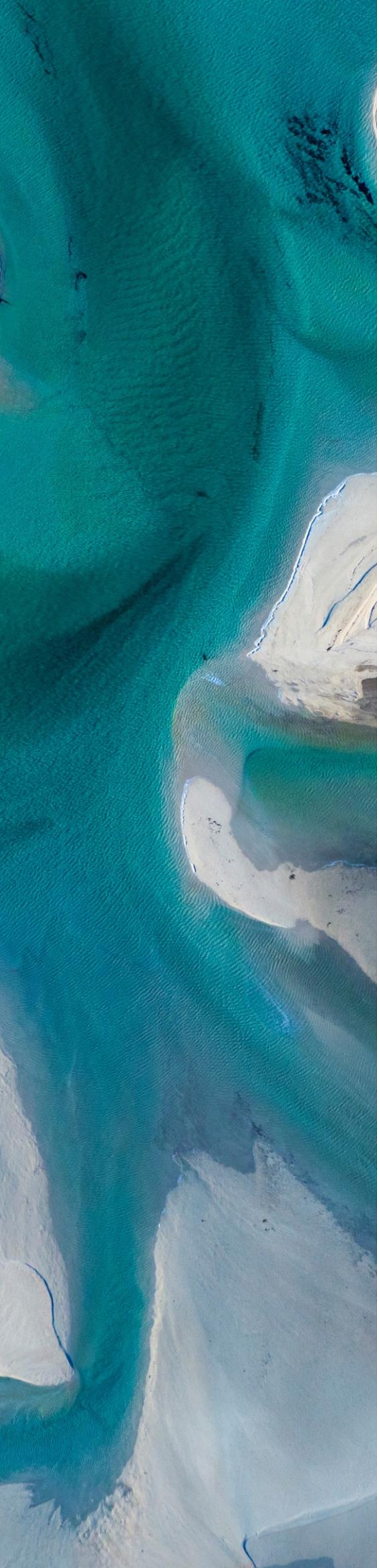
Monthly Tax Update

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

April 2026



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Corporate tax update

Ambitious Australia report proposes changes to R&D tax incentive

Australia's Research and Development (R&D) tax incentive may be reshaped as part of a broader reform agenda following the conclusion of the independent Strategic Examination of R&D in Australia. The final report from the independent panel appointed to lead the examination makes 20 recommendations intended to improve the capacity of Australia's research, development, and innovation system to support the economy and create a more prosperous, healthier, safer, and equitable Australia.

These recommendations include changes to the R&D tax incentive to simplify its administration, support startups and small to medium enterprise growth, and increase incentives for corporates and multinationals to undertake local R&D activities.

The report also recommends the introduction of a production tax credit or subsidy for advanced manufacturing resulting from R&D activities to remain in Australia, and that future tax reform should prioritise a competitive effective corporate tax rate for R&D companies to make Australia an attractive location for investment and innovative business activity.

The Federal Government will now carefully consider the final report and its recommendations and how it might respond.

Read more in our Tax Alert.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Warren Dick
Sydney
Australian Tax and Legal Leader
+61 419 479 279
warren.dick@au.pwc.com

Jason Karametos
Melbourne
Corporate Tax Leader
+61 (3) 8603 6233
jason.karametos@au.pwc.com

Bianca Wood
Sydney
Tax Markets Leader
+61 (2) 8266 2792
bianca.wood@au.pwc.com

Michael Dean
Sydney
Private Tax Leader
+61 402 041 451
michael.dean@au.pwc.com

Luke Bugden
Sydney
NSW Tax Leader
+61 (2) 8266 4797
luke.bugden@au.pwc.com

Kit Wong
Adelaide
Partner
+61 409 256 560
kit.a.wong@au.pwc.com

Clementine Thompson
Melbourne
VIC Tax Leader
+61 413 089 431
clementine.thompson@au.pwc.com

Amy Etherton
Newcastle
Partner
+61 (2) 4925 1175
amy.etherton@au.pwc.com

Tamika Cullen
Perth
WA Tax Leader
+61 422 214 044
tamika.cullen@au.pwc.com

Sophia Varelas
Melbourne
National Leader, R&D and Government Incentives
+61 417 208 230
sophia.varelas@au.pwc.com

James O'Reilly
Brisbane
QLD Tax Leader
+61 (7) 3257 8057
james.oreilly@au.pwc.com

Production tax incentives eligibility requirements

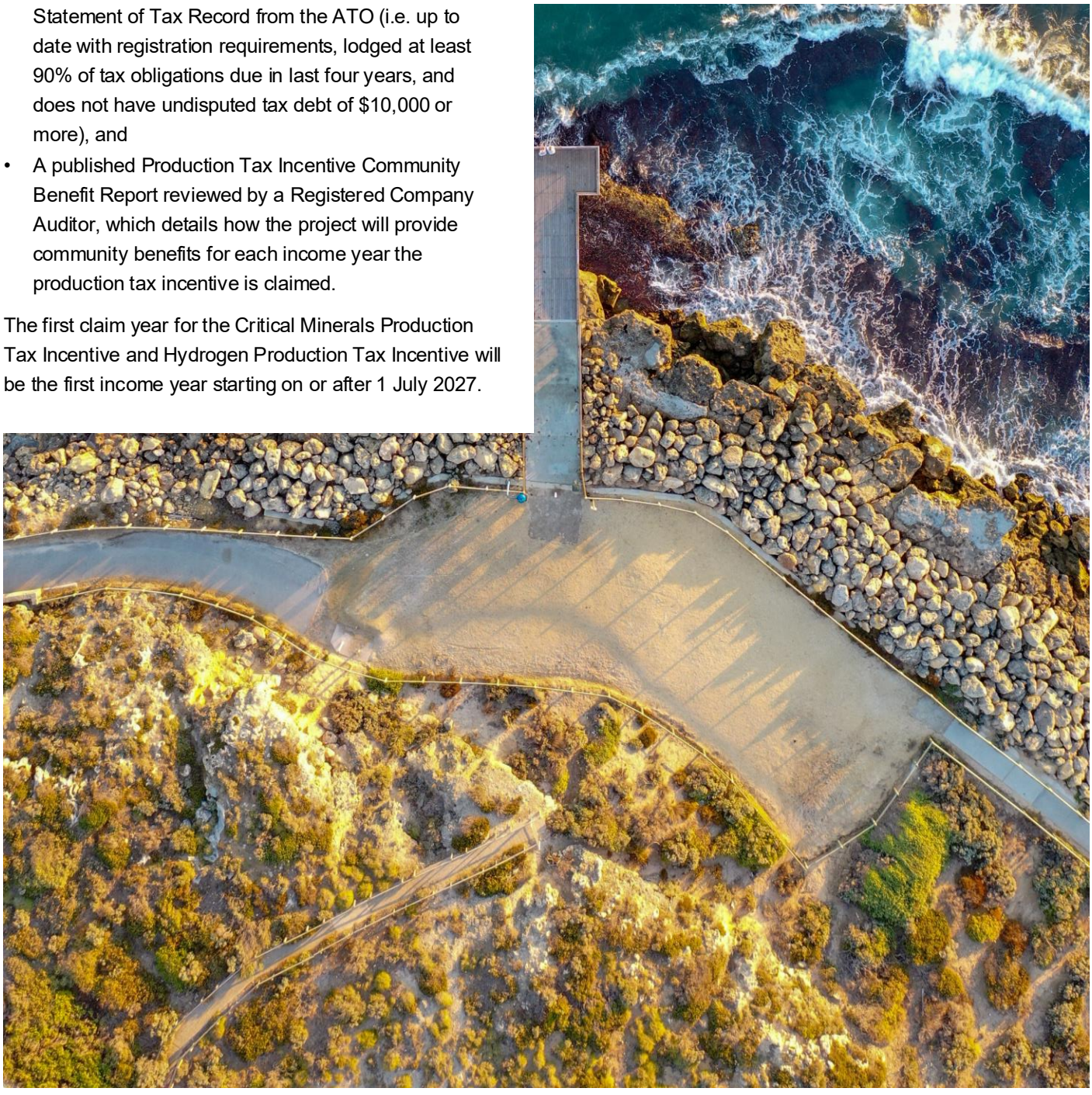
The Department of Industry, Science and Resources recently undertook consultation on proposed requirements that must be met for a company to access the Critical Minerals and Hydrogen Production Tax Incentives. This includes:

- Practical enforcement of the Voluntary Tax Transparency Code
- Meeting criteria consistent with a satisfactory Statement of Tax Record from the ATO (i.e. up to date with registration requirements, lodged at least 90% of tax obligations due in last four years, and does not have undisputed tax debt of $10,000 or more), and
- A published Production Tax Incentive Community Benefit Report reviewed by a Registered Company Auditor, which details how the project will provide community benefits for each income year the production tax incentive is claimed.

The first claim year for the Critical Minerals Production Tax Incentive and Hydrogen Production Tax Incentive will be the first income year starting on or after 1 July 2027.

Deductions for mining and petroleum exploration expenditure—Ruling Addendum

The Australian Taxation Office (ATO) has issued an Addendum to Taxation Ruling TR 2017/1 to clarify the Commissioner's view on the ordinary meaning of 'exploration or prospecting' in the context of Division 40 of the Income Tax Assessment Act 1997 (capital allowances). The Addendum applies to years of income commencing both before and after its date of issue.



Employment taxes update

Payday Super: ATO's draft guidance on Payday Super reforms

The Australian Taxation Office (ATO) has issued several draft Law Companion Rulings in preparation for the Payday Super reforms commencing 1 July 2026. These rulings are intended to provide clear guidance to employers, digital service providers, superannuation funds, and other stakeholders regarding key elements of the reforms, summarised as follows:

- Draft Law Companion Ruling LCR 2026/D1 which sets out the Commissioner's view of qualifying earnings (QE) for the purposes of the Superannuation Guarantee (Administration) Act 1992 (SGAA), which is used to calculate the minimum amount of contributions required to avoid liability to the superannuation guarantee (SG) charge.
- Draft Law Companion Ruling LCR 2026/D2 which considers the meaning of eligible contributions, which are superannuation contributions an employer can make to reduce or avoid the SG charge.
- Draft Law Companion Ruling LCR 2026/D3 which provides an overview of how the SG charge is calculated and assessed under the Payday Super law.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Adam Nicholas
Sydney
Partner
+61 (2) 8266 8172
adam.nicholas@au.pwc.com

Paula Shannon
Brisbane
Partner
+61 (7) 3257 5751
paula.shannon@au.pwc.com

Greg Kent
Melbourne
Partner
+61 (3) 8603 3149
greg.kent@au.pwc.com

Shane Pinto
Sydney
Partner
+61 423 679 958
shane.pinto@au.pwc.com

Anne Bailey
Melbourne
Partner
+61 (3) 8603 6818
anne.m.bailey@au.pwc.com

Norah Seddon
Sydney
Partner
+61 (2) 8266 5864
norah.seddon@au.pwc.com

- Draft Law Companion Ruling LCR 2026/D4 which provides guidance on the application and transitional provisions of the Payday Super reforms supporting the shift from the quarterly SG system. These transitional rules address timing mismatches, legacy arrangements relating to excess contributions, late payment offset and sacrificed contributions and overlapping actions or obligations during the transition period.

Comments on all four draft rulings have been invited and are due by 1 May 2026.

Payday Super: Concessional contributions cap breaches on transition to Payday Super

The Federal Government has announced that it will introduce technical amendments to ensure individuals do not exceed their concessional contributions cap in the 2026-27 year as a result of the transition from the current quarterly SG system to the new Payday Super system.

This amendment is expected to ensure that the concessional contributions cap for the 2026-27 year (which is expected to increase to $32,500) is not exceeded because of the inclusion of the June 2026 quarterly SG contribution which might also be made in the 2026-27 financial year.

Payday Super: New regulations to support Payday Super reforms

The Treasury Laws Amendment (Payday Superannuation) Regulations 2026 have been made to support the Payday Super reforms. The Regulations primarily amend the Superannuation Guarantee (Administration) Regulations 2018, and the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations), while make consequential and supporting amendments across several other instruments.

The Regulations set out methods for reducing an employer's administrative uplift amount, consolidate the payments and employees excluded from qualifying earnings, prescribe exceptional circumstances for the Commissioner's determination power (such as natural disasters and widespread technology outages), and update defined benefit member and benefit certificate settings. The SIS Regulations have also been updated to impose a uniform deadline of three business days for allocating or refunding contributions (for regulated superannuation funds other than SMSFs), while the existing 28-day allocation treatment for SMSFs has been retained.

Single Touch Payroll: Draft ATO guidance on penalties for failure to comply with reporting obligations

The ATO has published draft Law Administration Practice Statement PS LA 2026/D2 which deals with the administration of penalties for failure to comply with Single Touch Payroll (STP) reporting obligations.

PS LA 2026/D2 explains how the ATO will administer penalties that an entity becomes liable to pay when it fails to comply with its STP reporting obligations.

Submissions can be made on the draft PSLA by 24 April 2026.

Employment Termination Payments: Reduction in hours and pay constitutes genuine redundancy

In Commissioner of Taxation v Baya Casal [2026] FCAFC 11, the Full Federal Court has unanimously dismissed the Commissioner's appeal, upholding the Federal Court's decision in Baya Casal v Deputy Commissioner of Taxation [2025] FCA 87 that the taxpayer's employment position was genuinely redundant.

In this case, the taxpayer that been employed as an early learning centre assistant at a school was offered alternative roles following an internal restructure, with each of these roles involving reduced weekly hours and a corresponding reduction in annual salary of approximately 20–40%. The taxpayer declined the new roles and her employment was terminated, resulting in a payment of $15,327 being made to her. The school treated the payment as an employment termination payment (ETP) under section 82-130 of the *Income Tax Assessment Act 1997* (ITAA 1997). The taxpayer subsequently applied to the Commissioner for a private ruling, arguing the payment should have instead been classified as a tax-free genuine redundancy payment

under section 83-175 of the ITAA 1997, however, the Commissioner ruled that the payment was an ETP rather than a genuine redundancy payment.

The Commissioner's position was that if the employer still had a job that it wished the employee to perform then there may not be a genuine redundancy, particularly if the duties of that job were not too dissimilar from the existing ones. The facts demonstrated that the skills and duties required for the new roles were similar to the skills and duties of the taxpayer's existing role.

The taxpayer's case was that the alternative positions offered were not appropriate because they involved a material reduction in hours, and in remuneration, with the working days changed.

The Full Federal Court found that the Commissioner's approach focused too narrowly on the specific tasks an employee performed. Although it was to be accepted that a reduction in remuneration did not of itself demonstrate that a position had become redundant, it could support a conclusion that a position had become redundant where the reduction in remuneration resulted from a change to the scope of the responsibilities or duties to be performed, the scale of the tasks to be carried out or the location of the role.

In the circumstances of this case, the primary attributes of the taxpayer's role were not limited to the precise tasks she was to carry out but extended to the scope and scale of her tasks and duties. Her position was to perform duties and tasks on an hourly basis and she was remunerated according to hours worked. The scope of the taxpayer's role had diminished to a degree to which her position had become redundant.

NSW payroll tax: Cleaning business liable under employment agency contract provisions

In SoClean Pty Ltd v Chief Commissioner of State Revenue [2026] NSWSC 161, the taxpayer, a commercial cleaning business servicing shopping centres in the Sydney region, sought to challenge payroll tax assessments (including 25% penalty tax and market rate interest) on payments made to subcontractors.

In this case, the taxpayer provided cleaning services, including what it called "day-to-day" cleaning services and "specialised services" such as deep cleaning.

The Chief Commissioner of State Revenue (NSW) deemed these arrangements to constitute employment agency contracts, with payments to subcontractors deemed wages pursuant to section 40 of the *Payroll Tax Act 2007* (NSW) (PTA).

The Court ultimately rejected the taxpayer's appeal, affirming the Commissioner's determination that the specialised services procured by the taxpayer constituted services that (much like 'day to day services') it considered to be both necessary and appropriate for the delivery of its contracted cleaning services to its clients. It was found to have procured these services on a regular basis, "under" its client contracts within the meaning of section 37.

Additionally, the Court declined to remit either penalty tax or the market rate component of interest, finding the taxpayer had not established that it took reasonable care to comply with the law or that the default arose from circumstances beyond its control.

NSW payroll tax: Tribunal overturns 'common law employee' assessment

In Living Works Education (Australia) Pty Ltd v Chief Commissioner of State Revenue [2026] NSWCATAD 80, the NSW Civil and Administrative Tribunal (NCAT) reviewed payroll tax assessments issued to the applicant, a provider of suicide intervention training programmes, for the financial years ending 30 June 2022 to 2024. The Chief Commissioner assessed payroll tax on the basis that individuals engaged by the applicant to deliver its "safeTALK" and "ASIST" workshop programmes were employees. The applicant contended the trainers were independent contractors engaged under various forms of written agreement, including an "Independent Contractor Agreement" and a "Service Agreement".

Applying the principles in *CFMEU v Personnel Contracting* [2022] HCA 1, the Tribunal examined the contractual terms to determine the character of the relationship. While certain features such as the applicant's control over workshop content, use of prescribed materials, and compliance with company policies were consistent with employment, the Tribunal found that other factors carried more weight against that conclusion. In particular, the Tribunal placed significant weight on the trainers' ability to refuse work, their obligation to obtain their own insurance, the indemnities

they provided to the applicant, the fee structure (a flat rate per workshop rather than payment for hours worked), and the ability to subcontract with consent. The Tribunal also considered, but did not place determinative weight on, the GST treatment of the trainers' invoices, which was consistent with independent contractor status.

The applicant conceded that the agreements were "relevant contracts" under section 32(1) of the *Payroll Tax Act 2007* (NSW) but argued they were excluded by section 32(2)(b)(iii) (the 90-day exemption). The Tribunal found that one contractor had provided services exceeding 90 days in certain financial years, and the applicant failed to adduce evidence showing those services were not "similar services" to those under other contracts, thereby failing to discharge the onus of proving the exemption applied.

The Tribunal held that the trainers were not employees and the assessments could not stand on that basis. However, due to unresolved issues concerning the "relevant contracts" provisions and the scope of the amounts in dispute, the assessments were remitted to the Chief Commissioner for reconsideration.

PAYG withholding variations

The ATO has finalised the following Legislative Instruments which have the effect of varying PAYG withholding to nil:

- Taxation Administration (PAYG Withholding Variation for Company Directors and Certain Office Holders) Legislative Instrument 2026 (F2026L00198)—applies to payments made to an individual appointed as a director, member of a committee of management, or office holder, and where the individual must pass the full amount to another entity of which they are a director, partner or employee. This instrument repeals and replaces the previous instrument which was issued in 2016, and while it is substantially the same in effect as the 2016 instrument, it also provides an exemption from certain STP reporting requirements introduced after the 2016 instrument was made.
- Taxation Administration (PAYG Withholding Variation for Certain Insurance and Compensation Payments when an ABN is not Quoted) Legislative Instrument 2026 (F2026L00197)—applies to certain insurance and compensation payments where the payee has not quoted their Australian Business Number (ABN). This instrument repeals and replaces the previous instrument.
- Taxation Administration (Withholding Variation for Payments to Indigenous Artists who do not Quote an ABN) Legislative Instrument 2026—applies to certain payments for artistic work provided by an Indigenous artist who lives or works in certain remote locations and who does not quote an ABN.
- Taxation Administration (Withholding Variation for Certain Payments to Religious Practitioners) Legislative Instrument 2026—applies to certain payments made to a religious practitioner.

ATO and Fair Work Ombudsman: Sham contracting in the spotlight

A joint media release from the ATO and Fair Work Ombudsman (FWO) indicated that there will be a renewed focus on identifying and penalising sham contracting arrangements.

The ATO and FWO will work in collaboration to act on community insights and data matching across Taxable Payments Annual Reporting (TPAR), tax returns, and Single Touch Payroll reporting to proactively identify instances in which workers have been engaged under sham contracting arrangements as a means of avoiding the payment of worker entitlements.

The FWO has confirmed that it currently has a number of investigations on foot into alleged sham contracting in sectors such as building and construction, and road transport.

The ATO is encouraging businesses to proactively review their arrangements and use the ATO's online resources or engage with their tax advisors to work out if their worker is an employee or independent contractor.

Personal tax update

Medical expense deductions denied for airline pilot

In Farley and Commissioner of Taxation (Taxation) [2026] ARTA 255, the Administrative Review Tribunal has disallowed medical expenses incurred by an airline pilot, finding that the expenditure had been incurred at a point 'too soon' to be deductible.

The taxpayer was in the process of securing employment as a pilot when his medical clearance for a pilot's license was suspended. Between July 2021 and May 2022, the taxpayer incurred medical expenses that were required for him to obtain that medical clearance. In March 2022, he commenced his employment as a pilot.

The Tribunal found that the relevant medical expenses incurred by the taxpayer merely put him in a position to undertake employment as a pilot, and as such were not deductible. The expenses were incurred to get work, not in the course of doing work. As such, they were incurred functionally 'too soon'.

The Tribunal further noted that the relevant test was not entirely temporal (thus the modifier 'functionally'), and so even the relevant medical expenses that were incurred after the taxpayer's employment commencement date were incurred in getting the employment and were not incurred in the course of earning assessable income.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Glen Frost
Sydney
Partner
+61 (2) 8266 2266
glen.frost@au.pwc.com

Samantha Vidler
Brisbane
Partner
+61 (7) 3257 8813
samantha.vidler@au.pwc.com

Amy Etherton
Newcastle
Partner
+61 (2) 4925 1175
amy.etherton@au.pwc.com

Matt Gurner
Perth
Partner
+61 (8) 9238 3458
matthew.gurner@au.pwc.com

Simon Le Maistre
Melbourne
Partner
+61 (3) 8603 2272
simon.le.maistre@au.pwc.com

Kit Wong
Adelaide
Partner
+61 409 256 560
kit.a.wong@au.pwc.com

Deductibility of meal expenses upheld by Federal Court

In Commissioner of Taxation v Shaw [2026] FCA 197, the Federal Court has dismissed each of the Commissioner's grounds of appeal in a case concerning deductibility of meal expenses.

The taxpayer was a long-haul truck driver in Western Australia and was away from home for considerable periods each year. He was paid a travel allowance by his employer and claimed a deduction for meal expenses, calculated by multiplying the number of days he was away from home by the maximum reasonable daily allowance under Taxation Determination TD 2020/5 as relevant for the applicable income year. Following an audit, the claimed deduction was reduced by the Commissioner.

During appeal at the Administrative Review Tribunal in Shaw and Commissioner of Taxation (Taxation) [2025] ARTA 224, the Tribunal allowed the full amount of the claimed deduction. Ultimately, the ART concluded that the taxpayer did incur the disputed expenses in gaining or producing his assessable income. The Commissioner's submission that where the maximum reasonable daily allowance in TD 2020/5 is claimed as the deductible expense, but more is said to have been spent (as was the case here), the taxpayer is required to substantiate all expenses was rejected by the Tribunal, i.e. the exception to the substantiation provisions within section 900-50 of the Income Tax Assessment Act 1997 applied.

The Commissioner put forward a number of grounds of appeal to the Federal Court, including that the ART's approach effectively reversed the onus of proof by requiring the Commissioner to prove that the meal expenses were not deductible, and that the ART erred in its approach to apportionment. The Federal Court ultimately dismissed each of the Commissioner's grounds of appeal, finding that in the face of uncertainty as to how much of each amount on the bank statement was spent on meals, the ART could (and did) rely on other evidence in being persuaded that the claimed amounts for meals had been incurred by the taxpayer.

Indirect tax update

GST determination on supplies of formula products finalised

The Australian Taxation Office (ATO) has finalised Goods and Services Tax Determination GSTD 2026/1, which explains the Commissioner's view on when the supply of a formula product is GST-free.

The GST law provides that 'beverages, and ingredients for beverages, of a kind marketed principally as food for infants...' are GST-free. In this respect, it is the ATO's view that only supplies of formula products for children aged up to 12 months are GST-free because these products are of a kind marketed principally as food for infants.

The Determination also confirms the ATO's view that supplies of formula products are not GST-free under other items in the law that relate to milk products, as they are not of a kind specified (relevantly, milk or powdered milk), nor are they beverages that consist of at least 95% of these kinds of products.

The Determination applies both before and after its date of issue. However, the Determination includes a transitional compliance approach for tax periods ending on or before 30 June 2026, which covers:

- Formula products marketed principally for children aged from 12 months, and
- Products that are marketed principally as an ingredient for formula products for children aged from 12 months.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Matt Strauch
Melbourne
Indirect Tax Leader
+61 (3) 8603 6952
matthew.strauch@au.pwc.com

Shagun Thakur
Perth
Partner
+61 (8) 9238 3059
shagun.thakur@au.pwc.com

Brady Dever
Sydney
Partner
+61 (2) 8266 3467
brady.dever@au.pwc.com

Andrew Howe
Sydney
Partner
+61 (4) 1464 1438
andrew.s.howe@au.pwc.com

Mark Simpson
Sydney
Partner
+61 (2) 8266 2654
mark.simpson@au.pwc.com

Mark De Luca
Sydney
Partner
+61 (2) 8266 2461
mark.de.luca@au.pwc.com

Suzanne Kneen
Melbourne
Partner
+61 (3) 8603 0165
suzanne.kneen@au.pwc.com

Specifically, where a taxpayer has treated their supply of these products as GST-free in good faith, the ATO will not have cause to devote compliance resources to reviewing this GST treatment for tax periods ending on or before 30 June 2026, subject to meeting other requirements in the Determination. Of particular note is that if a taxpayer takes action to now claim input tax credits on acquisitions of the products that at the time were understood to be supplied as GST-free goods, not only will the transitional compliance approach not apply, but the taxpayer will also need to review its on-supply of the products and remit the GST payable on those taxable supplies.

Addendum to Detailed Food List

The ATO has also issued an Addendum to the Detailed Food List GSTII FL1 that provides details of the GST status of major food and beverage product lines. This is to:

- Ensure consistency with GSTD 2026/1 (see above)
- Revise and merge entries relevant to malt and malt extract, and
- Provide more context to snack foods that are taxable and GST-free.

Updated rulings on new residential premises

The ATO has finalised two Addenda to GST Rulings concerning new residential premises to reflect the Administrative Appeals Tribunal (AAT) decision in Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust v Commissioner of Taxation [2022] AATA 4436.

The updates made to GST Rulings GSTR 2003/3 (which covers when a sale of real property is a sale of new residential premises) and GSTR 2009/4 (which deals with new residential premises and adjustments for changes in extent of creditable purpose) both reflect:

- The AAT position that the five-year period in section 40-75 of A New Tax System (Goods and Services Tax) Act 1999 must be a continuous period.
- The AAT confirmation that marketing premises for sale is a 'use' of premises for the purposes of section 40-75 of the GST Act.
- The AAT clarification that the meaning of 'applied' in Division 129 of the GST Act and 'used' should not be interpreted consistently as a matter of course, and that 'used' takes its ordinary meaning.

Both Addenda apply both before and after their date of issue.

Finalised legislative instruments on GST attribution rules

The ATO has finalised the following legislative instruments concerning specific attribution rules, which would have otherwise sunset on 1 April 2026:

- The A New Tax System (Goods and Services Tax) (Attribution Rules—Certain Motor Vehicle Incentive Payments made to Motor Vehicle Dealers) Determination 2026, which allows a motor vehicle dealer to attribute the GST on the sale of a motor vehicle to the tax period in which the dealer knows the total amount they will receive for that vehicle. This would usually be when they enter into a contract with the customer to sell the vehicle. The instrument only applies in circumstances where the dealer receives an amount as an incentive payment from the vehicle manufacturer, distributor or importer in an earlier tax period, which forms a part of the total amount they will receive for the vehicle, or if the dealer issues an invoice for that incentive payment in the earlier tax period. The instrument helps ensure that the motor vehicle dealer can attribute the correct amount of GST to the appropriate tax period.
- The A New Tax System (Goods and Services Tax) (Attribution Rules—Prepayment for a Telecommunication Supply) Determination 2026, which allows telecommunications providers to delay attribution of GST for certain telecommunication supplies (such as telephone, mobile or internet services) to the tax period in which an invoice is issued (or would have been issued) for the supply in cases where a prepayment for that supply has been received in an earlier tax period. The instrument prevents the basic GST attribution rules from applying inappropriately in these circumstances.

- The A New Tax System (Goods and Services Tax) (Attribution Rules—Supplies of Electricity Distribution Services) Determination 2026, which allows a supplier of electricity distribution services to attribute GST and adjustments on supplies it has made to the tax period in which it receives from its billing agent all the information that is necessary to ascertain the total amount it will receive for the supply. This applies in circumstances where a billing agent issues an invoice for the supply on behalf of the supplier.

Input taxed supplies for low frequency fund-raising events

The A New Tax System (Goods and Services Tax) (Frequency of Fund-raising Events) Determination 2026, effective 4 March 2026, allows an endorsed charity, a gift-deductible entity or a government school to treat all supplies it makes in relation to a fund-raising event as being input taxed where it holds 15 or fewer like or similar fund-raising events in a prescribed accounting year. Where a fund-raising event forms part of a series or regular run of like or similar events that exceed 15, the endorsed charity, gift-deductible entity or government school is not able to choose to treat supplies made in connection with any of the events held in that prescribed accounting year as input taxed.

International tax and trade update

Board of Taxation's review of thin capitalisation reforms

As previously reported, the Board of Taxation has been tasked with independently reviewing the recent changes to Australia's thin capitalisation rules. The Board has now prepared a consultation guide to explain the review process including how stakeholders can contribute and questions to consider.

Comments can be made to the Board by 18 May 2026. The Board is expected to provide its final written report to the Government by 1 February 2027.

Pillar Two—More jurisdictions with qualified GloBE taxes

Legislative instrument Taxation (Multinational-Global and Domestic Minimum Tax) (Qualified GloBE Taxes) Amendment (Measures No. 1) Determination 2026 updates the list of jurisdictions, with varying application dates, that are considered to have qualified taxes for purposes of applying Australia's implementation of the Pillar Two Global Anti-Base Erosion (GloBE) rules.

ATO's decision impact statement on royalties case

The Australian Taxation Office (ATO) has issued a decision impact statement in response to the High Court's decision in *Commissioner of Taxation v PepsiCo Inc &*

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Warren Dick
Sydney
Australian Tax and Legal Leader
+61 419 479 279
warren.dick@au.pwc.com

Paul Cornick
Sydney
Partner
+61 439 733 981
paul.cornick@au.pwc.com

Greg Weickhardt
Melbourne
Partner
+61 428 769 169
greg.weickhardt@au.pwc.com

Jonathan Malone
Sydney
Partner
+61 (2) 8266 4770
jonathan.r.malone@au.pwc.com

Nick Houseman
Sydney
Australian Transfer Pricing Leader
+61 (2) 8266 4647
nick.p.houseman@au.pwc.com

Anor [2025] HCA 30, which concerned whether a payment included any royalty that would have been subject to royalty withholding tax and the potential application of the diverted profits tax (DPT).

The ATO sets out detailed comments on various aspects raised in the case. Among other points relevant to the royalty issue, the ATO states that it will examine closely any changes made to existing arrangements under which a non-resident IP holder receives compensation for making IP available so that there is no longer a payment (actual or constructive) of a royalty to a non-resident. Specifically, it states that such altered arrangements are considered high-risk for the purposes of the general anti-avoidance provisions (Part IVA) and the DPT.

Furthermore, the ATO observes that the Court's finding that the DPT did not apply because there was no tax benefit present was based on 'critical facts, unique to these appeals' and that it does not expect that this set of 'unique' and 'critical' facts will be common to other cases. Because of this, it considers that the majority's analysis as to tax benefit in this case has limited implications for the application of the DPT or Part IVA in other cases.

In conclusion, the ATO has indicated that it is reviewing the impact of this decision on Law Administration Practice Statement PS LA 2005/24 *Application of General Anti-Avoidance Rules*, and draft Taxation Ruling TR 2024/D1 *Income tax: royalties—character of payments in respect of software and intellectual property rights*.

Comments on the decision impact statement close 1 May 2026.

Canada-Australia tax treaty to be modernised

The Australian and Canadian governments have committed to modernising the Canada-Australia Tax Treaty to facilitate greater investment, including joint investments, in nation-building projects in both countries. Both countries have agreed to prioritise the negotiations.

Agreement to strengthen co-operation on domestic resource mobilisation

The Organisation for Economic Co-operation and Development (OECD) and the International Institute for Sustainable Development (IISD) have formalised their partnership with the signing of a Memorandum of Understanding (MoU) in the margins of the Platform for Collaboration on Tax's 2026 Conference on Tax and Development, held on 2-3 March in Tokyo, Japan.

The agreement builds on a collaboration that began in 2018 under the Base Erosion and Profit Shifting (BEPS) in Mining Programme. The MoU provides a framework for IISD and the OECD to continue their support to developing countries in strengthening domestic resource mobilisation, with a focus on the extractive sector and international taxation.

Under the MoU, the two organisations will deepen their work to address BEPS-related risks in mining, strengthen fiscal and administrative frameworks, and support countries in implementing international tax reforms. This work further covers the design and use of tax incentives, as well as emerging issues, such as environmental taxation and carbon pricing.

Update on US Administration's 'IEEPA tariffs'

Since the US Supreme Court ruled that the US Administration's 'IEEPA tariffs' are unlawful, the United States Court of International Trade (CIT) has issued a nationwide refund order to US Customs and Border Protection (CBP) without regard to IEEPA duties. The Court confirmed that all importers of record whose entries were subject to IEEPA duties are entitled to the benefit of the Supreme Court's ruling, not only those that filed suit. Read more in this Alert that has been updated for this latest development.

Australia-European Union Free Trade Agreement

On 24 March 2026 Australia and the European Union (EU) concluded negotiations on a free trade agreement (FTA), marking a major step forward in trade and investment between the parties. The FTA is expected to reduce trade barriers, create new opportunities in the services sector, and establish a more predictable business environment. While conclusion of negotiations is a significant milestone, the FTA is not yet in force. Businesses should start preparing now to be ready to claim preferential duty rates once implementation of the FTA is complete. Read more in our Alert.

State tax update

NSW: Surcharge land tax and principal place of residence

Revenue New South Wales has issued Commissioner's Practice Note CPN 039, which discusses how surcharge land tax applies to "foreign persons" who own residential land in New South Wales (NSW) and the interaction and differences with the exemption from surcharge land tax on their principal place of residence (PPR), i.e. the difference between sections 5A and 5B of the Land Tax Act 1956 (NSW).

Section 5A provides that surcharge land tax is payable in respect of residential land owned by a foreign person at midnight on 31 December of the preceding tax year. A person is not a foreign person if they are an Australian citizen or "ordinarily resident" in Australia on the taxing date. An individual is taken to be "ordinarily resident" in Australia on a taxing date if the person has actually been in Australia for 200 or more days of the preceding 12-month period and the person's continued presence in Australia is not subject to any time limitations imposed by law.

Section 5B provides an exemption from surcharge land tax to permanent residents, who are not ordinarily resident, if they intend to use and occupy the land as their PPR for a continuous period of 200 days during the relevant tax year and to be physically present in Australia for that continuous period of 200 days.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Rachael Cullen
Sydney
Partner
+61 409 470 495
rachael.cullen@au.pwc.com

Matthew Sealey
Sydney
Partner
+61 400 684 803
matthew.sealey@au.pwc.com

Barry Diamond
Melbourne
Partner
+61 (3) 8603 1118
barry.diamond@au.pwc.com

Jess Fantin
Brisbane
Partner
+61 408 748 418
jess.fantin@au.pwc.com

Cherie Mulyono
Sydney
Partner
+61 (2) 8266 1055
cherie.mulyono@au.pwc.com

Ari Esmerian
Sydney
Partner
+61 420 360 654
ari.esmerian@au.pwc.com

The Practice Note provides several examples to explain the interactions and differences. It is effective from 6 March 2026.

VIC: Duties—Aggregation of dutiable transactions

Section 24(1) of the *Duties Act 2000* (Vic) provides that dutiable transactions relating to separate items or separate parts of dutiable property are to be aggregated and treated as a single dutiable transaction where the contracts of sale are entered into within 12 months and the dutiable transactions together form, evidence, give effect to or arise from what is, substantially, one arrangement. The Victorian State Revenue Office (SRO) has issued the following draft Revenue Rulings in respect of the aggregation of dutiable transactions:

- Draft update DA-026v3, which clarifies how and when the Commissioner of State Revenue will aggregate dutiable transactions including:
  - An explanation of the legislative criteria being the 12-month period and the 'substantially one arrangement' criteria
  - The factors the Commissioners will take into account in making a determination that there is 'substantially one arrangement', including examples, and
  - Disclosure requirements, duty calculation, and exceptions.
- Draft ruling DA-071, which clarifies the application of the exception from aggregation for registered domestic builders, with particular emphasis on registration requirements. It also explains how and when transactions will be reassessed where residential premises are not constructed. When finalised, the draft ruling will apply to dutiable transactions arising from a contract of sale entered into on or after 1 June 2026, and to dutiable transactions that occur on or after 1 June 2026.

Comments on both draft Rulings close 21 April 2026.

VIC: Land tax—No aggregated assessment

In R.C. Land Management Pty Ltd v Commissioner of State Revenue [2026] VSC 49, the Victorian Supreme Court has allowed a taxpayer's appeal, finding that land held by one trustee for two discretionary trusts could not be assessed on an aggregated basis.

The taxpayer was trustee of two discretionary trusts, which were established to be used together in a land development business. Each trust was a 'partner' with an equal 50% interest in multiple parcels of land acquired by the taxpayer as trustee. The Commissioner issued land tax assessments for each of the relevant years, aggregating the land held by the trusts, and increasing the total land tax payable. Alternatively, the Commissioner argued that the land was held by the taxpayer in its own right, or as trustee, or, in a further alternative, that the taxpayer had been correctly assessed as a 'joint owner' by the operation of section 38 of the Act.

The taxpayer argued on the basis that the Commissioner had incorrectly assessed the trustee on an aggregated basis rather than a separate, 50% assessment basis, which, the taxpayer argued, contradicted sections 46A(2) and 46G(3) of the Land Tax Act 2005 (Vic).

The Court accepted the taxpayer's construction that under section 46G(3) of the Act, "the trustee of the trust is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee". Because the taxpayer held each parcel of land as to a 50% interest for each of the two discretionary trusts, each trust's landholding must be assessed separately rather than aggregated. The Court found that the joint owner provisions in section 38 had no application, as a trust is not a "person" and there is no deeming provision in the Act treating a trustee of two trusts as two separate persons.

Superannuation update

Draft regulations on operation of Division 296 tax on high superannuation balances

Following the enactment on 13 March 2026 of the legislation (Treasury Laws Amendment (Building a Stronger and Fairer Super System) Act 2026 and the Superannuation (Building a Stronger and Fairer Super System) Imposition Act 2026) that introduces the new Division 296 tax on individuals with high superannuation balances over $3m from 1 July 2026, Treasury has released related draft regulations. These draft regulations seek to prescribe certain values, calculations, and methods so that all applicable superannuation interests can be properly assessed for the purposes of the Division 296 tax.

Importantly, the draft regulations set out how super funds will attribute fund earnings to in-scope individuals:

- For members of Self-Managed Super Funds (SMSFs): A member's share of the fund's taxable earnings will be calculated based on the member's proportion of the fund's average total superannuation balance. Crucially, this will generally need to be determined by an actuary's certificate, other than in limited cases (i.e. there is only one member of the fund for the full income year, there is no Division 296 earnings or there are no fund members who have benefits in excess of $3m).

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Marco Feltrin
Melbourne
Partner
+61 (3) 8603 6796
marco.feltrin@au.pwc.com

Pete Nearhos
Brisbane
Partner
+61 7 3257 5030
pete.nearhos@au.pwc.com

Alice Kase
Sydney
Partner
+61 (2) 8266 5506
alice.kase@au.pwc.com

Grahame Roach
Sydney
+61 (2) 8266 7327
grahame.roach@au.pwc.com

Sharyn Frawley
Melbourne
Partner
+61 3 8603 1217
sharyn.frawley@au.pwc.com

- For members of large (APRA-regulated) funds and Pooled Superannuation Trusts (PSTs): The superannuation fund will be responsible for calculating a "fair and reasonable" attribution of the fund's earnings to the member. This will be based on a member's balance, the investment options chosen, and the period held, and having regard to the transitional phased-in adjustment factors for net capital gains that are also provided in the draft regulations.

The draft regulations also:

- Set out how to calculate earnings for defined benefit interests
- Specify the super interests that are excluded from the rules, and
- Explain how the tax applies in the year a person dies.

Comments close 7 April 2026.

For further details regarding the operation of Division 296, as well as the changes introduced to the LISTO, see our March Monthly Tax Update.

Consultation on preventing perpetrators from accessing victims' super death benefits

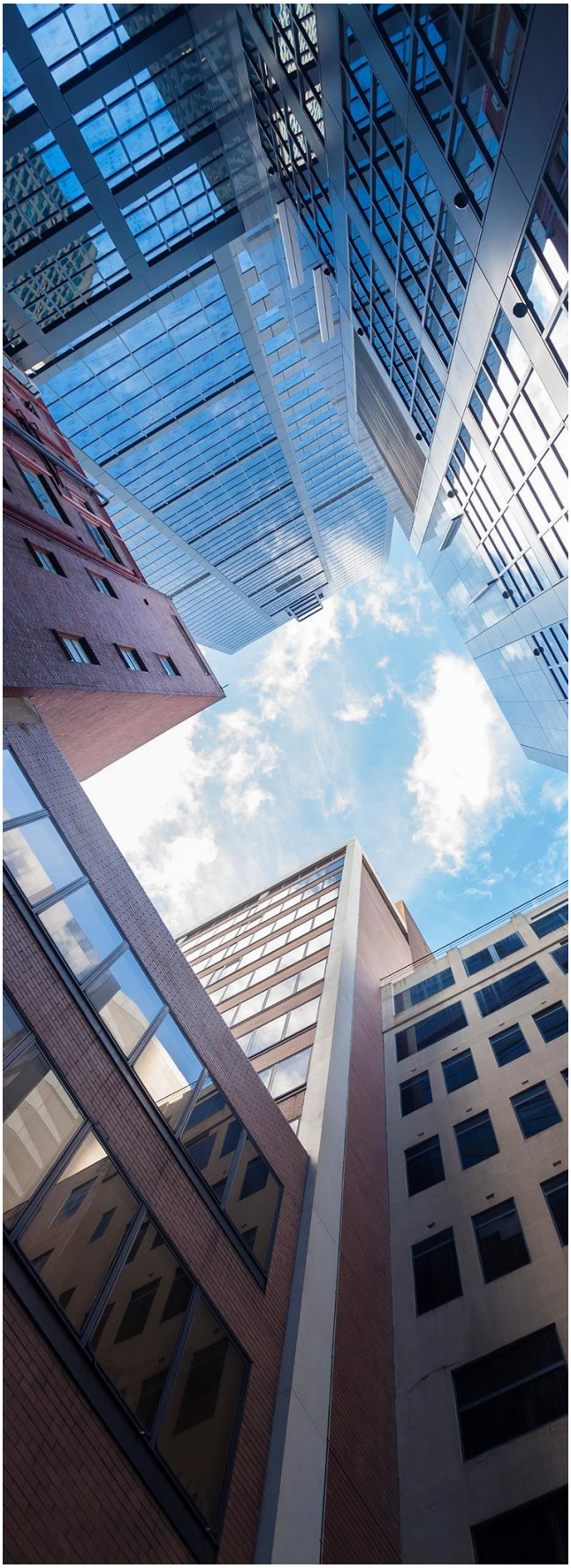
The Government has announced that it has commenced public consultation on reforms to prevent perpetrators of family and domestic violence from receiving the superannuation death benefits of their victims.

Under current superannuation law, a fund may be required to pay death benefits to a person who used family and domestic violence against the deceased. This can lead to unfair outcomes for victim-survivors and their families. The Government is consulting on changes to superannuation law that could:

- Prevent perpetrators from receiving victims' super death benefits
- Make the distribution of benefits in cases of family or domestic violence fairer and more consistent, and
- Ensure payments are made without unnecessary delay.

Treasury's consultation paper outlines several policy options and seeks views on how they should work in practice.

Comments close 15 April 2026.



Legislative update

Since our last update, Treasury Laws Amendment (Delivering an Efficient and Trusted Tax System) Bill 2026 was introduced into the House of Representatives on 25 March 2026. This Bill proposes a range of amendments to tax laws, including:

- Removal of the $2 threshold for deductible gifts or contributions
- Streamlining how trustees of closely held trusts report beneficiary information to the Commissioner
- Ensuring activities relating to tobacco and gambling are excluded from the R&D tax incentive, and
- Other minor and technical amendments.

The following tax or superannuation Bills have also completed their passage through Parliament and are now law:

- Treasury Laws Amendment (Building a Stronger and Fairer Super System) Bill 2026 and Superannuation (Building a Stronger and Fairer Super System) Imposition Bill 2026, which implement the new Division 296 tax to reduce the tax concessions available to those individuals with large superannuation balances, as well as make amendments to the low-income superannuation tax offset. For further information, see Superannuation update.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Warren Dick
Sydney
Australian Tax and Legal Leader
+61 419 479 279
warren.dick@au.pwc.com

Jason Karametos
Melbourne
Corporate Tax Leader
+61 (3) 8603 6233
jason.karametos@au.pwc.com

Claire Soccio
Melbourne
Workforce Leader
+61 411 481 681
claire.soccio@au.pwc.com

Michael Dean
Sydney
Private Tax Leader
+61 402 041 451
michael.dean@au.pwc.com

- The Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025, which makes a range of amendments to tax and superannuation law, among others, to:
  - Support employers to streamline the choice of fund process during employee onboarding to support the transition to Payday Super
  - Provide income tax and withholding tax exemptions for World Rugby and its wholly owned subsidiaries
  - Give effect to the Australia-Portugal double tax agreement
  - Update the list of deductible gift recipients, and
  - Increase the maximum amount of wine equalisation tax (WET) producer rebate from $350,000 to $400,000 per financial year, from 1 July 2026.

The following Commonwealth revenue measures were registered as legislative instruments since our last update:

- Treasury Laws Amendment (Payday Superannuation) Regulations 2026, effective 1 July 2026, which amends the Superannuation Guarantee (Administration) Regulations 2018 and the Superannuation Industry (Supervision) Regulations 1994 to support amendments made by the Treasury Laws Amendment (Payday Superannuation) Act 2025. For further information, see Employment taxes update.
- Taxation Administration (PAYG Withholding Variation for Company Directors and Certain Office Holders) Legislative Instrument 2026, effective 6 March 2026, which reduces to nil the amount that must be withheld from a payment to an individual who is appointed as a director, a member of a committee of management, or an office holder and is required to remit the full amount of payment they receive in that capacity to another entity of which they are a director, partner or employee. This repeals and replaces a previous legislative instrument due to sunset on 1 April 2026.
- Taxation Administration (Withholding Variation for Payments to Indigenous Artists who do not Quote an ABN) Legislative Instrument 2026, effective 12 March 2026, reduces to nil the amount that must be withheld from a payment for artistic work provided by an indigenous artist who lives or works in Zone A in Australia (Zone A covers certain remote locations) and who does not quote an Australian business number (ABN) in relation to that work. In addition, a payment summary does not need to be provided in relation to those payments as the amount withheld is nil. This repeals and replaces a previous legislative instrument due to sunset on 1 April 2026.
- Taxation Administration (Withholding Variation for Certain Payments to Religious Practitioners) Legislative Instrument 2026, effective 14 March 2026, reduces to nil the amount that an entity must withhold from certain payments it makes to a religious practitioner. It also removes the requirement for entities that are not religious institutions to issue payment summaries and provide an annual report in relation to some of the payments. This repeals and replaces a previous legislative instrument due to sunset on 1 April 2026.
- Taxation Administration (PAYG Withholding Variation for Certain Insurance and Compensation Payments when an ABN is not Quoted) Legislative Instrument 2026, effective 6 March 2026, reduces the amount a payer must withhold from certain insurance and compensation payments to nil, where the payee has not quoted their ABN. This repeals and replaces a previous legislative instrument due to sunset on 1 April 2026.
- A New Tax System (Goods and Services Tax) (Frequency of Fund-raising Events) Determination 2026, effective 4 March 2026, allows an endorsed charity, a gift-deductible entity or a government school to treat all supplies it makes in relation to a fund-raising event as being input taxed where it holds 15 or fewer like or similar fund-raising events in a prescribed accounting year.

- A New Tax System (Goods and Services Tax) (Attribution Rules—Certain Motor Vehicle Incentive Payments made to Motor Vehicle Dealers) Determination 2026, effective 6 March 2026, allows a motor vehicle dealer to attribute the GST on the sale of a motor vehicle to the tax period in which the dealer knows the total amount they will receive for that vehicle. This repeals and replaces a previous determination due to sunset on 1 April 2026.
- A New Tax System (Goods and Services Tax) (Attribution Rules—Prepayment for a Telecommunication Supply) Determination 2026, effective 5 March 2026, allows telecommunications providers to delay attribution of GST for certain telecommunication supplies to the tax period in which an invoice is issued (or would have been issued) for the supply in cases where a prepayment for that supply has been received in an earlier tax period. This repeals and replaces a previous determination due to sunset on 1 April 2026.
- A New Tax System (Goods and Services Tax) (Attribution Rules—Supplies of Electricity Distribution Services) Determination 2026, effective 5 March 2026, allows a supplier of electricity distribution services to attribute GST and adjustments on supplies it has made to the tax period in which it receives from its billing agent all the information that is necessary to ascertain the total amount it will receive for the supply. This repeals and replaces a previous determination due to sunset on 1 April 2026.
- Taxation (Multinational-Global and Domestic Minimum Tax) (Qualified GloBE Taxes) Amendment (Measures No. 1) Determination 2026, effective from various dates, which updates the list of jurisdictions having a Qualified Income Inclusion Rule (IIR), Qualified Domestic Minimum Top-up Tax (DMTT), and QDMTT Safe Harbour Status for the purposes of the GloBE rules.

Other news update

Senate inquiry report on the operation of the capital gains tax discount

The Senate Select Committee on the Operation of the Capital Gains Tax Discount has presented its final report. The report makes four findings:

- **Finding 1:** The committee consistently heard that the current design of the capital gains tax (CGT) discount results in a degree of concessional treatment relative to labour income, which can distort decision making and incentivise tax planning.
- **Finding 2:** The design of the CGT discount has the potential to distort the allocation of investment across the economy, with evidence that existing housing stock makes up a substantial share of capital gains that benefit from the CGT discount.
- **Finding 3:** While there are a number of factors that influence housing markets, there is evidence that the concessions provided by the capital gains tax discount, in combination with negative gearing, have skewed the ownership of housing away from owner-occupiers and towards investors.
- **Finding 4:** The benefits of the CGT discount are also unequally distributed, with implications for income and wealth inequality and intergenerational inequality.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Warren Dick
Sydney
Australian Tax and Legal Leader
+61 419 479 279
warren.dick@au.pwc.com

James O'Reilly
Brisbane
QLD Tax Leader
+61 (7) 3257 8057
james.oreilly@au.pwc.com

Bianca Wood
Sydney
Tax Markets Leader
+61 (2) 8266 2792
bianca.wood@au.pwc.com

Michael Dean
Sydney
Private Tax Leader
+61 402 041 451
michael.dean@au.pwc.com

Luke Bugden
Sydney
NSW Tax Leader
+61 (2) 8266 4797
luke.bugden@au.pwc.com

Kit Wong
Adelaide
Partner
+61 409 256 560
kit.a.wong@au.pwc.com

Clementine Thompson
Melbourne
VIC Tax Leader
+61 413 089 431
clementine.thompson@au.pwc.com

Amy Etherton
Newcastle
Partner
+61 (2) 4925 1175
amy.etherton@au.pwc.com

Tamika Cullen
Perth
WA Tax Leader
+61 422 214 044
tamika.cullen@au.pwc.com

It remains to be seen what, if any, specific actions the Government takes in response to this report. Having said that, as part of the report, it is worth noting the Labor Senators' additional comments in the report, namely that any future tax reforms should be guided by the principles that were agreed upon at the Economic Reform Roundtable in August 2025 (i.e. to deliver a fair go for working people and young people, including in intergenerational equity terms, for affordable, responsible ways to incentivise business investment and to make the system simpler and more sustainable). The Labor Senators also commented that the work of the committee and the evidence it has heard should be considered, alongside other advice and analysis, as part of the Government's ongoing consideration of tax policy and potential future reforms in the context of future budgets.

Outcome of Tax Ombudsman's review into ATO's management of GIC remission

In March 2026, the Tax Ombudsman released its report following a review into the Australian Taxation Office's (ATO) decision-making in relation to the general interest charge (GIC) on tax debts.

The review found the ATO's inconsistent decision-making, vague guidance, and poor communication were leading to confusion and unfair outcomes for taxpayers seeking a remittance (reduction or refund) of the interest charges accumulating on tax debts. The report includes several recommendations, including:

- The ATO agree an up-front interest-free payment plan for eligible taxpayers who enter into and maintain compliant payment plans
- The ATO build on their recent improvements to address inconsistency in GIC decision making
- The ATO conduct a post-implementation review of the changes to GIC remission made in late 2025 and early 2026, within 12 months of their completion. This includes the introduction of a centralised function for decision making, the standard application form, and website updates, including revised guidance and published examples of how remission criteria are applied.

The ATO has agreed to all recommendations, and the Ombudsman has welcomed the ATO's recent changes to address inconsistency in GIC remission decisions.

Giving funds minimum annual distribution rate to increase

The Government has announced that it will increase the distribution rate for giving funds, setting the minimum annual distribution rate for both private and public giving funds at 6% of net assets. This will ensure more benefits flow to charities to help them to provide their services, while still allowing giving funds to invest and provide benefits into the future. By way of background, giving funds allow donors to receive an upfront tax deduction for their gifts, provided the fund makes a minimum annual distribution to charities that are deductible gift recipients.

The new rate will apply from the first financial year following amendments to the giving fund guidelines, and existing giving funds will not need to meet the new distribution rate for two years.

Exercise of put option and novation deed confirmed as separate CGT events

In Aitken v Commissioner of Taxation [2026] FCAFC 18, the Full Federal Court has unanimously dismissed the taxpayer's appeal, finding that the exercise of a put option and the execution of a novation deed on the same day in relation to a forestry interest held by the taxpayer constituted two separate CGT events.

When the taxpayer acquired the forestry interests, he was required by the scheme to acquire an equal number of put options. On 1 July 2015, the taxpayer exercised the put option and then, later on the same day, entered a novation deed in relation to his forestry interests excluding certain rights which were retained by the taxpayer.

In the Federal Court decision in Aitken v Commissioner of Taxation [2025] FCA 372, the primary judge dismissed the taxpayer's appeal, finding that there were at least two CGT events that happened in relation to the appellant's forestry interests — one on the exercise of the put option and the other on entry into the novation deed. Further, the Court found that the taxpayer had not shown, as required under the relevant law that the reduction in the market value and/or subsequent market value of the interest in the project, as at 1 July 2015, was less than the amended assessment.

The Full Federal Court upheld the Federal Court's decision that there had been two CGT events. Further, the existence of the put option, and the fact that all investors or 'Growers' in the project held put options in relation to their forestry interests on the same terms as the put option, was material for the purposes of determining the market value of the taxpayer's forestry interests, and that the exercise of the put option decreased the market value of the taxpayer's forestry interests.

The Full Court further noted that it was necessary for the taxpayer to adduce various items of evidence, which they had not provided. In such circumstances, not all material facts which bore upon the impact on the market value of the taxpayer's forestry interests of the relevant CGT events were known or before the primary judge, with the consequence that the primary judge was correct to find that the taxpayer had not discharged his onus of proof.

Partial success for taxpayer on CGT disposals

In Brisbane Club v Commissioner of Taxation [2026] FCA 220, the Federal Court has found for the taxpayer in part, with only one of the contested assets being exempt from CGT on the basis that the assets were acquired pre-CGT.

The taxpayer acquired land in 1963. On 8 May 1985, the taxpayer entered into a deed with a developer to redevelop the land and, on 10 January 1986, entered into a building agreement with the developer, with construction on the land commencing on or after 14 February 1986. In June 1986, the taxpayer (as lessor) granted a lease over the whole of the land (including the building), with two subleases also entered into over parts of the building for a term commencing on 1 September 1986. The building was completed in 1988. In June 2021, the land, building, and the two subleases (among other property) were sold.

In respect of the building, the Federal Court found that the entry into the deed on 8 May 1985 was the relevant contract for the construction of the building. Although the building agreement was a condition of the deed, it did not affect the formation of the deed. Accordingly, the capital gain made on the disposal of the building was to be disregarded as it was pre-CGT. However, the same could not be said in relation to the subleases, which were between different parties, not between the developer and the taxpayer, with the Court finding that the relevant subleases had not been acquired before 20 September 1985 and hence were subject to CGT.

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