

# 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

Since our last update, the following are the legislation / regulations that have been passed and/or introduced:

### Treasury laws 2022 No 3 Bill and related Bills now law

Legislation relating to foreign acquisitions and takeover penalties, data sharing, tax treatment of visa programs, and modification powers in response to COVID-19 have received assent.

The following Bills received assent on 5 December 2022:

- **Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2022** (Act No 73 of 2022)
- **Income Tax Amendment (Labour Mobility Program) Bill 2022** (Act No 74 of 2022), and
- **Treasury Laws Amendment (2022 Measures No 3) Bill 2022** (Act No 75 of 2022).

### Family Assistance Legislation Amendment (Cheaper Childcare) Bill now law

The **Family Assistance Legislation Amendment (Cheaper Childcare) Bill** has received assent as Act 66 of 2022.

The Act increases the maximum Child Care Subsidy (CCS) rate from 85% to 90% for families for the first child in care and increase the CCS rate for all families earning less than \$530,000 in household income.

Families earning up to \$80,000 will receive a CCS rate of 90%, and families earning over \$80,000 will receive a CCS rate that tapers down by one percentage point for each additional \$5,000 of family income until it reaches zero percent for families earning \$530,000.

The Act also implements a range of measures to improve childcare provider transparency and accountability, improve data and analytics capability, and strengthen payment integrity.

### Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022 (Cth)

**Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022 (Cth)** was introduced into the House of Representatives on 23 November 2022. This bill provides for the electronic signing of documents under the Corporations Act ("the Act"), virtual hearings and examinations by regulators, the electronic publication of notices and the incorporation of legislative instruments into the Act.

December 2022



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## Legislation Update (Cont.)

### Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022

Regulations have been made to exclude certain entities with complex tax affairs or significant international dealings from the shortened 2-year period of review for income tax assessments.

Access to a shortened period of review of 2 years instead of 4 years was extended to include medium business entities (aggregated turnover between \$10 million and \$50 million) under amendments made by the Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020. The **Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022** ensures the 4-year amendment period continues to apply for entities with complex affairs or significant international dealings.

An exposure draft and explanatory materials of the regulations were released for public consultation in August 2022. Changes that have been incorporated in the regulations as made provide more certainty to when the period of review would apply to entities in relation to related party dealings and the research and development (R&D) tax incentive.

The regulations apply to assessments lodged after 9 December 2022 that relate to income years starting on or after 1 July 2021.

### Treasury laws 2022 No 4 Bill

Treasury laws 2022 No 4 Bill has been introduced into Parliament on 30 November 2022.

The Bill contains provisions for the digital games tax offset; tax treatment of digital currency; reducing the compliance burden for FBT record keeping; skills and training boost; technology investment boost; superannuation financial reporting and auditing; deductible gift recipients; and taxation of military superannuation benefits (to reverse the decision in *FC of T v Douglas* 2020 ATC; [2020] FCAFC 220).

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

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## OECD Updates

### Rules for Reporting by Digital Platforms - OECD update on exchange of information

The OECD has announced that 22 jurisdictions have agreed to exchange information in respect of income earned on digital platforms and offshore financial assets.

The multilateral competent authority agreement (MCAA) for the automatic exchange of information under the OECD Model Rules for Reporting by Digital Platforms has been signed which will allow jurisdictions to automatically exchange information collected by operators of digital platforms with respect to transactions and income realised by platform sellers in the sharing and gig economy and from the sale of goods through such platforms. In addition, a separate MCAA supporting the Common Reporting Standard Mandatory Disclosure Rules has been signed by 15 jurisdictions. This agreement will enable the annual automatic exchange of information collected from intermediaries that have identified arrangements to circumvent the Common Reporting Standard (CRS) and structures that disguise the beneficial owners of assets held offshore with the jurisdiction of tax residence of the concerned taxpayers.

Significant global progress on transparency and exchange of tax information has also been reported by the Global Forum. The OECD has published the first peer reviews with effectiveness ratings for 99 countries and jurisdictions which had committed to start automatic exchange of information in 2017 or 2018. The report shows that almost all jurisdictions have put in place the necessary legal frameworks and are exchanging information without significant timing or technical issues.

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

## ATO Rulings and Activity

### Taxation Administration: Classes of Electronic Payment System Transactions Exempt from Being Reported in Third Party Reports Determination 2022

The Australian Taxation Office (ATO) issued an updated legislative instrument which exempts electronic payment system administrators from having to report certain classes of transactions.

This instrument:

- exempts administrators of a payment system (within the meaning of the Payment Systems (Regulation) Act 1998) from having to include specified classes of transactions in reports prepared and lodged in relation to table item 9 in section 396-55 of Schedule 1 to the Taxation Administration Act 1953;
- maintains exemptions for certain specified classes of transactions where the administrator of a payment system moves from a payment platform previously exempted to a new payment platform; and
- applies with retrospective effect from 1 July 2022.

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

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## ATO Rulings and Activity (Cont.)

### PCG 2017/2 : Simplified transfer pricing record-keeping options

The ATO has updated its guidance on simplified transfer pricing record-keeping options.

The update to Practical Compliance Guideline PCG 2017/2 provides the maximum interest rate for low-level inbound loans and the minimum interest rate for low-level outbound loans for the 2023 income year. The new interest rate for both options is 5.65%.

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

### TR 2022/3: Personal services income and personal services businesses

The ATO has finalised its guidance on the personal services income (PSI) and personal services business (PSB).

Taxation Ruling [TR 2022/3](#) combines and updates Taxation Rulings [TR 2001/7](#) Income tax: the meaning of personal services income and [TR 2001/8](#) Income tax: what is a personal services business, but does not change the principles established in the 2 rulings.

As a result, TR 2001/7 and TR 2001/8 have been withdrawn.

The ruling forms part of the ATO's view on PSI and should be read in conjunction with Taxation Rulings [TR 2003/6](#) Income tax: attribution of personal services income and [TR 2003/10](#) Income tax: Deductions that relate to personal services income.

TR 2022/3 explains:

- the meaning of PSI
- who is not subject to the PSI rules
- a PSB
- the PSB tests
- PSB determinations, and
- the application of Pt IVA of ITAA 1936 to PSI rules.

In addition, the ruling contains examples to help taxpayers understand the PSI rules and PSB tests.

The ruling was initially issued as TR 2021/D2 in draft form.

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## ATO Rulings and Activity (Cont.)

### Family Trusts - Guidance on section 100A reimbursement agreements

The ATO has finalised guidance on reimbursement agreements under s 100A of the ITAA 1936 and its approach to associated compliance activity.

#### ■ **TR 2022/4 Income tax: section 100A reimbursement agreements**

This Ruling finalises draft **TR 2022/D1** and contains further guidance on:

- when the purpose of an adviser is relevant for s 100A(8)
- the relevance of cultural factors in determining whether a dealing is to achieve family or commercial objectives
- the allocation of capital gains when s 100A applies to a present entitlement, and
- relevant issues in the Guardian and Bblood decisions currently subject to appeal in the Full Federal Court.

#### ■ **PCG 2022/2 Section 100A reimbursement agreements – ATO compliance approach**

This Guideline:

- sets out how the ATO assesses risk for a range of trust arrangements to which section 100A of the Income Tax Assessment Act 1936 might apply and aims to provide more certainty to taxpayers and advisers by setting out how we will engage with them;
- applies before and after its date of issue; for entitlements arising before 1 July 2022, the Commissioner will apply the guidance first published on our website in 2014 to the extent it is more favourable to the taxpayer's circumstances;
- provides more examples to help taxpayers understand how the Commissioner will dedicate compliance resources for the arrangements that are low risk (green zone) or high risk (red zone), and
- should be read in conjunction with Taxation Ruling TR 2022/4 Income tax: section 100A reimbursement agreements.

### Data matching: private health insurance statements

According to a gazette notice, the ATO will acquire private health insurance (PHI) statement data from relevant providers for 2014–15 through to 2027–28.

The data items that will be collected include identification details of software providers, PHI providers and insured individuals, as well as PHI statement details. The ATO will acquire and match the data for the administration and enforcement of tax and superannuation laws. The data will be made available in the ATO's pre-filing services and used to determine liability for Medicare levy surcharge and eligibility for the PHI rebate.

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

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## ATO Rulings and Activity (Cont.)

### Class rulings / addendum to class ruling issued/withdrawn:

- Class Ruling [CR 2022/103](#) Telstra Corporation Ltd — restructure — employee shares schemes — treatment of shares or rights. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/104](#) Telstra Corporation Ltd — top hat restructure. This ruling applies to the 2022–23 income year, in which the Top Hat Restructure occurred.
- Class Ruling [CR 2022/105](#) Thorn Group Ltd — return of capital and share consolidation. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/106](#) Bank of Queensland Ltd — BOQ Capital Notes 3 has been issued. It applies from 1 July 2022 to 30 June 2032.
- Class Ruling [CR 2022/107](#) Bardoc Gold Ltd — demerger and scrip for scrip roll-over. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/108](#) Commonwealth Bank of Australia — CommBank PERLS XV Capital Notes. The ruling applies from 1 July 2022 to 30 June 2031.
- Class Ruling [CR 2022/109](#) Virtus Health Ltd — takeover and special dividend. The ruling applies from 1 July 2021 to 30 June 2023.
- Class Ruling [CR 2022/110](#) Heidelberg District Community Enterprise Ltd — off-market share buy-back. The ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2014/7](#) Income tax: payments assigned to representative public dentists (RPDs) under the Child Dental Benefits Schedule (CDBS) is withdrawn with effect from 24 November 2022, as the matters dealt with in the ruling are now covered by Class Ruling [CR 2022/100](#).
- Addendum to Class Ruling [CR 2021/90](#) Victorian Department of Transport — early retirement scheme 2021–2022. The ruling has been amended by omitting the words “31 December 2022” at paras 5, 19 and 40, and substituting “30 June 2023”. The addendum applies from 16 November 2022.

### Other ruling issued:

- Addendum to [PR 2021/3](#) Income tax: taxation consequences of changing the portfolio structure, contributing to and partially redeeming an investment in a unit in the Perpetual WealthFocus Investment Advantage Fund — 2021. It amends [PR 2021/3](#) to incorporate new scheme documents. The addendum applies before and after its date of issue.

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## Latest Australian Tax Cases

- **Deduction:** The AAT has varied the Commissioner's decision by allowing the applicant to deduct from his assessable income in the 2014 tax year the \$200,000 settlement payment for litigation and legal costs made by him on 29 January 2014. [XPTC v FC of T 2022 ATC – AATA 4147, 28 November 2022]
- **GST.** The AAT has held that a taxpayer failed to prove an amended GST assessment and associated shortfall penalties were excessive or otherwise incorrect. [The Trustee for the NFTA Unit Trust v FC of T [2022] AATA 4132 - 5 December 2022.]
- **R&D tax incentive.** The AAT has held in T.D.S Biz Pty Ltd and Commissioner of Taxation (Taxation) [2022] AATA 3543 that the taxpayer was not entitled to the research and development (R&D) tax incentive for supporting R&D activities conducted overseas. [T.D.S BIZ PTY LTD and Commissioner of Taxation (Taxation) [2022] AATA 3543 - 25 October 2022.]

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