejected the taxpayer's claim in [RFZD v Commissioner of Taxation \[2022\] AATA 988](#) that it was subject to excessive SG charge assessments or penalties. The AAT did not accept the taxpayer's claims that bookkeeper errors and their lack of knowledge and understanding of the strictness of the statutory time limits imposed by law in relation to the payment of required superannuation contributions were beyond its control. The taxpayer advanced no support for its claim of data corruption so the AAT was also unable to accept this assertion.

The Tribunal observed that there is no discretion under the SG law to remit the nominal interest or administrative components of the charges and that the remaining penalty amount was correctly calculated and already reduced by the Commissioner who took into account various factors in remitting the penalty. The Tribunal had regard to the process outlined in PSLA 2011/28 and found that there are no grounds to exercise the discretion to further remit the penalties.

Furthermore, in relation to penalties imposed for failing to withhold PAYG, the Tribunal considered there was no grounds to exercise the discretion to further remit the PAYG withholding penalty in accordance with PSLA 2014/4.

Tighter penalty provisions for all NSW taxes

As noted in the State Taxes update of this monthly update, the [State Revenue and Fines Legislation Amendment \(Miscellaneous\) Act 2022 \(NSW\)](#) is now law and has made a range of amendments to the tax administrative provisions applicable to many New South Wales (NSW) taxes, including among other things, payroll tax.

Of particular interest is the increase in the penalties that can apply to NSW payroll taxes (and other NSW taxes) that double the penalty rates for employers which are Significant Global Entities (SGEs) that engage in tax defaults (being an underpayment of tax in whole or part). The Chief Commissioner will continue to have powers to decrease penalties applicable where the taxpayer can demonstrate that they took reasonable care, and to increase penalties where there has been intentional disregard of the law. In brief, an SGE is defined according to the income tax law and is broadly an entity or member of an accounting consolidated group with consolidated annual global income of AUD 1 billion or more or that would be

included in a consolidated accounting group with annual global income of AUD 1 billion or more if certain assumptions were made.

A new general anti-avoidance regime that will cover all NSW taxes including duties, land tax and payroll tax also applies as well as a promoter penalties regime, similar to that contained in the Commonwealth tax law, which can apply to a person who engages in conduct that results in a person being a promoter of a tax avoidance scheme which can cover payroll taxes.

Also of note is that the Chief Commissioner has been granted powers to disclose information obtained through its investigations to other government agencies, for the purpose of their own investigation and law enforcement efforts, and also, for clearance checks by government and certain NSW agencies.

Victorian payroll tax update

The [State Taxation and Treasury Legislation Amendment Bill 2022 \(Vic\)](#), which was introduced into the Victorian Parliament on 3 May 2022, will amend the *Payroll Tax Act 2007* provisions relating to employment agents. Under the current law, a payroll tax exemption is currently available for payments made to, or in relation to, a service provider (i.e. a contractor) under an employment agency contract if that payment would be exempt had the service provider been paid by the client, as an employee. The client must provide a declaration to the employment agent to that effect.

The amendments, which will commence the day after the relevant Bill has been enacted, provide for the exemption to be extended to payments made by an employment agent to common law employees of the employment agent.

WA payroll tax changes

The [2022-23 Western Australian \(WA\) State Budget](#) was delivered on 12 May 2022 by Treasurer Mark McGowan. As part of the Budget, a number of payroll tax measures were announced including:

- a three-month payroll tax waiver for eligible hospitality businesses with annual wages between AUD 4 million and AUD 20 million (previously [announced](#)), to support businesses impacted by public health and social measures. These businesses must have experienced at least a 40 per cent drop in turnover for any four-week period between 1 January 2022 and 30 April 2022, relative to a comparable period in 2021. This payroll tax relief was previously only available for businesses that had experienced a 50 per cent decline in turnover.
- From 1 July 2022, the quarterly payroll tax return lodgment threshold will increase from AUD 100,000 to AUD 150,000. This means that payroll tax payers with an annual liability of up to AUD 150,000 will have the option to choose to pay quarterly (rather than monthly).

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Global Tax and Trade Update

New Government proposes tax changes for multinationals

With the Australian Labor Party (ALP) now in Government following the results of the 2022 Federal Election, their tax policies directed at multinationals looks set to be a reality proposed to apply next year. Although there is little detail on the specifics, it is clear that there are proposed changes to the thin capitalisation rules, implementation of the

Two-Pillar Solution to address the tax challenges of digitalisation of the economy, and new measures relating to royalties paid to low tax jurisdictions. For a summary of all the ALP tax policy measures, refer to the Other News section in this monthly update and read more in PwC's [Tax Alert](#).

Synthesised text of Malaysia tax treaty published

The Australian Taxation Office (ATO) has published the synthesised text of Australia's tax treaty with [Malaysia](#) as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

OECD Pillar One update

The Organisation for Economic Cooperation and Development (OECD) has [released](#) a [consultation document](#) on the Regulated Financial Services Exclusion to Amount A of Pillar One of the two pillar solution to address tax challenges arising from the digitalisation of the economy. Pillar One introduces a new taxing right over a portion of the profit of large and highly profitable enterprises for jurisdictions in which goods or services are supplied or consumers are located.

This exclusion is intended to apply to profits of specifically regulated financial institutions which covers six types of financial institution, being depositary institutions, mortgage institutions, investment institutions, insurance institutions, asset managers or mixed financial institutions. The consultation document also discusses a seventh category of entity, being a service entity that exclusively performs functions for a Regulated Financial Institution. Comments on the consultation document closed on 20 May 2022. Read PwC's [Tax Policy Alert](#) for more information.

The OECD has also published the submissions received in response to its consultations on the [Extractives Exclusion to Amount A of Pillar One](#).

Other OECD updates

In other OECD updates, the following has been released:

- the submissions received in response to its consultations on the [Crypto-Asset Reporting](#)

[Framework and Amendments to the Common Reporting Standard](#)

- the [Taxing Wages 2022](#) annual report which analyses taxes paid on wages in OECD countries. The report covers income taxes, social security contributions, payroll taxes and cash benefits, and illustrates how these taxes and benefits are calculated in each member country and examines how they impact household incomes.
- Uzbekistan has [joined](#) the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes where it will be invited to participate in the Asia Initiative aimed at tackling tax evasion and avoidance, corruption and illicit financial flows.

Canada releases draft legislation on hybrid mismatches

The Department of Finance of Canada has [released](#) draft legislation to implement rules to combat hybrid mismatch arrangements under the OECD's base erosion and profit shifting action two. The draft legislation is proposed to apply from 1 July 2022 to 'deduction/non-inclusion' mismatches relating to hybrid financial instruments, including transfers and substitute payments. Read more in PwC's [Tax Insight](#).

Update to PCG on fuel tax credits for non-business claimants

The ATO has updated practical compliance guideline [PCG 2016/3](#) to outline the ATO's practical compliance method for non-business fuel tax credit claimants and clarify that this is only applicable where a rate change during a claim period occurs because of indexation. Where this occurs, the fuel tax credit will be calculated based on the fuel tax credit rate in force on the last fuel purchase day of the period. The application of the 50 per cent reduction to fuel excise that was enacted following the 2022-23 Federal Budget is also addressed.

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Indirect Tax Update

ATO findings on reverse charging

The Australian Taxation Office (ATO) has released [findings](#) of its reviews of taxpayers in the financial services industry and goods and services tax (GST) on reverse charge transactions. The reverse charge provisions, which apply to a range of entities, including domestic and foreign banks, Fintech entities (such as buy-now, pay-later (BNPL) providers, and online lenders or account providers), life insurers and funds, apply when GST on a taxable supply is payable by the recipient rather than the supplier due to the difficulty of collecting GST from foreign suppliers. The ATO specifically recommends that affected providers review their tax control framework, with common errors identified by the ATO including:

- having no documented process for reverse charge transactions
- not involving the tax team in the identification of these transactions
- using a vendor list to identify transactions without reviewing and updating this regularly
- claiming input tax credits where reverse charges were not applied, and
- failing to review processes following a law change.

As a minimum, the ATO expects taxpayers to have a documented process to identify reverse charge transactions when preparing a business activity statement. The ATO considers best practice to identify reverse charge transactions at the time the transaction occurs. Taxpayers are also expected to demonstrate their documented procedures and conduct testing.

GST considerations for buy-now pay-later providers

The ATO has also [released](#) a paper outlining GST considerations for BNPL providers as part of the GST Financial Services and Insurance strategy, with

a focus on determining the entitlement to input tax credits on related costs. The primary forms of supplies discussed in the paper are:

- input taxed supplies of credit where a customer initiates the BNPL provider's provision of payment to the merchant in exchange for the customer repaying the amount at a later date, and
- taxable supplies of services to merchants that allow the merchant to accept payment using the BNPL provider's facilities, in exchange for merchant fees that are charged on a transaction by transaction basis.

The paper provides examples of common types of transactions such as the acquisition of debt collection services or the development and maintenance of a smartphone application and discusses the ATO's view of the appropriate treatment for these transactions. The paper then goes on to discuss appropriate apportionment methodologies for allocating acquisitions between input taxed supplies and taxable supplies and the ATO's expectations in relation to these methodologies.

Land sale under single contract held to be multiple supplies

The Federal Court has held in [Landcom v Commissioner of Taxation \[2022\] FCA 510](#) that the sale of several land titles under a single contract was the supply of several freehold interests in land for the purposes of the margin scheme. The taxpayer was a State-owned corporation that owned a number of lots and entered into a put and call option agreement with a land developer for the sale of these lots. At issue was whether there was one supply of all of the lots or a separate supply in respect of individual lots, as well as procedural issues relating to the status of the taxpayer as a government entity.

The Federal Court found in favour of the taxpayer and held that section 75-5(1)(a) of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) provided that each supply of a freehold interest in land was to be treated separately and that the focus of the margin scheme provisions in the legislation was on the sale of individual pieces of land. The Court also ruled that the inclusion of notional GST in a business activity statement gave rise to an assessment, following which the taxpayer was able to exercise its rights of appeal and review.

Refer to this [PwC Alert](#) for further information and insights into this case.

Determination on refunds of defence acquisitions

The then Minister for Defence has made the [Taxation Administration \(Defence Related International Obligations and Other Matters – Indirect Tax Refunds\) Determination 2022](#) that allows for a refund of indirect tax for acquisitions by the visiting forces of Papua New Guinea, Singapore and the United States of America (USA) that are engaged in defence activities. The new determination replaces the [Taxation Administration \(Defence Related International Obligations – Indirect Tax Refunds\) Determination 2018](#) and extends refunds of indirect tax to all acquisitions related by the USA relating to certain defence facilities, official use by visiting forces and contains a new provision relating to the Joint Strike Fighter program.

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Personal Tax Update

Changes to Pacific labour mobility scheme

The Australian Labor Party, which now has formed Government has [outlined](#) proposed changes to the Pacific Australia Labour Mobility Scheme. Under this proposal, the Government would meet upfront travel costs incurred by workers travelling under the Seasonal Worker Program (currently required to be met by farmers) with these costs recovered through increased withholding taxes or a deduction from the worker's departing superannuation payment. The proposed changes also include changes to workplace standards, allowing partners and children to join workers in Australia and moving a proposed agriculture visa to be a third visa stream under the Pacific Australia Labour Mobility Scheme.

Proposed safe harbour for non-commercial losses

The Australian Taxation Office (ATO) has released draft Practical Compliance Guideline [PCG 2022/D2](#) that proposes a safe harbour for individuals that make a non-commercial loss as a result of special circumstances such as flood, bushfire or COVID-19. The safe harbour proposes to allow individuals to manage their tax affairs as if the Commissioner had exercised discretion to allow the loss to be offset against other income. The safe harbour is intended to be available where a taxpayer was not able to carry on a business activity or unable to carry a business activity on the same scale as is usual and customers were not able to access the business activity.

The finalised Guideline is intended to apply for the 2019-20, 2020-21 and 2021-22 income years. Comments can be made on the draft PCG by 21 June 2022.

ATO's focus areas for Tax Time 2022

The ATO has [identified](#) the following four key focus areas for Tax Time 2022:

- record-keeping
- work-related expenses
- rental property income and deductions, and
- capital gains from crypto assets, property, and shares.

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State Taxes Update

2022-23 Victorian Budget

The [2022-23 Victorian State Budget](#) was delivered on 3 May 2022 by Treasurer Tim Pallas. The Victorian Budget continued the focus of previous years in recovering from the economic impact of COVID-19 with healthcare, increasing jobs, affordable housing and infrastructure investment being key priorities. Taxation revenue is expected to increase by 1.4 per cent during the 2022-23 year and grow by 4.7 per cent per year over the forward estimates, which is a reduction compared to the 6 per cent forecast in the previous 2021-22 State Budget. Net debt is projected to reach AUD 167.5 billion in June 2026, which is lower than forecast in the previous 2021-22 Budget update.

The key tax proposals include a measure ensuring electronic gaming machines operated by Crown Casino are subject to the same tax structure as those operated by other venues from 1 July 2023 and an exemption from motor vehicle registration duty for wheelchair accessible commercial passenger vehicles from 1 July 2022 (subsequently included in the [State Taxation and Treasury Legislation Amendment Bill 2022](#) – see later discussion).

Read more about the Victorian Budget in PwC's [Tax Alert](#).

2022-23 Western Australian Budget

The [2022-23 Western Australian \(WA\) State Budget](#) was delivered on 12 May 2022 by Treasurer Mark McGowan. The WA government forecasts an operating surplus of AUD 1.6 billion in the 2022-23 year following a record AUD 5.7 billion operating

surplus in the 2021-22 year. Taxation revenue is expected to decrease during the 2022-23 year to AUD 11.1 billion from AUD 11.4 billion in the 2021-22 year.

The key duty proposals contained in the Budget include:

- amendments to the stamp duty rebate for eligible off-the-plan apartment purchases so that from 1 July 2022, eligible purchasers will receive a transfer duty rebate equal to 100 per cent of the duty payable for a dwelling valued at less than AUD 500,000, and between 100 per cent to 50 per cent of the duty payable for a dwelling valued between AUD 500,000 and AUD 600,000. For dwellings valued above AUD 600,000, the existing rebate of 50 per cent will continue to apply.

and the previously announced duty measures that were included in the [Duties Amendment Bill 2022](#) which has now passed the WA Parliament:

- a reduction in the general rate of transfer duty from 1 July 2022 applicable to non-residential property to align with the rate applicable to residential property. In addition, the residential or business property concession will also be modified to ensure the transfer duty concession provides benefits on all eligible transactions up to AUD 200,000
- duty will be removed on the following:
 - prospecting licenses and derivative mining rights in relation to prospecting licences from 1 July 2022
 - new service demonstrator motor vehicles (i.e. those that are loaned to customers while

having their vehicle serviced) and vehicles that are returned to the seller that are faulty, applicable from the day after the assent of the legislation

- family law court orders where there is a marriage or de facto relationship breakdown with nominal duty applying to transfers of property made under court orders, applicable from the day after the assent of the legislation

Other key revenue measures announced in the Budget include:

- a 50 per cent land tax concession for new build-to-rent projects to commence on 1 July 2023 to incentivise developers to boost the supply of properties available to rent
- the 2 per cent surcharge on assessed land tax liability when paid over three instalments will be removed from 1 July 2022
- a distance-based road user charge for all zero or low emission vehicles from 1 July 2027 and measures to support the transition to zero or low emission vehicles by way of rebates of AUD 3,500 on the purchase price of eligible battery electric and hydrogen light vehicles
- a number of payroll tax measures including payroll tax waivers for certain business (see Employment taxes section of this update for details).

2022-23 Northern Territory Budget

The 2022-23 Northern Territory (NT) Government Budget was delivered on 10 May 2022 by former Treasurer Michael Gunner, describing the NT as the Comeback Capital of Australia. The focus of the NT Budget is creating new investment, industries and jobs, strengthening essential services and producing a great lifestyle for NT residents. The Government is anticipating an AUD 253 million deficit in the 2022-23 year with a return to surplus in 2026. Net debt is expected to peak at AUD 9.4 billion in 2024 before declining in 2025.

The key tax proposals include:

- an exemption from stamp duty for up to five years for individuals that purchase newly developed land from a registered builder and commencing on 1 July 2022
- a stamp duty concession of up to AUD 1,500 on the registration of new and second-hand battery electric and plug-in hybrid vehicles for a period of five years and commencing on 1 July 2022
- the cessation of the property activation levy from 1 July 2022, and
- the indexation of revenue units, penalty units and monetary units with an indexation rate of broadly 2.7 per cent.

The [Revenue Legislation Amendment and Repeal Bill 2022](#) has been introduced into the NT Parliament and contains these taxation proposals. Read more in PwC's [Tax Alert](#).

NSW State Revenue Amendments now law

The [State Revenue and Fines Legislation Amendment \(Miscellaneous\) Bill 2022](#) has passed the New South Wales (NSW) Parliament and is now law. The Bill amends the *Duties Act 1997* (NSW), *Land Tax Act 1956* (NSW) and *Taxation Administration Act 1996* (NSW).

The amendments make a range of important amendments to NSW stamp duty, including:

- application of duty to apply to 'an acknowledgement of trust' in relation to dutiable property (i.e. a statement that purports to be a declaration of trust, but merely has the effect of acknowledging that identified property vested/to be vested is already held)
- application of duty to transactions 'that result in a change in beneficial ownership of dutiable property' with a series of "excluded transactions" (e.g. the grant of a lease for no consideration). The measure also contains a transitional rule such that it should not apply to a transaction following commencement if it occurs in accordance with an agreement or arrangement entered into before commencement
- ensuring that exemptions and concessions operate equitably such as in relation to primary production land transfers between family members and in respect of the division of relationship property on the breakdown of a de facto relationship, and
- introducing a refund mechanism for surcharge duty (and surcharge land tax) paid in relation to a transfer of land to be refunded if, after the transfer, the land is used by the transferee wholly or predominantly for commercial or industrial purposes.

In relation to land taxes, the new measures operate to:

- give the Chief Commissioner power to provide relief from surcharge land tax for land used wholly or predominantly for commercial or industrial purposes
- extend the time in which the Chief Commissioner may issue reassessments for surcharge liability beyond five years, and
- tighten the "use and occupy" conditions to meet the principal place of residence exemption from surcharge land tax for permanent residents.

The final key amendment is in relation to taxation administration, including:

- the introduction of a new general anti-avoidance regime that will cover all NSW taxes including duties, land tax and payroll tax (with any purpose related to avoiding federal or other state taxes to be disregarded), and
- new penalty tax provisions applicable to all NSW taxes (including stamp duty and payroll tax) that double the penalty rates for large multinationals – specifically, Significant Global Entities (as defined in the income tax law) that engage in tax defaults and failure to take reasonable care where there is no intentional disregard of the law, and
- a promoter penalties regime, similar to that contained in the Commonwealth tax law, which can apply to a person who engages in conduct that results in a person being a promoter of a tax avoidance scheme. The new law also provides powers for the Supreme Court, on application by the Chief Commissioner, to order payment of civil penalties for breaches of the prohibition, or grant an injunction in relation to proposed breaches of the prohibition, and also to allow the Commissioner to accept voluntary undertakings in connection with tax avoidance schemes.

For further discussion refer to this PwC [Tax Alert](#).

Legislative update for Victoria

The [State Taxation and Treasury Legislation Amendment Bill 2022 \(Vic\)](#), which was introduced into the Victorian Parliament on 3 May 2022, contains various Victorian tax-related measures including:

- an exemption from motor vehicle duty for wheelchair accessible motor vehicles providing unbooked commercial passenger services, applicable from 1 July 2022 (as announced in the 2022-23 Victorian Budget)
- replaces the provision allowing for a refund of land tax where a person is absent because of the construction or renovation of a residence with an exemption
- a land tax exemption for land on which a specialist disability accommodation enrolled dwelling is being constructed
- extends an exemption from payroll tax available for employment agents to situations where a service provider is a common law employee of an employment agent
- an exemption from windfall gains tax to universities, where the university is a charity and revenue from the land will be used to fund charitable purposes.

The Bill also contains a number of administrative amendments relating to the timing of a deemed

assessment using the on-line duty payment system, the receipt and disclosure of information and the time limit for the Commissioner of State Revenue to permit out of time objections.

Foreign investor land tax surcharge and duties amendments for Tasmania

The Tasmanian Government has introduced a number of bills into the Tasmanian Parliament to implement a foreign investor land tax surcharge, clarify foreign investor duty surcharge and clarify provisions relating to conveyance duty.

The [Land Tax Amendment \(Foreign Investors\) Bill 2022](#) and [Land Tax Rating Amendment \(Foreign Investors\) Bill 2022](#) introduce a 2 per cent foreign investor land tax surcharge. The surcharge will apply to interests in residential land acquired by a foreign person, owned by a foreign company, or owned by a trust that becomes foreign from 1 July 2022.

The foreign investor land tax surcharge will not apply to a principal residence, commercial residential properties or to Tasmanian based developers that build at least 50 residential properties in a 12 month period. The Bill also includes a provision allowing non-foreign discretionary trust deeds to be amended to avoid imposition of the surcharge and allows the Commissioner of State Revenue to publish circumstances where a landowner is not considered a foreign person.

The [Duties Amendment Bill 2022](#) makes a number of amendments in relation to Tasmania's foreign investor duty surcharge regime and conveyance duty:

- in relation to the foreign investor duty surcharge confirming that from 1 July 2018 (the date the foreign investor duty surcharge commenced):
 - commercial residential properties such as hotels, retirement villages, etc are not subject to the surcharge
 - members of a self-managed superannuation fund have a beneficial interest in the assets of the fund for the purposes of the surcharge, and
 - beneficiaries of testamentary estates have a beneficial interest in the assets of the estate for the purposes of the surcharge.
- provide relief from foreign investor duty surcharge for Tasmanian based developers that build at least 50 residential properties in a 12 month period, applicable from 1 July 2022, and
- recognise non-interest based purchases of property (such as those undertaken in Islamic

finance arrangements) as a dutiable transaction from 1 July 2022 and to ensure that these property purchases are only subject to duty once.

WA expands eligibility for COVID-19 support

The WA Government has [expanded](#) eligibility for the [WA Small Business Hardship Grants Program](#) for businesses that experience the required decline in turnover during a consecutive two week period between 1 January 2022 and 30 April 2022, relative to the same period in the previous year. Two tiers of grants will now be available to businesses that experienced a decrease in turnover for a consecutive two-week period between 1 January and 30 April 2022 compared to an equivalent period in the previous year:

- those that experience a 30 per cent decline in turnover will be eligible to receive a grant between AUD 3,750 and AUD 37,500, and
- those that experience a 40 per cent decline in turnover (rather than the original 50 per cent) will be eligible to receive a grant of between AUD 5,000 and AUD 50,000.

The size of the grant corresponds with the number of employees employed by the business.

NSW land tax exemption applied to horse breeding and racing activities

The Supreme Court of New South Wales has held in [Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue \(NSW\) \[2022\] NSWSC 430](#) that land used for horse breeding and racing was exempt from NSW land tax as the land was used for primary production. The taxpayer operated a thoroughbred horse stud and bred, raced and sold horses. The relevant issue before the Court was whether the land was used predominantly for the "maintenance of animals... for the purpose of selling them or their natural increase or bodily produce".

The Chief Commissioner contended that where the dominant use of land has multiple complimentary activities, the maintenance of animals on that land must have a dominant purpose of selling those animals, their natural increase or bodily produce and the taxpayer's efforts devoted to horse racing on the land for the purpose of earning prize money was the dominant use of the land. The taxpayer contended that the horseracing activities were one part of integrated operating, with success in horse racing leading to more revenue in the breeding program which produced the vast majority of the taxpayer's revenue.

The Supreme Court held that the dominant purpose of the land was for the maintenance of the horses for the purpose of selling progeny and other products of breeding operations, with the racehorse activities part of integrated activity designed to maximise revenue from breeding. In particular, on the evidence, factors such as the uneconomic nature of the operations were they to be confined to racing alone; and the evidence that racing prowess is an important factor in the pricing able to be commanded for the sale of stallions' semen, lead to the conclusion that this is an integrated stud operation and that the dominant use of each of the parcels of land for each of the land tax years was for the maintenance of animals for the purpose of selling their bodily produce or natural increase. Accordingly, the land tax exemption applied.

Victorian land tax ruling on charitable exemption finalised

The State Revenue Office of Victoria has finalised ruling [LTA-009](#) to reflect recent amendments to the Victorian land tax exemption for charitable institutions. The ruling discusses concepts relevant to determining whether the land tax exemption is available, including what is a charity and when land is used exclusively for a charitable purpose. The ruling applies for the 2022 and later land tax years with the previous rulings, [LTA-004](#) and [LTA-005](#) applying to the 2021 and earlier land tax years.

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Superannuation Update

No super changes for first homebuyers and downsizers

With the Australian Labor Party elected to Federal Government, the following proposed changes that were put forward by the Coalition in the lead up to the Federal election will now not be progressing:

- the [Super Home Buyer Scheme](#) which would have allowed first home buyers to access up to 40 per cent of their superannuation balance to purchase their home (note that the [first home super saver](#) (FHSS) scheme still exists and with

a legislated increase to the amount of eligible contributions that can count towards the maximum releasable amount applicable from 1 July 2022), and

- [expanded home downsizer](#) which would have allowed Australians over the age of 55 (currently restricted to those over the age of 60) to downsize their property and invest up to \$300,000, per person, in their superannuation fund outside of the existing contribution caps, from the proceeds of a sale.

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Legislative Update

Federal Parliament continued to be prorogued throughout May due to the 2022 Federal Election, which has meant there have been no legislative updates from Parliament. The date at which the new Parliament will resume is not yet determined, but is expected sometime before the end of July 2022.

Since our last update, the following tax measures have been registered as legislative instruments:

- the [Taxation Administration \(Defence Related International Obligations and Other Matters – Indirect Tax Refunds\) Determination 2022](#) that

allows for a refund of indirect tax for acquisitions by the visiting forces of Papua New Guinea, Singapore and the United States of America that are engaged in defence activities, and

- the [Taxation Administration Deferral of Third Party Reports by Eligible Community Housing Providers for the 2020-21 Financial Year Determination 2022](#) that defers third party reporting for the 2020-21 financial year until 1 August 2022 for certain community housing providers.

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Other News

Australian Labor Party to form next Government

The Australian Labor Party (ALP) will form the next Federal Government following the results of the 2022 Federal Election. Whilst tax was not a key part of the policy platform for either party, some important changes regarding tax settings are expected to be made.

As part of its approach to taxation, the ALP had two key tax policies directed at [multinationals](#) and [electric vehicles](#) and a [small business](#) commitment to reduce tax compliance.

Its multinational tax policy includes support for the OECD's Two-Pillar Solution to address the tax challenges of digitalisation of the economy, replacing the thin capitalisation safe harbour method with a new test to limit debt-related deductions to 30 per cent of profits (EBITDA), limiting the ability for multinationals to abuse Australia's tax treaties when holding intellectual property in tax havens and greater transparency measures.

In relation to electric vehicles, the ALP proposes to exempt low-emission vehicles that have a cost below the luxury car tax threshold for fuel efficient vehicles from both import tariffs and fringe benefits tax.

The status of policies announced by the previous Government that remain unenacted are uncertain and it is not yet known whether the new Government will conduct a stocktake of these measures. These include measures such as the patent box regime, various small business "boosts" and reform of tax residency rules. Read more in PwC's [Tax Alert](#).

Applications opening soon for Austrade's Export Market Development Grant (EMDG) Program

Applications for the next round of Austrade's Export Market Development Grant (EMDG) program will open on 31 May 2022 and close on 5 July 2022. The newly structured program is now forward looking, providing greater certainty for claimants in relation to co-contributions from Austrade.

These grants encourage businesses with a turnover of less than AUD 20 million to market and promote their goods and services globally. Eligible products must be substantially of Australian origin and can include goods, services, events, intellectual property or know-how and software.

Grants are available in three tiers, with each tier providing a different level of matched support (up to a maximum of AUD 150,000 grant funding per financial year). The length of these grants (two to three years) reflects the different stages of an exporter's journey (e.g. first time exporters to experienced and expanding exporters). Costs can be claimed for activities such as advertising in overseas markets, travel to attend trade shows and conferences, sending samples overseas, engaging consultants overseas to help target new markets, and bringing potential customers to Australia.

If you would like any further information or assistance with an application, please contact your PwC adviser.

ATO warning on scam ABN and TFN applications

The Australian Taxation Office (ATO) has **warned** taxpayers that fake websites are increasingly being used to offer tax file numbers (TFNs) or Australian business numbers (ABNs) for a fee, without these services being provided. Advertisements for these sites often appear on social media platforms and the ATO has advised that applicants should check if a tax agent is registered with the Tax Practitioner's Board before engaging an agent to apply for these numbers.

ATO focus on debt collection

The ATO has **issued** a reminder to taxpayers to engage with the ATO if they have an overdue tax debt to set up an appropriate payment arrangement. Where a taxpayer does not engage, the ATO may take firmer debt collection activities which could include garnishee orders, director penalties, disclosure of business debts and legal proceedings. The ATO also states that it will prioritise superannuation guarantee debts, regardless of value, as these are amounts that are owed to employees. The ATO has recently written to businesses under its programs relating to the disclosure of business tax debts and director penalty notices and it has commenced taking next steps for taxpayers that do not respond.

Deferral of third party reporting for community housing

The ATO has made the [Taxation Administration Deferral of Third Party Reports by Eligible Community Housing Providers for the 2020-21 Financial Year Determination 2022](#) that defers third party reporting for certain community housing providers for the 2020-21 financial year until 1 August 2022. Eligible Community Housing Providers had been exempted from the requirement to provide an annual report for income years 2018-19 and 2019-20. The extended deadline to report is being granted for the 2020-21 year in recognition that additional time is needed for relevant entities to understand and prepare for the changes to the affordable housing reporting obligations.

Cash flow boost claim denied

The Administrative Appeals Tribunal (AAT) has held in [Narlex Pty Ltd v Commissioner of Taxation \[2022\] AATA 993](#) that a taxpayer was not entitled to the cash flow boost COVID-19 stimulus measure. The taxpayer was incorporated, registered for the goods and services tax and allocated an ABN in December 2019. However, it did not make taxable supplies until January 2020, which it accounted for in its quarterly activity statement for the period ending on 31 March 2020. The Tribunal noted that the cash flow eligibility requirement is absolute in the law in relation to requirements for making taxable supplies in a tax period that ended before 12 March 2020. The taxpayer was not eligible to receive the cash flow boost as it did not have a tax period that applied to it before 12 March 2020.

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Editorial

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PwC's Monthly Tax Update

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