

# 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

### Bills lapse with calling of Federal Election

The Federal Election has now been called and will be held on 21 May 2022. As a result, Federal Parliament has been prorogued and the House of Representatives dissolved on 11 April 2022.

The next sitting day for Parliament will be determined after the outcome of the Federal election.

All unpassed legislation before Parliament has lapsed, including the following tax and superannuation Bills:

- **Treasury Laws Amendment (2021 Measures No 7) Bill 2021** - includes the proposed removal of the \$250 non-deductible threshold for work-related self-education expenses; require electronic platform operators to provide certain transaction information to the ATO and facilitate transitional arrangements associated with the Australian Financial Complaints Authority replacing the Superannuation Complaints Tribunal.
- **Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022** and **Income Tax Amendment (Labour Mobility Program) Bill 2022** - include the proposals to allow taxpayers to self-assess the effective life of certain intangible depreciating assets and amendments relating to record-keeping penalties.
- **Treasury Laws Amendment (Tax Concession for Australian Medical Innovations) Bill 2022** – includes the proposed introduction of the “patent box” regime providing concessional tax treatment for eligible income derived from exploiting a medical or biotechnology patent.
- **Treasury Laws Amendment (Streamlining and Improving Economic Outcomes for Australians) Bill 2022** – includes the proposed amendments relating to reporting and auditing requirements of registrable superannuation entities and increased AAT powers for small business taxation decisions.

The **Treasury Laws Amendment (2020 Measures No 4) Bill 2021** has also lapsed, however tax and superannuation measures contained in it have been introduced in other Bills.

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## Legislation Update (Cont.)

### Specialized Agencies (Privileges and Immunities) Amendment Regulations 2022

As part of the 2020–21 Budget, the government announced that it will clarify privileges and immunities, including income tax exemptions, available to Australian individuals performing short-term missions on behalf of the International Monetary Fund (IMF) and the following three institutions of the World Bank Group (WBG):

- International Bank for Reconstruction and Development (IBRD)
- International Development Association (IDA)
- International Finance Corporation (IFC)

The Specialized Agencies (Privileges and Immunities) Amendment Regulations 2022 provide an income tax exemption for Australian residents performing temporary missions either for the IMF or the 3 specified WBG agencies on salaries and emoluments received from the relevant agencies. A temporary mission can be undertaken by anyone engaged on a contractual basis by a relevant agency, including experts and consultants.

The regulations apply retrospectively in relation to salaries and emoluments received on or after 1 July 2017.

Affected taxpayers that have already lodged their tax returns including the relevant payments as assessable income can lodge an amendment request.

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

## OECD Updates – Global minimum tax 15% corporate tax under Global Anti-base Erosion rules

### OECD implementation of Pillar 2 global minimum tax

In the public consultation meeting on 25 April 2022, the mechanism to implement and administer the Global Anti-base Erosion (GloBE rules) was discussed.

The GloBE rules introduce a global minimum 15% corporate tax rate for large corporates that will create a top-up tax for jurisdictions below the minimum rate.

Following the release of the proposed rules and commentary, an implementation framework is being developed to support tax authorities in various jurisdictions. Stakeholder input on the implementation mechanisms was part of the discussion during the public forum.

For further details and to watch the replay of the forum, please refer [here](#).

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## Other Updates

### Australian economic outlook unchanged from Budget: 2022 PEFO

In the 2022 Pre-election Economic and Fiscal Outlook (PEFO) report, the Treasury and Department of Finance stated that Australia's economic and fiscal outlook has not materially changed since the publication of the 2022-23 Budget in March.

According to the report, the underlying cash deficit of \$77.9 billion (3.4 per cent of GDP) is expected in 2022-23.

The deficit is projected to narrow across the forward estimates, reaching 1.6 per cent of GDP by 2025-26.

The 2022 PEFO outlook of the Australian economy remains strong with a forecasted real GDP growth of 4.25 percent in 2021-22, citing strong momentum in the labour market and a rebound in private sector activity as the main drivers.

Other key positive signs in the economy, according to the report, include employment returning above pre-pandemic levels, the labour market avoiding the scarring experienced in some advanced economies, and recent indicators that suggest Omicron is having a relatively limited impact on economic activity.

The PEFO forecasts the recent record prices for key export commodities will boost Australia's income and nominal GDP growth in the near term.

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

### Statistics about taxation revenue collected by the various levels of government in Australia

According to the latest statistics released by the Australian Bureau of Statistics (ABS), in the year 2020-21 across all levels of government, total taxation revenue was \$593.2 billion, an increase of 7.5%, up \$41.5 billion from the 2019-20 period. This represents 28.7% as a percentage of GDP.

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

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## ATO Rulings and Activity

### ATO clarification on trust guidance

The ATO had initially released for consultation the draft TR 2022/D1, draft PCG 2022/D1 and draft TD 2022/D1 on 23 February 2022. The consultation period has since been extended until 29 April 2022.

The ATO has clarified that the draft guidance on section 100A will not apply on a retrospective basis. The ATO will not be pursuing taxpayers that entered into arrangements between 1 July 2014 and 30 June 2022 who concluded in good faith that section 100A did not apply to them based on the previous 2014 guidance.

This draft guidance replaces the ATO's 2014 guidance, which taxpayers and their advisers have been relying on. This clarification confirms that the taxpayers can continue to rely on the previous 2014 guidance for matters that arose while that guidance was in place.

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

### Notional GST dispute resolution

The ATO has published guidance for government entities to dispute a notional GST matter where legal objection and review rights are not available. The document outlines:

- the process for a government entity to dispute a position the Commissioner has taken on a notional goods and services tax (GST) matter, and
- summaries of the legal issues and principles which have arisen from notional GST external reviews.

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

### Jail time for failing to lodge tax returns

In a media release, the ATO has highlighted a recent court case of a Western Australia doctor who has recently been sentenced to seven months' jail and placed on a good behavior bond for failing to comply with court orders to lodge 18 outstanding income tax returns and business activity statements (BAS).

The ATO has reiterated that those who evade tax deliberately and fail to engage with the ATO despite multiple attempts to contact them will face serious action.

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

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## ATO Rulings and Activity (Cont.)

### Unclaimed super and lost member reporting obligations

APRA funds need to meet their legislated obligations for member reporting and other associated payment obligations. This includes reporting and paying unclaimed super money (USM) and lost member assessment reporting.

According to the ATO website, Australian Prudential Regulation Authority (APRA) funds are required to meet their reporting obligations for member reporting and other associated payment obligations, including reporting and paying unclaimed super money (USM) and lost member assessment reporting.

To meet their reporting obligations under the Superannuation (unclaimed Money and Lost Members) Act 1999 (SUMLMA) for the statement period 1 July to 31 December 2021, funds have until 30 April 2022 to report and pay:

- unclaimed super monies;
- unclaimed super of former temporary residents;
- small and insoluble lost member accounts; and
- inactive low-balance accounts.

If there are no unclaimed monies, lost member or inactive low balance accounts to report and pay, funds need to lodge a non-lodgment advice.

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

### Claiming a tax deduction for donation made

The ATO has reminded taxpayers to ensure that if they want to claim a deduction in their tax returns for the donation made, the donation needs to meet the conditions to be tax deductible.

One of the most important tax deductible criteria is, the donation needs to be made to a deductible gift recipient (DGR). The ATO highlighted that not all charities and not-for-profits are DGRs. DGRs are either endorsed by the ATO, or in exceptional cases listed by name in the tax law. Taxpayers can confirm an organisation's DGR status by checking the ABN Lookup (click [here](#))

The ATO also emphasised that, the taxpayers must keep a record of their donation (for eg. a donation receipt).

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

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## ATO Rulings and Activity (Cont.)

### Foreign investor penalised for residential real estate purchases

In an ATO media release, the ATO indicates that the first penalty order for breaches of Australia's foreign investments rules has been issued by the Federal Court of Australia, attracting \$250,000 in penalties.

The foreign investor has been penalised for purchasing multiple properties in outer Melbourne without receiving permission from the Foreign Investment Review Board (FIRB).

The ATO identified the purchases using its extensive data sources as part of a multi-faceted compliance approach to detect foreign investors in breach of the Foreign Acquisitions and Takeover Act 1975 (FATA).

ATO Assistant Commissioner Keir Comish says the case shows the strength of ATO's data driven approach to monitoring compliance with Australia's foreign investment rules.

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

### Class rulings issued:

- Class Ruling [CR 2022/37](#) Commonwealth Bank of Australia — CommBank PERLS XIV Capital Notes. This ruling applies from 1 July 2021 to 30 June 2032.
- Class Ruling [CR 2022/38](#) Australian Pharmaceutical Industries Ltd — scheme of arrangement, ordinary dividend and special dividend. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/39](#) EFM Corporate Pty Ltd - health and fitness equipment services. This ruling applies from 1 April 2021 to 31 March 2028
- Class Ruling [CR 2022/40](#) Over The Wire Holdings Ltd — scrip for scrip roll-over. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/41](#) JB Hi-Fi Ltd — off-market share buy-back. This ruling applies from 1 July 2021 to 30 June 2022.
- Erratum to Class Ruling [CR 2022/32](#) Victorian Department of Health — early retirement scheme 2022–2023. It corrects a typographical error in CR 2022/32 at para 21 by omitting “VPS” and substituting “Victorian public sector”. The erratum applies from 30 March 2022.
- [Addendum](#) to Class Ruling CR 2021/101 Western I.V.F. Pty Ltd - scrip for scrip roll-over. This addendum has been issued to reflect some factual changes to the scheme and applies from 1 July 2021.

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## ATO Rulings and Activity (Cont.)

Other rulings issued:

- **Addendum** to Product Ruling PR 2020/3 Income tax: Challenger Life Company Ltd CarePlus Annuity and Insurance.
- **Addendum** to Product Ruling PR 2020/6 Income tax: Challenger Guaranteed Annuity (Liquid Lifetime) — 2020
- **Addendum** to Product Ruling PR 2020/13 Income tax: Challenger Guaranteed Annuity (Floating Rate Fixed Term)
- **Addendum** to Product Ruling PR 2021/1 Income tax: Challenger Guaranteed Annuity (Short Term)
- **Addendum** to Product Ruling PR 2019/7 Income tax: PPS Mutual Professionals Choice — 2019. It amends PR 2019/7 to reflect the repeal of the Income Tax Assessment Regulations 1997 and the commencement of the Income Tax Assessment (1997 Act) Regulations 2021. The addendum applies before and after 27 April 2022.

## Latest Australian Tax Cases

- GST; subdivided land - The AAT has held that a taxpayer was liable to GST on the sales of subdivided land after rejecting the taxpayer's submission that the sales were the mere realisation of a capital asset or that each sale was made solely as a consequence of the taxpayer ceasing to carry on an enterprise or substantially and permanently reducing the size or scale of an enterprise. [Collins & Anor ATF The Collins Retirement Fund v FC of T 2022 ATC - 4 April 2022]
- Luxury car tax; trading stock - A taxpayer that sold motor vehicles exhibited at its car museum was liable to increasing luxury car tax adjustments because the vehicles were not used solely as trading stock. [Automotive Invest Pty Ltd v FC of T (Gosford Classic Car Museum) 2022 ATC - 24 March 2022]
- Deductions; work-related expenses - A taxpayer employed by the Department of Correctional Services as a dog-handler has had partial success before the AAT in claiming deductions for expenses incurred in the course of his employment, including the costs of certain items of clothing sufficiently distinctive as a work garment and multiple gym memberships, the latter in accordance with an expansive reading of Taxation Ruling TR 95/13. [London v FC of T 2022 ATC - 4 April 2022]
- Trusts; "presently entitled" - The High Court has unanimously allowed the Commissioner's appeal from the Full Federal Court decision reported at 2020 ATC, [2020] FCAFC 150 in respect of amended assessments that included default distributions of trust income later disclaimed by the relevant taxpayers. The High Court found that the full court erred in holding that the taxpayers' disclaimers could operate retrospectively so as to disapply s 97(1) of ITAA 1936 (and thereby expunge the rights of the Commissioner), stating that a beneficiary's present entitlement under s 97(1) was to be determined immediately prior to the end of income year by reference to the legal relationships then in existence. [FC of T v Carter & Ors 2022 ATC - 6 April 2022]

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