



March 2021



Collaborating with Andersen Global in Australia

Monthly Tax Update

In this edition of Monthly Tax Update for March 2021, we provide the recent updates in legislative, 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.

Legislation Update

Income Tax Regulations finalised

Final regulations have been issued to remake the Income Tax Assessment Regulations 1997 ("1997 regulations"). The 1997 regulations are to sunset on 1 April 2021.

The Income Tax Assessment (1997 Act) Regulations 2021 ("2021 regulations") improve the operation of the 1997 regulations by simplifying language, omitting redundant provisions and restructuring provisions for ease of navigation. These changes do not impact the substantive meaning or operation of the provisions except in limited cases specifically identified in the explanatory material. They include minor clarifications to ensure the regulations operate as intended.

The 2021 regulations apply from 1 April 2021. Consequential amendments are also made to the Superannuation Industry (Supervision) Regulations 1994 and the Retirement Savings Accounts Regulations 1997.

For more details, please refer to:

- Income Tax Assessment (1997 Act) Regulations 2021 (F2021L00206) - [here](#)
- Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021 (F2021L00199) - [here](#)

OECD Update

OECD reports issued in February 2021

The Organisation for Economic Co-operation and Development (OECD) has published the following reports in February 2021:

- Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes

On 25 February 2021, the OECD has published a report to highlight the increasing sophisticated financial crimes which are often facilitated by professional intermediaries who enable white collar crimes like tax evasion and other financial crimes on behalf of their criminal clients. Such crimes have significant impacts on government revenue, public confidence and economic growth and the interest in addressing such issues has grown over the past period.

The report sets out a range of strategies and actions for countries to adopt in deterring, disrupting, investigating and prosecuting professionals who enable tax and white collar crimes. For more details, please refer [here](#).

Monthly Tax Update

OECD Update (cont.)

■ OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors

A tax report to the G20 has also been released in February 2021. Part I of the report provides an overview of the activities in the OECD's international tax agenda and addresses the following topics:

- tax challenges arising from Digitalisation;
- responses to COVID-19;
- tax and the environment;
- implementing the BEPS measures and tax certainty;
- tax transparency developments;
- capacity building – supporting developing countries.

Part II of this report covers the Global Forum on Transparency and Exchange of Information for Tax Purposes Progress Report to the G20.

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

ATO Rulings and Activity

Loss carry back guidance released — approved form and instructions

The ATO has released the loss carry back claim form and instructions for eligible corporate entities who want to claim a loss carry back offset prior to 1 July 2021.

The form should be used by eligible corporate entities that have an early balancer substituted accounting period or are required to lodge a tax return for a part of the 2020–21 income year.

Eligible entities are required to lodge the form 5 business days prior to lodging their company tax return to notify the ATO of their:

- choice to carry back losses to an income year
- aggregated turnover for the relevant loss years.

The loss carry back tax offset amount must also be included at the Refundable tax offset (Label E) in the calculation statement of the company tax return.

Eligible entities claiming a loss carry back offset for the 2020–21 income year after 1 July 2021 will be able to make the choice in the 2020–21 company tax return form.

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

Please click [here](#) to download the loss carry back claim form



Monthly Tax Update

ATO Rulings and Activity (cont.)

ATO guidance on deductions for employees' travel expenses

The ATO has issued the following guidance on the treatment of travel expenses for income tax and fringe benefits tax (FBT) purposes:

- **Taxation Ruling TR 2021/1** – this ruling explains when an employee can deduct transport expenses. Generally, transport expenses (including the cost of travel by airline, train, taxi, car, bus, boat or other vehicles) incurred by an employee in travelling between work locations are deductible, whereas transport expenses incurred for ordinary travel between home and a regular workplace are not deductible.

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

- **Draft Taxation Ruling TR 2021/D1** – this draft ruling which replaces TR 2017/D6 (withdrawn with effect from 17 February 2021). It outlines:
 - The deductibility of accommodation and food and drink expenses incurred by employees when they are travelling on work;
 - FBT implications, including the application of the “otherwise deductible rule”, where an employee is reimbursed for accommodation and food and drink expenses, or where the employer provides or pays for these expenses, and
 - the criteria for determining whether an allowance is a travel allowance or a living-away-from-home allowance benefit and the differences between them.

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

- **Draft Practical Compliance Guideline PCG 2021/D1** – it sets out the ATO’s practical compliance approach in determining if employees in certain circumstances are travelling on work or living at a location away from their normal residence.

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

The closing date for comments on both the draft ruling and the draft guideline is 19 March 2021. The ruling, draft ruling and draft practical compliance guideline must be read together.

Interim solutions for PAYG and GST quarterly instalment notices

As part of the Australian Taxation Office’s (ATO’s) digital improvement program, the ATO has stopped issuing paper quarterly PAYG and GST instalment notices and the September 2020 quarterly instalment notice was the last time the paper forms were issued as paper to taxpayer who has a digital preference on ATO systems.

In response to the feedback received from the profession that issues have arisen as a result of this change, the ATO will return to issuing paper PAYG and GST quarterly instalment notices starting with the March 2021 quarterly notices, not June 2021 as originally advised. This interim approach will continue until a permanent solution is developed.

Tax professionals will expect to receive paper forms for this period onwards where their clients have registered a preference for them to be issued with notices. If a tax professional received a paper instalment notice in their mail pack for a client in the September 2020 quarter, they will expect to receive the paper form for the March 2021 quarter, unless registration details have changed for that client.

The interim approach will continue until a permanent solution is developed. However, this approach does not extend to self-preparers who will continue to receive an email reminder 21 days before the due date, where the ATO has an email address for them.

For self-preparer clients, who have had a delivery preference changed to digital and do not have access to online services, the ATO will update their preference to paper on request. For the December 2020 quarter, agents and clients can view the amount payable and retrieve the payment reference number using ATO online services.

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

Monthly Tax Update

ATO Rulings and Activity (cont.)

Class rulings issued:

- Class Ruling [CR 2021/11](#) - Village Roadshow Ltd — disposal of shares. The ruling applies from 1 July 2020 to 30 June 2021.
- Class Ruling [CR 2021/12](#) - Salary Packaging Australia Pty Ltd — benefits provided to fly-in fly-out employees. The ruling applies from 1 April 2020 to 31 March 2025.
- Class Ruling [CR 2021/13](#) - GetSwift Ltd — exchange of shares for GetSwift Technologies Ltd shares and amendment of options and employee awards. The ruling applies from 1 July 2020 to 30 June 2021.
- Class Ruling [CR 2021/14](#) - Metgasco Ltd — return of capital by way of in specie distribution. The ruling applies from 1 July 2020 to 30 June 2021.
- Class Ruling [CR 2021/15](#) - CU Health Pty Ltd — exempt benefits relating to work-related medical examinations, medical screenings, preventative health care and counselling of employees. The ruling applies from 1 April 2020 to 31 March 2025.
- Class Ruling [CR 2021/16](#) - MiX Telematics Australasia Pty Ltd — use of Fleet Manager systems for car logbook and odometer records. The ruling applies from 1 April 2020 to 31 March 2025.
- Class Ruling [CR 2021/17](#) - Shante Pty Ltd — use of an electronic travel smartcard for public bus transport by an employee. The ruling applies from 1 April 2020 to 31 March 2025.
- Class Ruling [CR 2021/18](#) - Eton Irrigation Cooperative Ltd — receipt of membership. The ruling applies from 1 July 2019 to 30 June 2021.
- Class Ruling [CR 2021/19](#) - EQT Wholesale Flagship Fund — scrip for scrip roll-over. The ruling applies from 1 July 2020 to 30 June 2021.
- Class Ruling [CR 2021/20](#) - Portfolio Plus Industrial Equities Fund — scrip for scrip roll-over. The ruling applies from 1 July 2020 to 30 June 2021.
- Class Ruling [CR 2021/21](#) - Equities Fund — scrip for scrip roll-over. The ruling applies from 1 July 2020 to 30 June 2021.

Monthly Tax Update

Latest Australian Tax Cases

- **CGT; cost base** - The AAT has held that a taxpayer's net capital gain on the sale of property was not reduced by the proceeds remitted to another party under an agreement. [ZBFF v FC of T 2021 ATC - 2 February 2021]
- **Deductions** - The Federal Court has held that an amount paid by a taxpayer to cancel employee entitlements under an option plan and incentive scheme was not deductible under s 8-1 of ITAA 1997 as it was made to facilitate the acquisition of the taxpayer's shares by an existing majority shareholder and was not connected to the carrying on of the taxpayer's business. [Clough Ltd v FC of T 2021 ATC - 18 February 2021]
- **Scheme; promoter penalties** - The Federal Court has imposed a total penalty of \$22,680,000 on the 4 promoters of the R&D tax schemes previously found liable in the proceedings reported at 2020 ATC [FC of T v Bogiatto & Ors (No 2) 2021 ATC - 12 February 2021]
- **Collection and recovery** - The AAT has denied a medical practitioner release from his tax debt after he failed to demonstrate that he would suffer serious hardship if required to satisfy the debt. [ZCSB v FC of T 2021 ATC - 5 February 2021]
- **Information-gathering powers** - The Federal Court has upheld the validity of a notice issued under s 353-10, finding that the Commissioner's purpose in seeking the relevant information was to determine whether to accept or challenge the legal professional privilege claims of the applicant, not to determine their validity. [CUB Australia Holding Pty Ltd v FC of T 2021 ATC - 2 February 2021]

If you would like more information or would like to discuss the monthly tax update, please contact:

Cameron Allen
Office Managing Director
Tel: +61 (0) 3 9939 4488 (Melbourne)
Tel: +61 (0) 2 8226 8756 (Sydney)
Email: cameron.allen@aa.tax

www.aa.tax

This document is of a general nature and is not intended to constitute an offer of financial products or services. It is not intended to be relied upon as a basis for investment decisions. We accept no responsibility for any loss suffered as a result of any action taken in reliance on the information contained in this document or any other information provided in this document or any other information provided in this document.