

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

The new Federal Parliament resumed sittings on 26 July 2022 following the election of the Australian Labor Party Government.

The following are the progress of tax-related Bills which were introduced into Parliament:

■ Treasury Laws Amendment (2022 Measures No 1) Bill 2022

Treasury Laws Amendment (2022 Measures No 1) Bill 2022, which was introduced into the House of Representatives on 27 July 2022, proposes a number of amendments to tax and superannuation laws, and to delay the commencement of the Modernising Business Registers program, has received assent as Act No 35 of 2022 on 9 August 2022.

It contains measures including, strengthen tax transparency laws by lowering the reporting threshold to a turnover of \$100 million for Australian private companies. They remove grandfathering arrangements that exempted certain large proprietary companies from submitting audited annual reports to ASIC.

The Treasury Laws Amendment (2022 Measures No 1) Bill 2022 otherwise contains various measures amending the tax law including:

- recovery grants for Cyclone Seroja — to ensure certain grants paid to small business or primary producers will not be taxable in 2021–22 and later years;
- tax exemptions for FIFA Women's World Cup — to provide income tax and withholding tax exemptions to FIFA and its wholly owned subsidiary FWWC2023 Pty Ltd for activities associated with the 2023 FIFA Women's World Cup. The exemptions will apply from 1 July 2020 to 31 December 2028;
- make minor and technical amendments to various legislation including the Fringe Benefits Tax Assessment (FBT) to address unintended consequences and restore access to FBT exemptions for certain tax exempt not-for-profit societies and associations inadvertently excluded and prevent overlap between employees covered by the \$30,000 exemption cap and those covered by \$17,000 exemption cap;
- transitional provisions relating to the replacement of the Superannuation Complaints Tribunal with the Australian Financial Complaints Authority.

Amendments in the Bill will also delay commencement of the Modernising Business Registers program to 1 July 2026, or an earlier date specified by proclamation.

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Legislation Update (Cont.)

■ Treasury Laws Amendment (2022 Measures No 1) Bill 2022 (Cont.)

The Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020 provided for the transfer of certain registry functions and powers from ASIC to the Registrar (the Commissioner of Taxation). Under this Act, the amendments commence from a date fixed by proclamation or, if not commenced prior to 22 June 2022, automatically from 22 June 2022. The delay is to provide more time for supporting IT systems to be ready for the change.

■ Treasury Laws Amendment (2022 Measures No. 2) Bill 2022

Treasury Laws Amendment (2022 Measures No. 2) Bill 2022 has been introduced into parliament on 3 August 2022.

The Bill proposes to:

- empower the Commissioner to direct an entity to complete an approved record-keeping course where the Commissioner reasonably believes the entity has failed to comply with its tax-related record-keeping obligations as an alternative to existing financial penalties;
- require electronic platform operators to provide information on transactions made through the platform to the Australian Taxation office (ATO);
- removes the \$250 non-deductible threshold for work-related self-education expenses;
- enable small business entities to apply to the Small Business Taxation Division of the Administrative Appeals Tribunal (AAT) for an order staying, or otherwise affecting, the operation or implementation of decisions of the Commissioner that are being reviewed by the AAT; and
- allow individuals aged 55 and above to make downsizer contributions to their superannuation plan from the proceeds of selling their main residence.

■ Treasury Laws Amendment (Electric Car Discount) Bill 2022

The Treasury Laws Amendment (Electric Car Discount) Bill 2022 was introduced into the House of Representatives on 27 July 2022.

The Bill proposes to amend the FBT law to exempt from fringe benefits tax cars that are zero or low emissions vehicles that are first held and used on or after 1 July 2022.

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COVID-19 Stimulus Packages Updates

Federal Government reinstates COVID-19 payment measures to 30 September

In recognition of the risks associated with more infectious new variants through the winter period, in a media release, the Federal Government has announced the reinstatement of the Pandemic Leave Disaster Payment to 30 September 2022.

Eligibility for the payment will be backdated to 1 July 2022, to ensure that anyone unable to work owing to isolation requirements in this period, without access to paid sick leave, is supported. Access to these payments will commence from Wednesday 20 July 2022, with existing eligibility requirements to continue.

In addition, the Federal Government will also reinstate the Crisis Payment – National Health Emergency (COVID-19) until 30 September 2022, with eligibility also to be backdated to 1 July 2022. This is to support those affected by COVID-19 isolation requirements who receive an income support payment or ABSTUDY Living Allowance, and who are in severe financial hardship.

The Government has further agreed to create a new, temporary telehealth item to help general practitioners assess their patient's suitability for oral COVID-19 antivirals.

Access to Rapid Antigen Tests (RATs) will also be increased with National Cabinet agreeing to utilise existing RAT stocks funded through an equal cost share agreement with the Government.

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

OECD Updates

OECD releases progress report on Amount A of Pillar One

The Organisation for Economic Cooperation and Development (OECD) has released for consultation a progress report on Amount A of Pillar One.

The report outlines the technical work completed to date and includes a consolidated version of the operative provisions on Amount A (presented in the form of draft technical model rules).

The report does not include the rules on the administration of the new taxing right, including the tax certainty-related provisions, which are expected to be released before October 2022. Under a revised timeline, the new multilateral convention to implement Pillar One is due to be finalised by mid-2023 for entry into force in 2024.

Submissions in response to the Progress Report are due by 19 August 2022.

For more information, please refer to the [OECD](#) website and for a copy of the [progress report](#).

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Other Updates (Cont.)

Foreign investors - Increase to fees and penalties

In a media release, the Treasurer has announced an increase in foreign investment fees and penalties. From 29 July 2022, foreign investment application fees will double, which the Government expects will generate an additional \$455 million in budget revenue over the forward estimates.

Assistant Treasurer Stephen Jones says foreign investment fees will continue to make up only a small proportion of total foreign direct investment, with application fees ensuring the cost of administering the foreign investment framework is not borne by Australians.

For more information, please refer to the [Treasure's](#) website and the [Foreign Investment Review Board's](#) website.

ATO Rulings and Activity

International tax - ATO Taxpayer Alert issued on treaty shopping arrangements

The ATO has released a taxpayer alert (TA), TA 2022/2 - Treaty shopping arrangements to obtain reduced withholding tax rates on 20 July 2022. The TA outlines the ATO's concerns about treaty shopping arrangements designed to obtain the benefit of a reduced withholding tax rate under a double tax agreement (DTA) in relation to royalty or dividend payments from Australia.

TA 2022/2 highlights:

- that the ATO is likely to make follow-up enquiries where they detect treaty shopping arrangements;
- what the taxpayers should do if their arrangements are potentially within scope of the TA.

The TA briefly explains the ATO concerns from a taxation perspective and raises the potential application of anti-avoidance rules under the relevant Treaty (including the principal purpose test or the main purpose test) as well as the general anti-avoidance provision (Part IVA) and diverted profits tax.

Further, the ATO notes that it is currently reviewing certain international transactions of this nature and engaging with taxpayers and advisors appropriately.

The ATO also provides two separate examples of arrangements involving reduced dividend and royalty withholding taxes. It highlights several relevant characteristics of concern and also refers to the importance of contemporaneous documentation and other objective evidence supporting the commercial rationale (non-tax issues) for the structure, restructure or acquisition.

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

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ATO Rulings and Activity (Cont.)

Private company loans - TD 2022/11 - Income tax Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?

The ATO has issued Taxation Determination TD 2022/1 on unpaid present entitlements (UPEs) and sub-trust arrangements in the context of the deemed dividend rules in Division 7A of the Income Tax Assessment Act 1936.

This Determination describes when a private company provides financial accommodation where it is made presently entitled to income of a trust and either:

- that entitlement remains unpaid (an unpaid present entitlement (UPE)), or
- the trustee satisfies the present entitlement by setting aside an amount from the main trust fund (main trust) and holding it on a new separate trust (sub-trust) for the exclusive benefit of the private company beneficiary.

The Determination outlines the ATO's compliance approach, with practical examples, with respect to the application of Division 7A on how a private company beneficiary and trustee can implement complying loan agreements so that the provision of financial accommodation does not give rise to a deemed dividend.

The determination applies to trust entitlements arising on or after 1 July 2022. The ATO has also published a compendium of feedback received based on its consultation on draft Taxation Determination TD 2022/D1.

As a consequence, Taxation Ruling TR 2010/3 Income tax: Division 7A loans: trust entitlements and Law Administration Practice Statement PS LA 2010/4 Division 7A: trust entitlements were withdrawn with effect from 1 July 2022.

This Determination provides that, for trust entitlements arising on or before 30 June 2022, the Commissioner will not devote compliance resources to those sub-trust arrangements that correspond to the guidance in TR 2010/3 and PS LA 2010/4, including arrangements that commence on or after 1 July 2022 in respect of a trust entitlement arising on or before 30 June 2022.

Please refer to TD 2022/11 and Compendium of public advice [TD 2022/11EC](#) for more information.

ATO written binding advice - PS LA 2008/4 - Publication of edited versions of written binding advice

This Practice Statement has been refreshed to align with the recommended processes of the Office of the Australian Information Commissioner's Australian Privacy Principles guidelines (2019) to ensure confidentiality of taxpayer information and to meet the requirements of the Privacy Act 1988.

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

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ATO Rulings and Activity (Cont.)

ATO releases FATCA and Common reporting standard guidance

The ATO is responsible for data collection and exchanges with foreign jurisdictions for 2 automatic exchange of information (AEOI) regimes: the United States of America's Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS).

The ATO has released a guide and toolkit to assist financial institutions and CRS and FATCA obligations.

The objective of this guide is to provide practical information as part of a toolkit about how to conduct a self-review of the governance, due diligence, data and reporting systems of CRS and FATCA reporters. The guide outlines the core elements and what we look for when we review the following 3 fundamental areas of compliance:

- AEOI governance
- due diligence obligations
- reporting systems (and the accuracy of the information reported to the ATO, including data testing undertaken to verify CRS and FATCA reporting).

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

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

The ATO has issued an erratum to Taxation Determination TD 2022/7 dealing with aggregated turnover and the application of the "connected with" concept to partnerships, foreign hybrids and non-entity joint ventures.

This determination has been amended to address typographical errors. Please refer [here](#) for further information.

Reverse charge of GST on things purchased from offshore

The ATO has released a guide on how to account for goods and services tax (GST) and apply reverse charge GST on purchases from offshore.

Generally, the entity making an offshore purchase is responsible for making a reverse charge GST payment if the offshore purchase falls under the reverse charge rules. The reverse charge rules are outlined in the ATO guide.

Included in the guide, the ATO outlines information in relation to the following:

- What is reverse charge GST
- Requirement to reverse charge GST
- Choosing to reverse charge GST
- Reporting and correctly completing business activity statement (BAS)

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

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ATO Rulings and Activity (Cont.)

ATO releases guide on tax treatment of crypto assets

The ATO has published a guide to help taxpayers understand their tax obligations in respect of crypto assets. According to the ATO, crypto assets are considered an asset for capital gains tax (CGT) purposes, which must be reported when there has been a disposal. A disposal event arises when you no longer own the asset including :

- trading, selling or gifting crypto;
- exchanging one crypto asset for another crypto asset;
- converting crypto to a fiat currency, for example to Australian dollars (AUD); or
- using crypto to obtain goods or services.

The ATO emphasises the importance of record keeping for all crypto assets, in particular keeping records of crypto transactions as disposing of a crypto asset may incur a capital loss or capital gain, which needs to be included in the crypto asset owner's tax returns.

A capital loss can only be made when a crypto asset is disposed of and must be reported in the year it occurred. Paper losses on crypto assets cannot be claimed as a capital loss.

Crypto asset capital losses also are not allowed to be offset against other income like salary or wages but can be used to offset against capital gains from the current, or future financial years.

Other income derived from crypto, such as airdrops or staking rewards, also need to be included in tax returns at 'other income'.

If a taxpayer holds onto a crypto asset for 12 months or more, they may be eligible for a 50 percent CGT discount.

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

Property investment – ATO focus on rental property income and deductions

The ATO has indicated that income and tax deductions from rental properties is one of the four key areas they are focusing on this tax time. The ATO further mentioned that the rental property income and deductions is an area that's easy to get wrong, and needs extra care when lodging.

The ATO Random Enquiry Program has found that nine out of ten tax returns that reported rental income and deductions contain at least one error, even though most of those property owners were assisted by a registered tax agent. The ATO is therefore urging rental property owners to ensure they carefully review their records before declaring income or claiming deductions this tax time, and for registered tax agents to ask a few extra questions of their clients.

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

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ATO Rulings and Activity (Cont.)

Share investment - ATO releases guidance to assist preparation of tax positions and filings

The ATO has released a guide to help taxpayers record their shares and investments correctly in their tax returns.

According to the ATO, taxpayers can reduce the need for amendment down the track by avoiding some of the common mistakes, by:

- waiting until pre-filing is available as some investments take longer than others;
- checking the pre-filing information, if a share or investment is not there, add it in;
- even if any dividends and distributions are automatically reinvested into a reinvestment plan, it still need to be reported as income;
- capital gains tax (CGT) events can be driven by actions a company takes, such as liquidations, mergers, demergers or return of capital; and
- reporting capital losses on tax returns is important so they can be easily carried forward to offset future capital gains.

To ensure that their investments are accounted for in the tax return, the ATO says taxpayers should ask themselves these questions:

- Did you acquire any investments this year?
- Have you disposed of any investments this year (including gifts)?
- Do you have records of the transactions to substantiate any claims?

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

ATO guide on how to wind-up a Self-Managed Super Fund

The ATO has released a guide on the steps and obligations involved in winding up a Self-Managed Super Fund (SMSF). SMSF managers are advised to have an 'exit plan' in place at all time, as this will make it easier when the time does come. The ATO also advises that the exit plan should consider all the circumstances of the fund's members and be signed off by all trustees. Furthermore, the plan should be with the SMSF's records and be reviewed regularly.

When developing the exit plan, the following should be considered :

- how to deal with members benefits upon their death;
- appointing an enduring power of attorney;
- estimated costs of winding up;
- liquidity of funds' assets;
- being SuperStream ready to enable roll out of benefits; and
- who will keep copies of the fund's records and transactions.

By completing and lodging the final SMSF annual return, the ATO is informed that the fund is winding up.

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

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ATO Rulings and Activity (Cont.)

Top 100 and Top 1,000 public and multinational businesses and superannuation funds - ATO Agent Nomination pilot program

On 19 June 2022, the ATO started a pilot program with a small number of businesses who are part of the Top 100 and Top 1,000 public and multinational businesses and superannuation funds.

Participating businesses in the pilot now need to nominate an authorised agent, via online services for business, before the agent can link to their accounts digitally.

The ATO says participants need to do this when:

- engaging a new registered agent or authorised representative; or
- providing additional authorisation to an existing agent or authorised representative.

Once linked, the agent can act on the businesses' behalf, when using their online services or practice management software. This means that only authorised agents can establish a new link to taxpayer accounts.

Participants will see the agent nomination in the 'agent details' page in online services for business from 20 June 2022.

More information, please refer to the ATO website [here](#).

Class rulings issued:

- Class Ruling [CR 2022/62](#) - Totium Pty Ltd - health services provided to employees via The Exec Check program. This Ruling applies from 1 April 2021 to 31 March 2025.
- Class Ruling [CR 2022/63](#) - Crestone Holdings Limited - scheme of arrangement and dividends. This Ruling applies from 1 July 2021 to 30 June 2027.
- Class Ruling [CR 2022/64](#) - Western Areas Limited - employee share scheme - shares disposed of under scheme of arrangement. This Ruling applies from 1 July 2019 to 30 June 2022.
- Class Ruling [CR 2022/65](#) - National Australia Bank Limited - NAB Capital Notes 6. This Ruling applies from 1 July 2022 to 30 June 2033.
- Class Ruling [CR 2022/66](#) - Amalgamated Australian Investment Group Limited - demerger of Halo Technologies Holdings Ltd. This Ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/67](#) - Toyota Halo system - use for fringe benefits tax car logbook and odometer records. This Ruling applies from 1 April 2022 to 31 March 2026.

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ATO Rulings and Activity (Cont.)

Class rulings issued (Cont.):

- Class Ruling [CR 2022/68](#) - Ardent Leisure Group Limited - return of capital and special dividend. This Ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/69](#) - Macquarie Group Limited - Macquarie Capital Notes 6. This Ruling applies from 1 July 2022 to 30 June 2033.
- Class Ruling [CR 2022/70](#) - Pambula & District Community Development Limited - off-market share buy-back. This Ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/71](#) - Westpac Banking Corporation - Westpac Capital Notes 9. This Ruling applies from 1 July 2022 to 30 June 2031.
- [Addendum to CR 2022/60](#) - BHP Group Limited – dividend by way of in specie distribution of Woodside Energy Group Ltd shares. This Ruling applies from 1 July 2021 to 30 June 2022.
- [Erratum to CR 2022/61](#) -Minotaur Exploration Ltd – reduction of share capital and scrip for scrip roll-over. This Ruling applies from 1 July 2021 to 30 June 2022.

Other rulings issued:

- [Erratum to TD 2022/7](#) - Income tax: aggregated turnover – application of the 'connected with' concept to partnerships, foreign hybrids and non-entity joint ventures.
- [Addendum to GSTR 2012/3](#) - Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels.
- [PR 2022/6](#) - Tax consequences for a customer participating in CommBank Yello with the Commonwealth Bank of Australia. This Product Ruling applies from 27 July 2022. It applies only to the specified class of entities that receive a benefit under the scheme from 27 July 2022 until 30 June 2025, being its period of application.

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Latest Australian Tax Cases

- **Capital gains tax (CGT)** - Due to an administrative oversight, a company was deregistered and reinstated 18 days later. On deregistration, the company's property vested in ASIC and, then, on reinstatement, revested in the company. An order under s 601AH(3)(d) of the Corporations Act was obtained that shares held by it did not vest in ASIC on deregistration. Accordingly, a potential capital gains tax liability arising from a change of ownership of the shares was avoided. The Court orders that Pherous Holdings Group Pty Ltd (ACN 106 590 050) is deemed and taken at all times to have remained the legal and beneficial owner of 20,740,000 ordinary shares in Corporate Travel Management Ltd (ACN 131 207 611) during the period from 8 March 2019 to 26 March 2019 (inclusive). [Pherous Holdings Group Pty Ltd, re Pherous Holdings Group Pty Ltd (2022) 40 ACLC, [2022] FCA 613 - 20 May 2022]
- **Assessable income** - The AAT has found that a special dividend paid by BHP Group Ltd to shareholders following the sale of assets was a dividend paid out of profits and thus assessable to the taxpayer as ordinary income. [Douglas v FC of T 2022 ATC - 30 June 2022]
- **Employee/contractor relationships** - The Federal Court has found that a lecturer engaged by a higher education provider was an employee of that provider within both the ordinary meaning of the term and the extended definition in the superannuation guarantee legislation. [JMC Pty Ltd v FC of T 2022 ATC - 29 June 2022]

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