

June 2022



Collaborating with Andersen Global in Australia

# 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.

## Australia has a new Federal Government – Expected tax changes on the horizon

The Australian Labor Party (ALP) has been elected to form government in the House of Representatives after winning the federal election in May 2022, with a narrow majority in the lower house. The ALP will not have a straight majority in the Senate and will have to cooperate with the Crossbench to pass legislation.

In terms of expected tax changes, the ALP suggested the following tax measures if elected in the run-up to the election:

- supplying an employer-provided electric car with an FBT exemption (subject to depreciation cost limit ceiling)
- From July 1, 2023, multinational corporations' debt deductions will be limited to 30% of profits.
- From 1 July 2023, major corporations will be restricted from abusing Australia's tax treaties by holding intellectual property in tax havens.
- enacting the OECD's Two-Pillar proposal for a worldwide minimum tax of 15%
- revising the Pacific Australia Labour Mobility Schemes, which would see the government cover all upfront travel costs over \$300 starting in January 2023.

The ALP had previously agreed to keep the Coalition's "stage 3" personal tax cuts if it won government. Costing around \$19 billion a year, the "stage 3" tax cuts will see everyone earning between \$45,000 and \$200,000 paying 30 per cent in tax from 2024. The changes scrap the 37 per cent tax bracket for those earning above \$120,000, making those earners the biggest winners from the cuts.

These proposed measures have not been released in any form as at the time of writing. We will keep you abreast of changes to any tax legislation as they come to hand.

## Legislation Update

Since our last update, there have been no legislative updates from the Parliament due to it being prorogued and dissolved prior to the Federal Election. The date at which the new Parliament will resume is not yet been finalised, although new Prime Minister Anthony Albanese has indicated 26 July 2022.

# Monthly Tax Update

## OECD Updates

Tax challenges of digitalisation: OECD invites public input on tax certainty aspects of Amount A under Pillar One

As part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS to implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, the OECD is seeking public comments on two consultation documents relating to tax certainty:

- A Tax Certainty Framework for Amount A; and
- Tax Certainty for Issues Related to Amount A under Pillar One.

A central element of Amount A is an innovative Tax Certainty Framework for Amount A which guarantees certainty for in-scope groups over all aspects of the new rules, including the elimination of double taxation.

A tax certainty process for issues related to Amount A will ensure that in-scope Groups will benefit from dispute prevention and resolution mechanisms to avoid double taxation due to issues related to Amount A (e.g. transfer pricing and business profits disputes), in a mandatory and binding manner. An elective binding dispute resolution mechanism will be available only for issues related to Amount A for developing economies that are eligible for deferral of their BEPS Action 14 peer review and have no or low levels of MAP disputes.

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

## Other Updates

Directors take note! - ASIC outlines key focus areas for 30 June 2022 reporting

ASIC is urging directors, preparers of annual and half-year reports and auditors to assess whether companies' 2022 annual and half-year financial reports provide useful and meaningful information for investors and other users, as it highlights key focus areas for reporting by companies for the reporting period ending 30 June 2022.

These key areas are:

- asset values;
- provisions;
- solvency and going concern assessments;
- events occurring after year end and before completing the financial report; and
- disclosures in the financial report and Operating and Financial Review (OFR)

The Operating and Financial Review (OFR) should complement the financial report and tell the story of how the entity's businesses are impacted by both COVID-19 and non-COVID-19 factors, ASIC says. The commission also advises directors and management to assess how the company's performance, the value of its assets and its provisions, and business strategies may be affected by current and future uncertainties and risks. For more information, please refer [here](#).

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## ATO Rulings and Activity

### Four key focus areas for the ATO Tax Time 2022 – Individual taxpayers

The ATO has on 16 May 2022 announced four key focus areas that the taxpayers should be aware of for Tax Time 2022.

The four focus areas the ATO will be focusing on are:

1. record-keeping;
2. work-related expenses;
3. rental property income and deductions; and
4. capital gains from crypto assets, property, and shares

For more information and details on the key focus areas, please refer [here](#).

### ATO update: Key changes for Tax Time 2022

The ATO has released a guide and measures to be aware of when completing 2022 tax returns.

Here are all the key changes for Tax Time 2022:

- COVID-19 payments
- Deduction for COVID-19 tests
- Working holiday maker
- Granny flat arrangements and CGT
- Temporary full expensing extended to 30 June 2023
- Loss-carry back tax offset tool
- Research and development tax incentive amendments
- Film tax offsets
- Offshore banking unit regime
- Change in tax rate for base rate entities
- New and modified items in the 2022 Company tax return
- Removed items in the 2022 Company tax return
- Removed items in the AMIT tax return
- Changes to capital allowance rules

For more information on the key changes relevant to each type of entities, please refer [here](#).

# Monthly Tax Update

## ATO Rulings and Activity (cont.)

### Changes to tax-deferred employee share schemes from 1 July 2022

The ATO has issued a guide in respect of the changes to tax-deferred employee share schemes (ESS) from 1 July 2022.

As a result of the changes, employees will no longer have a taxing point if they cease their employment on or after 1 July 2022. Accordingly, employers will no longer need to report to the ATO when an employee with ESS interests ceases employment with the company on or after this date.

Employees will still need to pay tax at other taxing points under a tax-deferred scheme, and this will need to be reported using existing labels.

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

### Donating crypto assets

The ATO has released information on things taxpayers need to consider if they are thinking of donating crypto assets. According to the ATO, the things to consider about donating crypto assets are:

- the taxpayers need to find out if the not-for-profit organisation is set up to accept crypto assets
- transfer the crypto assets into the recipient's legal name.

In order to claim a tax deduction for a gift or donation of a crypto asset, it must meet:

- the gifts and donations conditions
- gift types, requirements and valuation rules.

When considering the gifts and donations conditions, gift types, requirements and valuation rules, crypto assets are property.

In general, taxpayers can only claim a tax deduction for gifts or donations to organisations that have a status as a deductible gift recipient (DGR). Any gifts or donations made to social media or crowdfunding platforms are not tax deductible, unless the recipient of the gift or donation has DGR status. Taxpayers can check the DGR status of an organisation [here](#).

Another important issue to be aware of is the capital gains tax (CGT) consequences when donating crypto assets. This is because crypto assets are property, donating crypto assets is a CGT event, similar to any other disposal of an asset.

If CGT applies to a gift of crypto assets, they are received at the market value of the asset at the time of the CGT event. Generally, there are no CGT payable when donating crypto assets to DGRs for:

- gifts made under a will (testamentary gifts) — but no tax deductions can be claimed for these
- property donated under the Cultural Gifts Program
- personal use assets.

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

Most taxpayers will need to report the crypto asset transaction at both the CGT and the gifts and donations sections of their tax return.

For more information about tax treatment of crypto assets, please refer [here](#).

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

## Proposed safe harbour for non-commercial losses

According to the ATO, in recent years, special circumstances such as flood, bushfire and COVID-19 impacts may have caused the non-commercial loss rules in Div 35 of ITAA 1997 to apply to a taxpayer's business. If this happens, and a taxpayer does not meet one of the other requirements for the loss to be offset against their other income, the taxpayer will need to seek the Commissioner's discretion in s 35-55 to allow them to do so.

The ATO has issued Draft Practice Compliance Guideline PCG 2022/D2 – Non-commercial business losses – Commissioner's discretion regarding flood, bushfire or COVID-19, outlining a safe harbour that allows a taxpayer to manage their tax affairs as if the Commissioner had exercised the discretion in s 35-55(1)(a). It does not prevent the taxpayer from applying for an exercise of the discretion in the usual way if their circumstances do not fall within the terms of the safe harbour.

To qualify for the safe harbour, the taxpayer needs to satisfy all of the following criteria in an income year and the taxpayer made a tax profit from their business activity in the immediately preceding income year:

- a) the taxpayer satisfies the income requirement in s 35-10(2E)
- b) the taxpayer made a loss from their business activity
- c) their business activity was affected by one or more of the following events:
  - flood (including where the taxpayer received ATO flood support)
  - bushfire (including where the taxpayer qualified for an ATO bushfire lodgment and payment deferral), or
  - a government-imposed lockdown, business closure and/or restriction due to COVID-19.
- d) the event meant that:
  - the taxpayer was not able to carry on their business activity, or unable to carry it on to the same scale as they usually carry on their business activity, or
  - some or all of their customers were not able to access their business activity, or access it in the same way as they usually did.
- e) the taxpayer has not applied for a private ruling requesting the Commissioner exercise the "special circumstances" discretion in relation to their business activity in the relevant income year, and
- f) the taxpayer has evidence to support that they are eligible for the safe harbour.

The Commissioner intends to apply the finalised guideline for the 2019–20, 2020–21 and 2021–22 income years.

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

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Base rate entities and the lower company tax rate

The ATO has reported that some corporate tax entities in privately owned and wealthy groups and public and international groups are mistakenly claiming to be a Base Rate Entity (BRE) and using a lower company tax rate when they are not entitled to.

The ATO reminded that incorrectly claiming the lower rate of company tax will affect the rate of tax paid in an income year and may also affect the maximum franking credit subsequently allocated to a frankable distribution.

The ATO has released a guide to help corporate entity to determine if it is eligible for a reduced company tax rate of 25%. Please refer [here](#) for the ATO guide.

A BRE is eligible to a lower company tax rate of 25% for the 2021-2022 income year onwards. The full company tax rate of 30% applies to all companies that are not eligible for this lower company tax rate.

To be a BRE, a company needs to meet the following eligibility criteria:

- aggregated turnover for the income year is less than the aggregated turnover threshold (which is \$50 million from the 2018–19 income year onwards, or \$25 million for the 2017–18 income year).
- If the company earns passive income, it cannot exceed 80% of the company's assessable income in that income year. Passive income can include, corporate distributions and their franking credits; royalties and rent; most income from interest; gains on qualifying securities; and a net capital gain.

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

### Loss carry back tax offset tool

The ATO has released a guide to help companies correctly claim loss carry-back (LCB) refundable tax offset in order to avoid erroneous tax filings.

According to the ATO, companies need to include the following in their tax return to ensure that the LCB claim gets processed correctly :

- the LCB labels in item 13;
- the opening and closing franking account balance labels in item 8; and
- the Refundable tax offsets label (Label E) in the calculation statement, where you add the LCB tax offset amount from label 13S. If you don't complete this label you won't receive any refund owing from your LCB claim.

ATO's LCB tax offset tool is also available to help companies to accurately complete all the required labels for the tax filing.

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

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Division 7A UPEs under sub-trust arrangements

The ATO has extended the application of Practical Compliance Guideline PCG 2017/13 to unpaid present entitlements under eligible sub-trust arrangements that arise on or before 30 June 2022.

PCG 2017/13 sets out the Commissioner's compliance approach regarding the repayment of loans entered into under investment Option 1 or Option 2 of Law Administration Practice Statement PS LA 2010/4. The Commissioner will consider unpaid present entitlement funds to be held on sub-trust for the sole benefit of a private company beneficiary if they are lent to the main trust under one of 2 investment options in PS LA 2010/4.

The guideline has been extended to apply in relation to unpaid present entitlements under eligible sub-trust arrangements arising on or before 30 June 2022. Application was previously limited to eligible sub-trust arrangements maturing in the 2016–17 to 2020–21 income years.

The Commissioner's updated view in draft Taxation Determination TD 2022/D1 on when an unpaid present entitlement or amount held on sub-trust becomes the provision of "financial accommodation" subject to Div 7A is proposed to apply for trust entitlements arising on or after 1 July 2022.

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

### PS LA 2011/17: Debt relief, waiver and non-pursuit

The ATO has released an updated law administration practice statement (PS LA 2011/17: Debt relief, waiver and non-pursuit) on 26 May 2022.

The ATO has updated and clarified the policy in paragraph 11 of this Practice Statement with respect to the relevant factors the Commissioner may take into account when considering release decisions. The changes are intended to direct the decision maker to balance the factors as to why they may grant release against why they may not grant release. This is to ensure that decision makers weigh competing factors of all the relevant circumstances of the taxpayer's case, as opposed to arbitrarily using these factors as a checklist.

This Law Administration Practice Statement provides guidance about the:

- Commissioner's discretion to not pursue the recovery of tax debts
- Commissioner's ability to release individual taxpayers from their obligation to pay certain tax-related liabilities, and
- Finance Minister's power to waive amounts owing.

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

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### ATO prioritizing support and assistance for debt collection efforts

The ATO says they remained committed to engaging with taxpayers with overdue tax debts by offering tailored assistance.

The ATO also encourages taxpayers who have difficulties with tax debts to engage the ATO or their registered tax professionals to set up appropriate payment arrangements.

Where taxpayers do not engage, the ATO is taking firmer debt collection activities. These include garnishees, recovery of director penalties, disclosure of business tax debts, and legal actions including summons, creditors petition, wind-up and insolvency action. The ATO prioritises those taxpayers representing higher risks and refusing to engage. It also prioritises taxpayers with superannuation guarantee debts irrespective of their debt value, as the superannuation guarantee is an entitlement that is owed to employees.

The ATO has recently written to businesses under 2 awareness programs, “disclosure of business tax debts” and the use of “Director Penalty Notices (DPNs)”. It has sent 29,552 awareness letters for disclosure of business tax debts and 52,319 awareness letters about the use of DPNs. More than 20,000 taxpayers have since responded, by making payments or entering into payment plans.

For those taxpayers who have not responded and are not engaging, the ATO will move to the next steps:

- for disclosure of business tax debts, the ATO has issued nearly 300 intent to disclose notices and has commenced disclosing some of these to Credit Reporting Bureaus Equifax and Creditor Watch
- for companies with outstanding obligations, the ATO is currently issuing 30 to 40 DPNs each day and expects that to increase.

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

### GST considerations for buy-now, pay-later providers

The ATO has published a paper, setting out the key GST considerations for buy-now, pay-later providers, focusing on how to determine their entitlement to input tax credits on related costs.

The ATO emphasizes that this guidance does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

The paper provides examples of common types of transactions such as the acquisition of debt collection services or the development and maintenance of a smartphone application. The paper also further discusses the ATO’s view of the appropriate treatment for these transactions. The appropriate apportionment methodologies for allocation acquisition between input taxed supplies and taxable supplies and the ATO’s expectations in relation to these methodologies are also discussed in this paper.

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



# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Class rulings issued:

- Class Ruling [CR 2022/42](#) Australian Government Bond holders — exchange of bonds for CHESS Depository Interests. The ruling applies to the income years ended 30 June 2023 to 30 June 2027.
- Class Ruling [CR 2022/43](#) Class Ltd — partial scrip for scrip roll-over. This Ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/44](#) AVA Risk Group Ltd — return of capital. This Ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/45](#) Class Ltd — employee share scheme — shares disposed of under scheme of arrangement. This Ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/46](#) Victorian Department of Premier and Cabinet — early retirement scheme 2022–2023. The ruling applies from 26 May 2022 to 30 June 2023.
- Class Ruling [CR 2022/47](#) CSL Ltd — non-executive director rights plan. This Ruling applies from 1 July 2021 to 30 June 2026.
- Class Ruling [CR 2022/48](#) OreCorp Ltd — demerger of Solstice Minerals Ltd. This Ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/49](#) Qube Holdings Ltd — off-market share buy-back. This Ruling applies from 1 July 2021 to 30 June 2022.
- **Addendum** to [CR 2022/24](#) Aventus Group — exchange of units in Aventus Holdings Ltd for shares in Home Consortium Ltd — scrip for scrip roll-over. The addendum updates the implementation date.
- **Addendum** to [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 roll-over. The addendum updates the implementation date.

### Other rulings issued:

- Product Ruling [PR 2022/4](#) W.A. Blue Gum Project 2022. This Product Ruling applies prospectively from 1 June 2022, the day it was published

# Monthly Tax Update

## Latest Australian Tax Cases

- Assessable income - The AAT has affirmed objection decisions of the Commissioner that lump sum payments made to 2 former employees of 7-Eleven stores pursuant to deeds executed by the employees and a subsidiary of 7-Eleven in relation to 7-Eleven's historic underpayment of wages were assessable as ordinary income. [Guttikonda & Anor v FC of T 2022 ATC - 20 May 2022]
- R&D; procedural fairness - The Federal Court has dismissed an appeal from an AAT decision ([2019] AATA 1633) that had held that the applicant's development of fitness algorithms was not R&D, rejecting the applicant's arguments that it had been denied procedural fairness by the AAT in its copying verbatim (and without attribution) the bulk of the submissions put forward by Innovation and Science Australia within its written statement of reasons, as well as in the AAT's refusing to admit evidence in regard to R&D activities that were not part of the reviewable decisions before it. [Ultimate Vision Inventions Pty Ltd v Innovation and Science Australia 2022 ATC – 20 May 2022]
- GST; margin scheme - The Federal Court has held that where there was a supply of several freehold interests in land under a single contract, each supply would constitute a separate supply for the purposes of the margin scheme. [Landcom v FC of T 2022 ATC – 9 May 2022]
- SGC, PAYG, penalties - A law firm that failed to comply with its PAYG and superannuation obligations has also failed to convince the AAT that its amended SGC assessments were excessive or that penalties imposed should be further remitted, after its claims of bookkeeper error, corruption of data and cooperation with the ATO were not substantiated by the evidence. [RFZD v FC of T 2022 ATC – 14 April 2022]
- Share capital - The Federal Court has granted the declaratory relief sought by a taxpayer in respect of whether an amount of \$4,388,252,224 paid to it by its sole shareholder and expressed to be for nil consideration and not in exchange for further shares was properly characterised as an amount of share capital. [Aurizon Holdings Ltd v FC of T 2022 ATC – 8 April 2022]

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