

Monthly Tax Update

In this edition of the Monthly Tax Update, we provide the recent updates in legislation along with tax developments in the areas of corporate tax, individual tax, indirect tax and international tax. We also include the ATO's recent activities, including its publications, rulings issued in the past month, latest Australian tax cases and other news in this edition.

Legislation Update

- [Treasury Laws Amendment \(Cost of Living Support and Other Measures\) Bill 2022 \(Act No 14 of 2022\)](#)
- [Excise Tariff Amendment \(Cost of Living Support\) Bill 2022 \(Act No 15 of 2022\)](#)
- [Customs Tariff Amendment \(Cost of Living Support\) Bill 2022 \(Act No 16 of 2022\)](#)

The above Bills implementing the various cost of living support and other key measures as announced in the 2022-23 Federal Budget have received Royal Assent on 31 March 2022 and are now law.

The Acts:

- Increase the Medicare levy low income thresholds and Medicare levy surcharge low income threshold in line with CPA movements.
 - Allow an income tax deduction for taxpayers who incur relevant COVID-19 testing expenses in gaining or producing their assessable income. The deduction applies to relevant expenses incurred on or after 1 July 2021.
 - Provide for several entities to be deductible gift recipients (DGRs) under the income tax law:
 - Provide regulatory relief to employee share schemes which meet particular requirements.
 - Reduce the GDP adjustment factor for the 2022–23 income year to 2%.
 - Increase the low- and middle-income tax offset (LMITO) for the 2021–22 income year by \$420 to ease cost of living pressures for Australians.
 - Lower the PBS safety net thresholds for the concessional safety net to 36 scripts (from 48) and general to \$1457.10 (from \$1542.10) on 1 July 2022;
 - Enact the 2022 cost of living payment of \$250 to Social Security and Veterans' income support and compensation recipients, Farm Household Allowance recipients, and holders of a Pensioner Concession Card, Commonwealth Seniors Health Card or Veteran Gold Card.
 - Reduce the excise duty rates and excise-equivalent customs duty rates for fuels by 50% from 30 March 2022 for 6 months.
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- [Offshore Petroleum \(Laminaria and Corallina Decommissioning Cost Recovery Levy\) Bill 2021 \(Act No 18 of 2022\)](#)
 - [Treasury Laws Amendment \(Laminaria and Corallina Decommissioning Cost Recovery Levy\) Bill 2021 \(Act No 24 of 2022\)](#)

The 2 Bills have received Royal Assent on 1 April 2022.

The above Bills impose a temporary non-deductible levy on offshore petroleum production on registered holders of petroleum production licences under the Offshore Petroleum and Greenhouse Gas Storage Act 2006. The levy is imposed to recover the Commonwealth's costs of decommissioning the Laminaria and Corallina oil fields and associated infrastructure.

April 2022



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Monthly Tax Update

Legislation Update (Cont.)

Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No 3) 2022

A determination has been made to declare various NSW, Queensland, South Australia and ACT grant programs as eligible programs. Any grants paid under these programs will be non-assessable non-exempt (NANE) income for the purposes of s 59-97 of ITAA 1997:

- NSW Accommodation Support Grant
- Commercial Landlord Hardship Grant (NSW)
- NSW Performing Arts Relaunch Package
- NSW Festival Relaunch Package
- 2022 Small Business Support Program (NSW)
- 2021 COVID-19 Business Support Grants (Queensland)
- COVID-19 Business Support Grant — July 2021 (SA)
- COVID-19 Additional Business Support Grant (SA)
- COVID-19 Tourism and Hospitality Support Grant (SA)
- COVID-19 Business Hardship Grant (SA)
- COVID-19 Business Support Grant (ACT)

The NANE treatment under s 59-97 is available for grant payments received in the 2020–21 or 2021–22 income years.

For further details, please refer [here](#).

OECD Updates – BEPS (Base Erosion and Profit Shifting)

Implementation Framework of the Global Minimum Tax

The public consultation meeting on the Implementation Framework of the global minimum tax will take place virtually on Monday 25 April. This will follow the call for input on the Pillar Two Implementation Framework which is still open for comments until Monday 11 April 2022.

For more details, please refer [here](#).

Public Consultation - Pillar One Amount A: Draft Model Rules for Domestic Legislation on Scope (Digitisation of the Economy)

Amount A of Pillar One has been developed as part of the solution for addressing the tax challenges arising from the digitalisation of the economy. It 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.

As part of the public consultation process on the implementation aspects of the two-pillar solution to reform the international tax rules, the OECD is inviting public comments on the Draft Model Rules for Scope. The comments can be submitted by 20 April 2022.

For more details, please refer [here](#).

April 2022



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Monthly Tax Update

Other Updates

Board of Taxation reports on R&D tax incentive and GST on low-value imports

The Board of Taxation (BOT) has released reports on the research and development tax incentive (R&DTI) dual agency administration model and the GST on low-value imported goods (LGIV).

In relation to the recommendations, the Government believes the ATO and other relevant regulators are working together to administer the programs efficiently and collaboratively with affected stakeholders.

For more details, please refer [here](#).

Copies of the report are available as follows:

- R&DTI – Review of the dual-agency administration model – click [here](#).
- Review of GST on low value imported goods – click [here](#).

Board of Taxation 2020–21 annual report

The Board of Taxation has released its 2020-21 annual report which details activities undertaken in the past 12 months and highlights its agenda for the coming year.

The report also notes 2022 Federal Budget announcements related to the Board's recommendations, including:

- review of corporate tax residency rules;
- fringe benefits tax;
- exempt granny flat arrangements from CGT;
- small business tax concessions;
- individual tax residency rules; and
- collective investment vehicles.

For more details, please refer [here](#).

R&D tax incentive determination on clinical trials

Certain clinical trials are now eligible for the Research and Development Tax Incentive (R&D Tax Incentive).

A determination provides that phase 0, I, II, III, pre-market pilot stage and pre-market pivotal stage clinical trials are eligible activities for the purpose of the R&D Tax Incentive. The determination, commenced on 1 April 2022, provides a simplified registration process for businesses to invest in these clinical trials.

For more details, please refer [here](#).

Monthly Tax Update

Other Updates (Cont.)

Financial Services and Credit Panel regulates financial advisers

From 1 January 2023, all financial advisers who provide personal financial advice to retail clients are required to be registered with ASIC as a relevant provider.

The new requirement is for all relevant providers, who are authorised to provide personal advice to retail clients in relation to relevant financial products, as the holder of a financial services licence or on behalf of the licensee.

The new requirement extends to relevant providers who were previously registered as individual tax (financial) advisers with the Tax Practitioners Board (TPB).

For more details, please refer [here](#).

Crypto asset secondary service providers: Licensing and custody requirements

The government released a consultation paper on 21 March 2022 seeking industry feedback on proposed new crypto asset licensing and custody requirements. The paper also covers the first stage of a broader token mapping exercise which are to be completed by the end of 2022.

Response to the consultation will be closed on 27 May 2022.

For more details, please refer [here](#).

ATO Rulings and Activity

- Legislative Instrument (F2022L00508) - Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2022
- Legislative Instrument (F2022L00509) - Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2022

Two legislative instruments setting out the requirements to lodge income tax returns for the 2021–22 income year have been made.

Legislative Instrument F2022L00508 sets out which persons are required and which ones are exempt from lodging an income tax return for the income year, and the date by which it should be lodged.

Legislative Instrument F2022L00509 requires liable and recipient parents under a child support assessment to lodge an annual income tax return by the lodgment due date. It applies to the year of income ended 30 June 2022 or an approved period in lieu.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Legislative instrument (F2022L00361) - Director Identification Number Laws (Other Government Bodies) Disclosure Framework 2022

A legislative instrument on the disclosure framework to support the Director ID regime has been made which provides for a disclosure framework relating to the disclosure of protected information that is director ID information.

It repeals the Corporations Director Identification Number Data Standard 2021

The Corporations Act 2001 (Corporations Act) and the Commonwealth Registers Act 2020 (Registers Act) authorise the disclosure of protected director ID information to certain government entities. Some public governance, performance and accountability bodies, courts and tribunals, are part of the workings of government, but do not fall within the definition of “government entity”. The Disclosure Framework sets out the circumstances in which the Registrar may disclose director ID information to these bodies, in the same way as government entities.

For more details, please refer [here](#).

Legislative instrument (F2022L00374) - Taxation Administration – Payment Summary Deferral: Employment Termination and Departing Australia Superannuation Payments Deferral 2022

A legislative instrument has been made that continues the deferral of the payment summary due date for employment termination and departing Australia superannuation payments.

The legislation instrument defers the due date for providing a copy of payment summaries to the Commissioner in respect of employment termination payments under TAA sch 1 s 16-165(1)(b), and departing Australia superannuation payments made under TAA sch 1 s 16-166(b) to 14 August following the financial year in which the payment was made.

Payers do not have to provide copies of summaries to the Commissioner within the required 14 days of making employment termination payments or departing Australia superannuation payments where they have withheld amounts from payments in accordance with Subdiv 12-C, s 12-85 or Subdiv 12-FA, s 12-305 of sch 1 to the TAA. They are however required to provide copies but within a timeframe aligned with their other reporting obligations.

This is a continuation of the deferral which has been in place since 16 November 2006, provided for by the following instruments:

- (PAYG) Withholding: Notice of exemption from requirement to give a copy of payment summary to the Commissioner within 14 days under section 16-165(1)(b) and section 16-166(b) of Schedule 1 to the Taxation Administration Act 1953 (F2006B11584) registered on 16 November 2006 (repealed), and
- Taxation Administration Act 1953 - PAYG Withholding - Payment summary deferral - Employment termination and departing Australia superannuation payments (F2012L00584) registered 15 March 2012.

April 2022



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Monthly Tax Update

ATO Rulings and Activity (Cont.)

Legislative instrument (F2022L00374) - Taxation Administration – Payment Summary Deferral: Employment Termination and Departing Australia Superannuation Payments Deferral 2022 (Cont.)

The instrument commences on 1 April 2022 and repeals the Taxation Administration Act 1953 - PAYG Withholding - Payment summary deferral - Employment termination and departing Australia superannuation payments (F2012L00584).

The instrument was previously released as draft LI 2022/D6 on the ATO website.

For further details, please refer [here](#).

TR 93/25: Income tax: assessability of proceeds from illegal activities, treatment of amounts recovered and deductibility of fines and penalties.

The ruling on misappropriated or stolen funds has been updated to take into account developments in the law since it was issued.

This ruling considers whether the proceeds of certain illegal activities will be treated as assessable income under section 6-5 of the Income Tax Assessment Act 1997 (ITAA 1997). The meaning of “illegal activities” are considered in this ruling to mean any activities not permitted by law such as those related to drug dealing, insider trading, misappropriation, prostitution and illegal bookmaking.

This Ruling also considers the treatment of amounts that are recovered from or repaid and any fines or penalties that are imposed for the associated offence.

The application of the capital gains and losses provisions are not considered in this ruling.

TR 93/25 was previously released in draft form as TR93/D2 and TD 92/D140

For more details, please refer [here](#).

Tax implications of Inter-bank offered rate reform (IBOR)

The ATO has released online guidance on common tax implications arising from changes made to financial arrangements driven by Inter-bank offered rate (IBOR) reform.

The guide applies to entities that change contractual terms of a financial arrangement for the sole purpose of responding to transition from a particular IBOR to an alternative risk-free rate or other replacement benchmark rate. The focus of the guide is on financial arrangements subject to the taxation of financial arrangements (TOFA) regime in Div 230 of ITAA 1997.

For further details, please refer [here](#).

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Supplementary guide for large superannuation funds, managed funds and insurance companies on third-party data tax controls

The ATO has issued supplementary guidance on third party data tax controls for large superannuation funds, managed funds and insurance companies.

The supplementary guide explains how the ATO applies its Justified Trust methodology to review the existence, design effectiveness and operational effectiveness of third party data income tax controls as part of an effective tax control framework.

It supplements the ATO's Tax Risk Management and Governance Review Guide issued in July 2015 and should be reviewed together.

This Guide on third-party data tax controls supplements the [ATO Guide](#) and should be reviewed together.

For further details, please refer [here](#).

ATO decision impact statement on Addy backpacker tax case

The ATO has updated its decision impact statement on the High Court decision in *Addy v FC of T* 2021 ATC; [2021] HCA 34.

In this case, the High Court decided that a British citizen (the taxpayer) who held a working holiday visa but who was, in unusual circumstances, held to be a resident of Australia was entitled to be taxed at the more favourable rates applicable to her level of income that apply to Australian nationals who are resident of Australia, and not the rates normally applicable to individuals who hold working holiday visas. The taxpayer was entitled to be taxed more favourably because of the non-discrimination article (NDA) in the double-tax convention between Australia and the United Kingdom (UK).

The decision only applies to someone who is:

- a national of one of the countries which Australia's tax treaties contain a NDA (ie Chile, Finland, Germany, Israel, Japan, Norway, Turkey and the UK);
- a holder of a working holiday visa (Subclasses 417 or 462, or associated bridging visa); and
- a resident of Australia.

Most holders of working holiday visas will not be residents of Australia. That is because persons who come to Australia for the purposes of a holiday, even if they work while here, generally do not become residents of Australia. But for unusual circumstances, the taxpayer in this case would not have been a resident of Australia.

In the Commissioner's view, in the far less common situation where a person held a working holiday visa but subsequently remained in Australia, the individual may be a resident. If the person is also a national of one of the countries that is covered by NDA, the decision may be applicable. This may apply if the individual held a working holiday visa and subsequently obtained a different visa for a purpose other than having a holiday. Other cases where an individual held a working holiday visa and is a resident are theoretically possible but will be rarely found in practice.

For more details, please refer [here](#).

April 2022



Collaborating with Andersen Global in Australia

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO decision impact statement on the distinction of “employee” and “contractor”

The ATO has issued a decision impact statement on the High Court decision in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 (the CFMMEU case).

This Decision impact statement outlines the ATO's response to this case which concerns whether the applicant was an employee of Personnel Contracting Pty Ltd for the purposes of the Fair Work Act 2009 (FWA). In relation to the common law test of employment, the decision provided clarity in the approach to be taken when characterising the legal relationship of the parties.

While not a party to the litigation, the decision of the High Court is relevant to legislation administered by the Commissioner involving the ordinary meaning of the term 'employee'.

The Commissioner will review relevant products, including the following:

- Superannuation Guarantee Ruling [SGR 2005/2](#) Superannuation guarantee: work arranged by intermediaries
- Superannuation Guarantee Ruling [SGR 2005/1](#) Superannuation guarantee: who is an employee?
- Taxation Ruling [TR 2005/16](#) Income tax: Pay As You Go — withholding from payments to employees
- Taxation Ruling [TR 2013/1](#) Income tax: the identification of “employer” for the purposes of the short-term visit exception under the Income from Employment Article, or its equivalent, of Australia's tax treaties
- Superannuation Guarantee Ruling [SGR 2009/1](#) Superannuation guarantee: payments made to sportspersons
- ATO Interpretive Decision [ATO ID 2014/28](#) Superannuation Guarantee Status of the Worker: Pizza delivery drivers as employees.

The closing date for comments is 6 May 2022.

For more details, please refer [here](#).

TD 2022/8: Income tax: deductibility of expenses incurred in establishing and administering an employee share scheme

The ATO has issued Taxation Determination TD 2022/8 which sets out the Commissioner's view on the deductibility of expenses incurred in establishing and administering an employee share scheme (ESS) as part of its remuneration strategy. This expenditure often includes establishing and administering an employee share trust (EST) that holds shares or rights for employees participating in the ESS.

TD 2022/8 was initially issued in draft form as Draft Taxation Determination TD 2022/D2.

For more details, please refer [here](#).

Monthly Tax Update

ATO Rulings and Activity (Cont.)

TD 2022/4: Income tax: when are you genuinely restricted from immediately disposing of an interest provided under an employee share scheme?

The ATO has issued guidance on the meaning of “genuine disposal restrictions” in the context of employee share schemes (ESSs).

Division 83A of the Income Tax Assessment Act 1997 (ITAA 1997) applies when ESS interests are provided to employees at a discount to their market value under an ESS. Generally, employees are assessed on the discount in the income year that shares or rights to shares are acquired. However, where certain conditions are met, the assessable income is deferred to a later point in time (the ESS deferred taxing point).

The ESS deferred taxing point for ESS interests that are shares or rights to acquire shares occurs at the earliest of the times set out in subsections 83A-115(4) and (6) for shares, or subsections 83A-120(4), (6) and (7) for rights.

One ESS deferred taxing point occurs if, at the time employees acquired their ESS interest, the scheme 'genuinely restricted them immediately disposing of the interest'. In those circumstances, the ESS deferred taxing point arises when they are no longer so restricted.

It is therefore important to establish whether employees were 'genuinely restricted' by the scheme and the time when the scheme no longer restricted them. This is also referred to as the restrictions being 'lifted'.

TD 2022/4 sets out the principles for working out whether a scheme's disposal restrictions were 'genuine disposal restrictions' and, if they were, when employees no longer genuinely restricted by the scheme for the purposes of determining the ESS deferred taxing point. This Determination does not consider the 'real risk of forfeiture' test, which is another condition in subsections 83A-115(4) and 83A-120(4) and (7).

TD 2022/4 was initially issued in draft form as Draft Taxation Determination TD 2021/D5.

For further details, please refer [here](#).

A Compendium (TD 2022/4EC) for this document was also issued and can be accessed [here](#).

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Meaning of aggregated turnover and the applications of “connected with”

On 30 March 2022, the ATO issued three Determinations, with retrospective effect, to assist mainly large businesses in applying the aggregation rules in Subdivision 328-C ITAA 1997 (meaning of small business entity). These rules form part of the aggregated turnover test, used to determine eligibility for a range of tax concessions.

■ TD 2022/5: Income tax: aggregated turnover - application of the 'connected with' concept to corporate limited partnerships

TD 2022/5 sets out the Commissioner's view and practical examples on determining whether an entity directly controls a corporate limited partnership under s 328-125(2).

A corporate limited partnership, as defined in s 94D of ITAA 1936, is treated as a company for income tax purposes. Therefore, the rules for determining an entity's 'aggregated turnover' in Subdivision 328-C also apply to a corporate limited partnership as though it were a company, rather than a partnership.

Accordingly, for the purposes of determining whether an entity is 'connected with' a corporate limited partnership by virtue of directly controlling the corporate limited partnership within the meaning of subsection 328-125(2):

- - an entity is capable of directly controlling a corporate limited partnership by operation of either the 'general control tests'[5] or the 'voting control test'[6], and
- - the specific test for determining whether an entity directly controls a partnership[7] does not apply to determining whether an entity directly controls a corporate limited partnership.

Further, a corporate limited partnership is capable of being an 'affiliate' of another entity within the meaning of section 328-130.

TD 2022/5 was initially issued as TD 2021/D3 in draft form.

This Determination applies both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 Public Rulings).

For more details, please refer to the Determination [here](#).

The Compendium for TD 2022/5 (TD 2022/5EC) can be accessed [here](#).

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Meaning of aggregated turnover and the applications of “connected with” (Cont.)

- TD 2022/6: Income tax: aggregated turnover - application of the public entity exception to the indirect control test

TD 2022/6 sets out the Commissioner’s view on how the public entity exception to the “indirect control test” in s 328-125(7) applies where a public entity is interposed in an ownership structure.

For the purposes of determining 'control' within the meaning of section 328-125, where an entity (the first entity) controls another entity (the second entity) and the second entity directly or indirectly controls a third entity, the first entity is taken to control the third entity.

However, the 'indirect control test' within the meaning of subsection 328-125(7) does not apply if a public entity is interposed between the first entity and the third entity. In these circumstances, the first entity will not control the third entity merely because of its interest in the interposed public entity

TD 2022/6 provides that the mere presence of an interposed public entity does not result in a control chain being broken. If a public entity is interposed in an ownership structure, the first entity may still control the third entity through direct control.

TD 2022/6 was initially issued as TD 2021/D4 in draft form.

This Determination applies both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 Public Rulings).

For more details, please refer to the Determination [here](#).

The Compendium for TD 2022/6 (TD 2022/6EC) can be accessed [here](#).

- TD 2022/7: Income tax: aggregated turnover - application of the 'connected with' concept to partnerships, foreign hybrids and non-entity joint ventures

TD 2022/7 sets out the Commissioner’s view and practical examples on determining whether an entity directly controls, or is directly controlled by, a partnership, foreign hybrid or non-entity joint venture under s 328-125(2).

By way of background, Subdivision 328-C sets out the rules for determining the 'aggregated turnover' of an 'entity'. The Commissioner considers Subdivision 328-C to apply to a partnership as though it were an entity separate to its partners. The partnership, rather than the individual partners, is the relevant entity when determining whether a partnership directly controls another entity under s 328-125(2). An entity that is directly controlled by a partnership may be indirectly controlled by entities controlling the partnership under s 328-125(7), including the individual partners in their capacity as partners.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Meaning of aggregated turnover and the applications of “connected with” (Cont.)

- TD 2022/7: Income tax: aggregated turnover - application of the 'connected with' concept to partnerships, foreign hybrids and non-entity joint ventures (Cont.)

Subdivision 328-C also applies to foreign hybrid limited partnerships and foreign hybrid companies as though they were a partnership. Accordingly, the specific test for determining direct control of a company under s 328-125(2)(b) does not apply to these entities. By virtue of being treated as a partnership for Australian tax purposes, an entity that is a foreign hybrid is not capable of being an affiliate of another entity within the meaning of section 328-130.

Unlike a partnership, a 'non-entity joint venture' is not considered an entity in their own right for the purposes of Subdivision 328-C. When applying the aggregation rules in Subdivision 328-C, the relevant entities are each of the parties to the non-entity joint venture, in their separate capacities.

When applying the aggregation rules, the relevant entities are each of the parties to the non-entity joint venture, in their separate capacities. Parties to a non-entity joint venture will not be taken to be affiliates of each other merely because of the nature of their business relationship.

Additionally, a party to a non-entity joint venture will not be an affiliate of another party to that non-entity joint venture merely because of the nature of their business relationship.

TD 2022/7 was initially issued as TD 2021/D2 in draft form.

This Determination applies both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 Public Rulings).

For more details, please refer to the Determination [here](#).

The Compendium for TD 2022/7 (TD 2022/7EC) can be accessed [here](#).

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Class rulings issued:

- Class Ruling [CR 2022/20](#) Tritium Holdings Pty Ltd — scrip for scrip roll-over. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/21](#) Westpac Banking Corporation — off-market share buy-back. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/22](#) Spark Infrastructure Trust — acquisition, interim distribution and special distribution. The ruling applies from 1 January 2021 to 31 December 2021.
- Class Ruling [CR 2022/23](#) Smartgroup Corporation Ltd — use of a travel smartcard for bus travel by employees. The ruling applies from 1 April 2021 to 31 March 2025.
- Class Ruling [CR 2022/24](#) Aventus Group — exchange of shares in Aventus Holdings Ltd for shares in Home Consortium Ltd — scrip for scrip rollover. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/25](#) Aventus Group — exchange of units in Aventus Retail Property Fund for units in Homeco Daily Needs Real Estate Investment Trust — scrip for scrip rollover. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/26](#) Victorian Department of Families, Fairness and Housing — early retirement scheme 2022–2023. The ruling applies from 24 March 2022 to 30 June 2023.
- Class Ruling [CR 2022/27](#) University of Southern Queensland — early retirement scheme 2022. The ruling applies from 24 March 2022 to 30 June 2022.
- Class Ruling [CR 2022/28](#) Perth Airport Pty Ltd — provision of parking to an individual under an arrangement with their employer. The ruling applies from 1 April 2022 to 31 March 2027.
- Class Ruling [CR 2022/34](#) Australia and New Zealand Banking Group Ltd — ANZ Capital Notes 7
- Class Ruling [CR 2022/35](#) Urban Mobility Pty Ltd — use of an electric bicycle by an employee
- Class Ruling [CR 2022/36](#) Eftpos Payments Australia Ltd — demutualisation.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Other rulings issued:

- Product Ruling **PR 2022/2** - Tax consequences of investing in C2 Gateway Deferred Purchase Agreement. This ruling applies from 1 July 2022 only to the specified class of entities that enter into the scheme from 1 July 2022 until 30 June 2025, being its period of application.
- Product Ruling **PR 2022/3** - AIA Australia Limited - Priority Protection - income protection insurance cover). This ruling applies from 1 July 2021. It therefore applies only to the specified class of entities that enter into the scheme from 1 July 2021 until 30 June 2024, being its period of application.

Latest Australian Tax Cases

- **Legal professional privilege** - In proceedings concerning whether documents were subject to legal professional privilege in the context of services provided by a multi-disciplinary partnership, the Federal Court has determined that, of the 116 sample documents before it, just under half were privileged or partly privileged while just over half were not privileged. [FC of T v PricewaterhouseCoopers 2022 ATC - 25 March 2022]
- **Deductions** - The AAT has largely affirmed the Commissioner's assessments in respect of deductions claimed by a performing artist after finding that most of the expenses had either not been shown to have been incurred in the course of deriving assessable income or had not been properly substantiated. [XGPH v FC of T 2022 ATC - 29 March 2022]
- **Collection and recovery; oppressive conduct** - The Federal Court has held that the Commissioner acted oppressively in seeking to enforce payment of the total debt in respect of alternative assessments issued to multiple taxpayers concerning the same income for the same income years, while the exercise of the Commissioner's discretion to defer payment time was also found to be infected by legal error. [Hyder & Ors v FC of T 2022 ATC - 22 March 2022]
- **Transfer pricing; carried forward loss** - The Federal Court has ruled in a transfer pricing case that a taxpayer company was not entitled to a carried forward loss of \$259 million claimed on the basis that it had made interest payments in accordance with a No Amendment Model over the life of the relevant loan note issuance agreement. [Singapore Telecom Australia Investments Pty Ltd v FC of T 2022 ATC - 22 March 2022]

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