

June 2021



Collaborating with Andersen Global in Australia

Monthly Tax Update

In this edition of the Monthly Tax Update for June 2021, we provide the recent updates in legislation along with tax developments in the areas of corporate tax, individual tax and international tax. We also include the ATO's recent activities, including its publications, class rulings issued in the past month, latest Australian tax cases and other news in this edition.

Federal Budget 2021/22

In the Federal Budget 2021/2022 handed down on 11 May 2021, the Government has outlined a few key economic forecast indicators and a few key measures were announced. A&A has published a special edition of Federal Budget Tax Update and provided our insight and commentary on what these changes may mean for you, your employees and your business.

Some of the key highlights included in the Budget publication are:

- Personal tax cuts - unchanged
- Low to middle income tax offset 1 year extension
- Child care offset amended from 1 July 2022
- Amendments to employee share schemes
- 30% tax offset for gaming developers
- Choosing effective life for intangibles
- Superannuation changes, expansion of downsizer, removal of work test & \$450 minimum threshold
- Small business to use AAT for suspension of collection on disputed debt
- New Patent box
- Proposed changes to tax residency

You can read the A&A Federal Budget 2021/22 tax update [here](#).

Legislation Update

Since our last update, the following new Commonwealth tax and superannuation legislation has been introduced into Federal Parliament:

Treasury laws 2021 No 3 Bill passes House

The Treasury Laws Amendment (2021 Measures No 3) Bill 2021 (the Bill) has passed the House of Representatives.

The Bill proposes to:

- increase the Medicare levy and Medicare levy surcharge thresholds in line with movements to the Consumer Price Index;
- make certain government payments to thalidomide survivors exempt from income tax;
- make certain disaster recovery grant payments non-assessable non-exempt income; and
- make changes to provide for certain entities to become deductible gift recipients.

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

Monthly Tax Update

Legislation Update (Cont.)

Treasury laws 2021 No 4 Bill introduced

Treasury Laws Amendment (2021 Measures No 4) Bill 2021 (the Bill) was introduced into the House of Representatives on 26 May 2021. The Bill proposes amendments to tax law to give effect to a number of 2020-21 and 2021-22 Federal Budget announcements including measures to:

- **FBT exemption to support retraining and reskilling (Schedule 1 to the Bill)** - provide employers with an exemption from fringe benefits tax on providing training or education to a redundant, or soon to be redundant, employee for the purpose of assisting that employee to gain new employment (applicable to benefits provided on or after 2 October 2020).
- **Junior minerals exploration incentive extension (Schedule 2 to the Bill)** - extend the operation of the junior minerals exploration incentive for a further four years to continue to encourage mineral exploration companies to undertake greenfields minerals exploration in Australia through to the 2024-25 income year.
- **Exempting granny flat arrangements from CGT (Schedule 3 to the Bill)** - provide a targeted CGT exemption for CGT events that occur on entering into, varying or terminating formal written arrangements under which an older person or person with a disability acquires, varies or disposes of a granny flat interest (applicable from the first 1 July after the Bill receives Royal Assent).
- **New Zealand sports team members and support staff (Schedule 5 to the Bill)** - amends the International Tax Agreements Act 1953 (Cth) to disregard days spent in Australia due to COVID-19 by New Zealand sportspersons on teams participating in cross-border competitions and their support staff in determining whether income derived from such competitions is taxable in Australia. Schedule 5 applies to income in the 2020-21 and 2021-22 income years.
- **Low and Middle Income Tax Offset (LMITO) (Schedule 6 to the Bill)** - make the LMITO available in the 2021-22 income year.

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

Monthly Tax Update

Legislation Update (Cont.)

Technical amendments to tax laws

Exposure draft legislation and regulations have been released covering proposed minor and technical amendments to taxation laws.

The exposure draft materials contain a number of amendments, including the following taxation measures:

- clarification that a country by country reporting (CbC) entity is to provide a statement on the global operations and pricing policies of other members of the CBC reporting group for the income year to which the statement relates rather than the previous income year;
- clarification of how a company may change its loss carry back choice;
- ensuring a franking credit arises for a company in particular circumstances where the company's tax offset refund is subsequently reduced;
- clarification that capital works are included within the requirement to spend AUD 100 million on certain assets for the purposes of the alternative test for eligibility for the temporary full expensing measure; and
- expanding the operation of the modified tax cost setting rule currently applying to finance leases to cover all leases where the joining entity is a lessor or lessee of a depreciating asset.

Comments on the exposure draft materials were due on 25 May 2021 and the consultation process has now been completed.

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

COVID-19 Stimulus Packages Updates

COVID-19: penalty remission for SGEs

The ATO acknowledges the challenges faced by and impacts to significant global entity (SGE) as a result of COVID-19 conditions globally. The ATO will remit failure to lodge on time penalties to nil for some significant global entities (SGEs) lodging their 2021 income tax returns late due to the impacts of COVID-19 until 30 August 2021.

The automatic remission is available for SGEs having difficulty meeting their income tax return or General Purpose Financial Statements (GPFS) lodgment obligations if they:

- have a 31 December 2020 substituted accounting period
- have an income tax return lodgment due on 15 July 2021; a lodgment concession is available to 31 July 2021 for returns lodged electronically by a tax agent, and
- lodge their 2021 income tax return or corresponding GPFS less than 30 days late.

The ATO will not apply blanket extensions to lodgment due dates for any SGE lodgment obligations and will not be able to provide bulk deferrals to registered tax agents with SGE clients. For more details, please refer [here](#).

June 2021



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Monthly Tax Update

COVID-19 Stimulus Packages Updates (Cont.)

COVID-19: temporary support for lockdown affected workers

In a media released on 3 June 2021, the Government has announced a temporary COVID-19 disaster payment for workers who have had their work hours and income significantly affected due to state lockdowns.

Eligible recipients with liquid assets of \$10,000 or less will receive up to \$500 per week for losing 20 hours or more of work and \$325 per week for losing under 20 hours.

Eligible recipients must be:

- Australian citizens, permanent residents and eligible working visa holders who reside or work in a Commonwealth declared hotspot;
- workers unable to attend work and earn an income due to state-imposed health restrictions for more than a week, and
- those who have exhausted any leave entitlements (other than annual leave) or other special pandemic leave.

The weekly support payment will be made for the second and any subsequent weeks of restrictions.

Individuals who are already receiving income support payments, business support payments or the Pandemic Leave Disaster Payment will not be eligible.

OECD Updates

OECD supports developing countries in the time of COVID-19

On 19 May 2021, the OECD released a new report "Tax Co-operation for Development: Progress report in the COVID-19 era". This report sets out the range of the OECD's work with developing countries in 2020. These include participating in the development and implementation of inclusive international standards; country-level capacity building programmes delivered through a variety of platforms and modalities; guidance and data developed and analysed by world-class experts on tax policy and administration; and through partnerships with international organisations, regional tax organisations and other stakeholders.

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

June 2021



Collaborating with Andersen Global in Australia

Monthly Tax Update

Other Updates

R&D Tax Incentive customer portal launched

A new customer portal has been launched to make it easier for companies to manage their applications for the Research and Development (R&D) tax incentive.

Users can now log in to the portal and start drafting their application. Applications can be submitted via the portal from 5 July 2021.

The portal includes:

- an online space for users and their authorised representatives, to manage their interactions with the R&D tax incentive program
- an updated application form to assist users understand the eligibility criteria and how to address these in their applications, and
- improved security using myGovID digital identity services, linked to the company's ABN using Relationship Authorisation Manager.

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

ATO Rulings and Activity

FBT car parking threshold for 2021-22 FBT year

The ATO has advised that the car parking threshold for the FBT year commencing 1 April 2021 is AUD 9.25 (up from AUD 9.15). For this and other key FBT thresholds for the year commencing 1 April 2021, refer to ATO listing [here](#).

Car limit for 2021-22

The car limit for capital allowance purposes for 2021-22 has increased to \$60,733 (up from \$59,136 for 2020-21).

The car limit is used, among other things, in s 40-230 of ITAA 1997 to work out the first element of the cost of certain cars to which the car limit applies.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO updates – Tax time 2021 forms and temporary full expensing schedule

The ATO has released the various forms, schedules and instructions for the 2021 tax return lodgement season, including:

- Company tax return 2021 and instructions
- Capital gains tax schedule
- Dividend and interest schedule
- Individual tax return 2021 (for agents) and instructions
- Interposed entity election or revocation 2021
- Guide to depreciating assets 2021.

The full list can be accessed under “Tax Time 2021” on the ATO's Forms and instructions page [here](#).

Permanent establishments

■ COVID-19: updated ATO guidance on permanent establishments

The ATO has updated its guidance on whether the presence of employees in Australia, due to the impacts of COVID-19, may create a permanent establishment.

The ATO will not apply compliance resources to determine if a taxpayer has a permanent establishment in Australia if:

- the taxpayer did not otherwise have a permanent establishment in Australia before the effects of COVID-19
- the temporary presence of employees in Australia continues to solely be as a result of COVID-19 related travel restrictions
- those employees temporarily in Australia will relocate overseas as soon as practicable following the relaxation of international travel restrictions, and
- the taxpayer has not recognised those employees as creating a permanent establishment or generating Australian source income in Australia for the purpose of the tax laws of another jurisdiction.

The above approach applies until 31 December 2021. From 1 January 2022, taxpayers will be required to consider whether ongoing arrangements give rise to a permanent establishment in Australia. For more details, please refer [here](#).

■ Permanent establishment ruling (TR 2002/5) updated

The ATO has updated its ruling on permanent establishment on 12 May 2021.

Taxation Ruling TR 2002/5 considers the phrase “a place at or through which [a] person carries on any business” in the definition of permanent establishment in s 6(1) of ITAA 1936.

The addendum inserts an example of when a period of 6 months or more might not constitute temporal permanence. It applies from 1 March 2020. For more details, please refer [here](#).

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Class rulings issued:

- Class Ruling **CR 2021/33** - Red Hot Australia HoldCo Pty Ltd — scrip for scrip roll-over. The ruling applies from 1 July 2020 to 30 June 2021.
- Class Ruling **CR 2021/34** - Australian Mines Ltd — demerger of Norwest Minerals Ltd. The ruling applies from 1 July 2020 to 30 June 2021.
- Class Ruling **CR 2021/35** - Coca-Cola Amatil Ltd — scheme of arrangement and dividend. The ruling applies from 1 July 2020 to 30 June 2021.
- Class Ruling **CR 2021/36** - CSIRO — studentship or internship stipends. The ruling applies from 1 July 2020 to 30 June 2025.
- Class Ruling **CR 2021/37** - Western Australian Debating League Incorporated — payments to league members. The ruling applies from 1 July 2020 to 30 June 2022.
- Class Ruling **CR 2021/38** - Saracen Mineral Holdings Ltd — scheme of arrangement and special dividend. The ruling applies from 1 July 2020 to 30 June 2021.
- Class Ruling **CR 2021/39** - WPP AUNZ Ltd — scheme of arrangement, FY 2020 Total Dividend and Special Dividend. The ruling applies from 1 July 2020 to 30 June 2021.

Latest Australian Tax Cases

- **Deductions** - The Full Federal Court has dismissed the taxpayers' appeal from the decision reported at 2020 ATC, after agreeing with the primary judge that upfront payments made as part of lease and licence agreements to operate McDonald's stores were capital in nature. [Mussalli & Ors v FC of T 2021 ATC - 14 May 2021]
- **Assessable recoupment** - The AAT has held that an amount of \$250,000 received by a taxpayer in consideration of him releasing the insurer from all liability under his insurance policy (and subsequent to an earlier insurance payment received for lost rental income) was an assessable recoupment pursuant to s 20-20 of the Income Tax Assessment Act 1997. [Dessent v FC of T 2021 ATC - 11 May 2021]
- **Capital allowances** - The Federal Court has held that a party to joint venture agreements in relation to a natural gas project was entitled to a tax deduction under Div 40 of the Income Tax Assessment Act 1997 for the cost of acquiring an additional proportional interest in statutory titles collectively held by the project's participants (which conferred authority to explore for petroleum). [Shell Energy Holdings Australia Ltd v FC of T 2021 ATC - 12 May 2021]