

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 / issued:

Defence, Veterans' and Families' Acute Support Package Bill 2022

Legislation to provide vulnerable veterans and their families more flexible support and expand access to financial support has been enacted.

The Defence, Veterans' and Families' Acute Support Package Bill 2022 has received assent as Act No 40 of 2022. The Bill includes necessary amendments to the Income Tax Assessment Act 1997 to ensure that family support payments for veterans and their families are exempt from income tax and also not included as income for the purposes of social security law.

These amendments will apply for the 2022–23 income year and later income years.

Regulations for the Australian Charities and Not-for-profits Commission (ACNC)

The following regulations for the ACNC have been remade:

- **Australian Charities and Not-for-profits Commission Regulation 2013 (F2013C00451)** (the existing Regulation)

This regulation outlines the requirements of the ACNA, the governance standards and external conduct standards applying to charities registered with the ACNC and requirements for registered charities' annual financial reports.

It is due to sunset on 1 April 2023.

- **Australian Charities and Not-for-profits Commission Regulations 2022 (F2022L01301)** (the new Regulations)

These regulations remake the existing Regulation with revisions to update and remove redundant provisions. The language, format and numbering of the existing Regulation have largely been maintained in the new Regulations as they are used extensively in the ACNC's administrative guidance for the sector.

The new Regulations will commence on 1 April 2023. They were originally issued in draft form on 18 July 2022 for consultation.

Monthly Tax Update

Legislation Update (Cont.)

Superannuation Legislation Amendment (Broadening Contribution Rules) Regulations 2022 (F2022L01286)

Regulations have been made to give effect to the superannuation measure to expand the eligibility for downsizer contributions by reducing the eligibility age from 60 to 55 years.

When enacted, Sch 5 to the Treasury Laws Amendment (2022 Measures No 2) Bill 2022 will amend ITAA 1997 to allow individuals aged 55 years or over to make downsizer contributions to their complying superannuation plan from the proceeds of selling their main residence.

Superannuation Legislation Amendment (Broadening Contribution Rules) Regulations 2022 (F2022L01286) support the amendments in Sch 5 to the Bill by ensuring that downsizer contributions will be accepted by regulated superannuation funds and Retirement Savings Account (RSA) institutions for individuals who are aged 55 years or over, from the date of commencement of Sch 5 to the Bill.

The Regulations commence on the later of 1 October 2022 and after the commencement of Sch 5 to the Bill. The Regulations do not commence at all in the event that Sch 5 to the Bill does not commence. The Regulations apply in relation to contributions made on or after the commencement of the Regulations.

A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2022 (F2022L01272)

A legislative instrument (F2022L01272) has been issued to ensure taxpayers are able to substantiate and account for GST adjustments associated with taxable supplies. It describes what additional information should be included in an adjustment note and a recipient created adjustment note, in addition to the requirements set out in s 29-75(1) of the GST Act.

F2022L01272 sets out the additional information requirements for a document to be an adjustment note or a recipient created adjustment note under s 29-75(1). Unless an exception applies, a supplier or a recipient must hold an adjustment note to attribute a decreasing adjustment from an adjustment event when completing their GST return for a tax period. Even where a document has insufficient information, the Commissioner has discretion to treat a document as an adjustment note under s 29-75(1).

F2022L01272 replaces A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012 (F2013C00796).

The determination commences on 30 September 2022.

Monthly Tax Update

Legislation Update (Cont.)

Taxation Administration: Withholding Variation to Nil for Low Income Minors Legislative Instrument 2022 (No. F2022L01145)

Taxation Administration: Withholding Variation to Nil for Low Income Minors Legislative Instrument 2022 (No. F2022L01145) has been issued and commenced on 1 October 2022.

This instrument varies to Nil the amount of pay as you go (PAYG) withholding for low income minors (i.e. individuals under 18 years of age at the time of payment), who do not provide a tax file number (TFN) declaration or quote their Australian business number (ABN) to a person making a payment to them.

This is a remake of a previous Legislative Instrument (Legislative Instrument No. F2012L00884) which will sunset on 1 October 2022

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

COVID-19 Updates

Targeted support to replace pandemic leave disaster payment

After the discussion at the National Cabinet meeting held on 30 September 2022, it has been agreed that the Pandemic Leave Disaster Payment (the PLDP) will end on 14 October 2022, while financial support will continue for casual workers in specific sectors.

Targeted financial support will continue for casual workers in aged care, disability care, Aboriginal healthcare and hospital care sectors, on the same basis as the PLDP. The new payment will be funded 50:50 between the Commonwealth and States and Territories. Services Australia will release the final details including eligibility and compliance soon.

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

OECD Updates

BEPS - OECD/G20 Inclusive Framework on BEPS: Progress Report

The OECD has published its sixth annual progress report of the OECD/G20 Inclusive Framework on BEPS. This report sets out an overview of the progress made by the OECD/G20 Inclusive Framework, covering the period from September 2021 to September 2022.

The report contains an overview (part 1) and four sections of substantive content. Part 2 reports on the implementation of the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy agreed in October 2021. Part 3 focuses on the implementation of the BEPS minimum standards and Part 4 on the other BEPS Actions. Finally, Part 5 provides an update on activities undertaken to support the Inclusive Framework developing countries. For further details, please refer [here](#).

Monthly Tax Update

OECD Updates (Cont.)

BEPS 2.0 - Tax Incentives and the Global Minimum Corporate Tax (Pillar Two)

In October 2021, the international community agreed a landmark deal on the two-pillar solution to the tax challenges arising from the digitalisation and the globalisation of the economy. As part of this plan, Pillar Two establishes a global minimum effective corporate tax rate of 15% for large multinational enterprises (MNEs) which has important implications for the use of tax incentives around the world.

A new OECD report on tax incentives was prepared at the request of the Indonesian G20 Presidency, provides a number of concrete considerations for countries to take into account as they prepare for the implementation of Pillar Two. Wherever tax incentives drive an MNE's effective tax rate (ETR) in a jurisdiction below 15%, the MNE would potentially be subject to top-up taxes under the GloBE Rules, a core component of Pillar Two. These rules may have an impact on the effectiveness of certain tax incentives. Therefore, the design of tax incentives will require careful reconsideration in a post-Pillar Two environment. The report considers the existing use of tax incentives in developed and developing countries, analyses key provisions of the GloBE Rules and shows how they may impact different types of tax incentives differently.

The report concludes with policy considerations for countries.

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

Country-by-Country Reporting – Compilation of 2022 Peer Review Reports

Under the Action 13 Minimum Standard, jurisdictions have committed to foster tax transparency by requesting the largest multinational enterprise groups (MNE Groups) to provide the global allocation of their income, taxes and other indicators of the location of economic activity. This unprecedented information on MNE Groups' operations across the world has boosted tax authorities' risk-assessment capabilities. The Action 13 Minimum Standard was translated into specific terms of reference and a methodology for the peer review process. The peer review of the Action 13 Minimum Standard has completed four annual reviews in 2018, 2019, 2020 and 2021. These cover the three key areas under review: the domestic legal and administrative framework, the exchange of information framework, and the confidentiality and appropriate use of Country-by-Country (CbC) reports.

This fifth annual peer review report reflects the outcome of the fifth review which considered all aspects of implementation. It contains the review of 134 jurisdictions which provided legislation or information pertaining to the implementation of CbC Reporting.

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

Monthly Tax Update

OECD Updates (Cont.)

BEPS 2.0 – Australian Treasury Consultation Paper: Global agreement on corporate taxation addressing the tax challenges arising from the digitalization of the economy

The implementation and operation of globally agreed Pillar One and Two corporate tax reforms into Australian domestic law is open for public consultation.

On 8 October 2021 Australia and over 130 other countries endorsed proposed international corporate tax reforms to address the challenges arising from the digitalisation of the economy. These reforms were developed by the OECD Inclusive Framework on Base Erosion and Profit Shifting and presented as a two-pillar solution that would help ensure that multinationals pay their fair share of tax in the jurisdictions in which they operate.

Treasury is seeking input on the domestic implementation issues of the reforms, including the implementation of a Domestic Minimum Tax. The consultation paper explains the proposed measures and lists numerous broad and specific questions around design features, issues arising from interaction with existing tax laws, the impact on investment decisions, additional compliance requirements, business-readiness, timelines and if Australia should be an early or late adopter of the reforms.

The Treasury Consultation Paper can be accessed [here](#).

The last day for submissions is 1 November 2022.

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

ATO Rulings and Activity

CGT exemption for dwelling acquired from deceased estate

The ATO has updated its practical compliance guideline on the discretion to extend the 2-year period allowed to dispose the main residence of the deceased without triggering CGT, to reflect consultation feedback.

Practical Compliance Guideline PCG 2019/5 outlines a safe harbour compliance approach that allows taxpayers to manage their tax affairs as if the Commissioner had exercised the discretion to allow them a longer period. This guideline also outlines the factors the Commissioner will consider when deciding whether to exercise the discretion to extend the 2-year period.

A diagram has been inserted to explain how the safe harbour can be relied on. There are also additional examples to illustrate its application in specific scenarios.

The update improves the practical application of the guideline and further eases the compliance burden.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Tax Residency: Draft ruling on residency test for individual

The ATO has issued fresh guidance (draft Taxation Ruling TR2022/D2) on its interpretation of the individual tax residency rules to reflect key case law developed in the matters of Harding, Pike and Addy.

The draft Taxation Ruling TR 2022/D2 consolidates the ATO's views on 3 of the tests involved: the ordinary concepts test, the domicile test and the 183-day test. It replaces IT 2650 Income tax: residency - permanent place of abode outside Australia and TR 98/17 Income tax: residency status of individuals entering Australia. IT 2650 and TR 98/17 are withdrawn with effect from 6 October 2022.

The views reflected were updated to take developments in case law into account. Of note, the Commissioner adopts the view of the Full Federal Court that a 'place of abode' can extend to a town or country. The draft Ruling contains information on the 183-day residency test which will assist a large number of individual taxpayers, especially those who come to Australia on short-term work and holiday visas.

This Ruling explains:

- residency is about the individual's connection to Australia, and
- an individual can be a resident for tax purposes of more than one country at the same time.

The ruling also includes 14 examples to illustrate the ATO's view on residency in particular scenarios. In determining residency, the ATO will look beyond the time spent in or out of Australia, and is not necessarily limited by facts for that period or year and will look at surrounding income years for evidence to support a conclusion.

The ruling covers the various aspects of each test, such as physical presence in Australia, intention of presence, ties with Australia, maintenance of assets, length of overseas stay, nature of accommodation, and existence of a place of abode outside Australia. It also discusses relevant findings by the courts in Harding, Pike and Addy.

The ruling also considers the position of short-term temporary workers and working holiday makers, and those who are part-year residents and dual residents.

The last day for comments on the ruling is 25 November 2022.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

TD 2022/14 – Deductible liabilities to be excluded from cost base of CGT asset

The ATO has issued a determination finalising its position on the exclusion of deductible liabilities from an asset's CGT cost base.

This determination states that if the CGT cost base of an asset includes, either under s 112-35 or s 110-25(2) of ITAA 1997, a non-contingent liability to pay an amount, and the amount has been deducted or can be deducted, then s 110-45(2) of ITAA 1997 will operate to exclude that amount from the asset's cost base.

In principle, an item of expenditure should either be deductible for income tax purposes or included in the cost base of an underlying asset for CGT purposes, but not both. Consistently with that principle, for CGT assets acquired after 7:30 pm ACST on 13 May 1997, where a deduction for expenditure is claimed, subsection 110-45(2) applies to exclude the expenditure from the CGT asset's cost base:

The determination applies both before and after 5 October 2022. It was previously issued as draft [TD 2019/D11](#) and a [compendium](#) of the ATO's responses to issues raised has been published.

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

TD 2022/D3 – Income tax: use of an individual's fame by related entities

The ATO has issued a draft tax determination, TD 2022/D3 for public comment. The draft determination applies to arrangements where an individual with fame establishes an entity (for example, a family trust or company) and enters into an agreement with that entity for the use of their name, image, likeness, identity, reputation and signature.

The guidance confirms that income from the use of an individual's fame cannot be alienated to a related entity, such as a family trust or company.

The draft guidance explains the ATO's view on the application of s 6-5 of ITAA 1997 where such income will be assessable as ordinary income of the individual. This is on the basis that under Australian law, an individual with fame has no property in that fame and cannot vest or transfer any property in their fame to another entity. There is no recognised proprietary right in the fame that is capable of transfer of assignment. Accordingly, under an arrangement where the related entity is allowed to use the famous person's name, image, likeness, identity, reputation and signature (their "fame"), and the related entity receives fees from third parties for their authorised use of the fame, the fee will be taken to be derived by the individual, and not the related entity.

According to the ATO, the determination is only concerned with income from use of the individual's fame. It does not apply to income from the provision of services (such as where the individual is engaged by a related entity to provide services to a third party), nor does it apply to fees earned by a related entity from exploiting copyright, trademark or registered design rights licensed to the related entity.

The last day for comments on the draft TD 2022/D3 is 4 November 2022.

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

October 2022



Collaborating with Andersen Global in Australia

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Fringe benefits tax - record keeping exposure draft legislation

The Government is introducing legislation to reduce fringe benefits tax (FBT) record keeping compliance costs for employers who maintain good corporate records.

In this regard, exposure draft legislation and associated draft explanatory material have been released for public consultation.

The proposed legislation gives the ATO the power to modify, by legislative instrument, existing FBT record keeping obligations. It aims to reduce the employers' administrative burden in FBT record keeping obligations by allowing employers to rely on existing corporate records, rather than the employee declarations and other prescribed records, to finalise their FBT returns where the ATO considers the alternative records adequate.

Exposure draft legislative instruments and associated explanatory material dealing with travel diaries and relocation transport expense payments have also been released for public consultation.

This consultation process was completed on 30 September 2022.

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

FBT guide for employer – car fringe benefits

The ATO has rewritten Chapter 7 – Car fringe benefits guide to provide a step-by-step guide to identifying and calculating the taxable value of car fringe benefits.

The rewritten chapter does not provide a new "ATO view" on car fringe benefits, however the content has been revised to make the information and examples easier to follow and apply to employer's circumstances.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Non-commercial business losses

Division 35 of the Income Tax Assessment Act 1997 prevents an individual's losses from non-commercial business activities being offset against the individual's other assessable income in the year the loss is incurred.

In recent years, special circumstances such as flood, bushfire and COVID-19 impacts may have caused the non-commercial loss rules 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 to allow them to do so.

The ATO has issued Practical Compliance Guideline PCG 2022/1 which outlines a safe harbour approach for taxpayers affected by flood, bushfire or COVID-19 in relation to the non-commercial business loss rules whereby the ATO is taken to have exercised his discretion that it would be unreasonable, by reference to the circumstances specified, to defer the losses. Specifically, if the conditions set out in the guideline apply, individuals can offset a non-commercial business loss resulting from flood, fire or COVID-19 impacts against other income without needing to seek a private ruling seeking the Commissioner's specific exercise of discretion.

This Guideline applies to the 2019-20, 2020-21, 2021-22 and 2022-23 income years.

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

GST - Universities and Residential Colleges: Draft practical compliance guideline for supplies of accommodation, meals, courses, and religious services to resident students

The ATO has issued draft Practical Compliance Guideline PCG 2022/D3 Goods and services tax and residential colleges, setting out the Commissioner's compliance approach for universities and residential colleges supplying accommodation, meals, tertiary residential college courses and religious services to resident students and claiming input tax credits. The purpose of the Guideline is to assist residential colleges to determine if supplies of accommodation, meals, tertiary residential college courses and religious services satisfy section 38-250 of the A New Tax System (Goods and Services Tax) Act 1999 and can be treated as GST-free supplies.

The ATO's proposed compliance approach for universities and residential colleges supplying accommodation, meals, tertiary residential college courses and religious services to resident students and claiming input tax credits.

The purpose of the guideline is to assist residential colleges to determine if supplies of accommodation, meals, tertiary residential college courses and religious services satisfy s 38-250 of the A New Tax System (Goods and Services Tax) Act 1999 and can be treated as GST-free supplies.

This guideline applies to tax periods starting on and from 1 January 2023. It replaces the GST Tool for Residential Colleges, which will be retired from 31 December 2022.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Market valuation for tax purposes

The ATO has updated its guidance on market valuation, after consulting with tax, accounting and valuation professionals. The ATO guide is intended to assist taxpayers and their advisers in understanding the Commissioner's general expectations on market valuation for tax purposes. It includes information on what market value means for tax purposes and the evidence and processes the ATO generally expect to see to support a valuation.

The 3 internationally-defined valuation approaches are:

- The market approach, which relies on applying market transactions for comparable valuation assets at the valuation date. This approach estimates market value by reference to market prices in actual transactions and asking prices of assets currently available for sale. The valuation process is essentially that of comparison and correlation between the asset to be valued and other similar assets.
- The income approach, which refers to estimating the risk and return parameters of the valuation asset at the valuation date. This approach estimates the market value of an asset based on the income or cashflows that the asset can be expected to generate in the future.
- The cost approach, which involves estimating the market cost of replicating the valuation asset in a similar condition as at the valuation date as a suitable indicator of market value. It is often used when the plant and equipment is a component part of a larger transaction to allocate value to the plant and equipment as a proportion of the enterprise value.

According to the guide, the valuation approach must be:

- reasonable given the valuation asset and information available
- supported by evidence
- suitable for tax purposes; depending on the circumstances and facts, a valuation that adopts and follows professional standards can add credibility to an estimate
- replicable, and
- well-documented.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Income tax: ascertaining the right to tax United States (US) and United Kingdom (UK) resident financial institutions under the US and the UK Taxation Conventions in respect of interest income arising in Australia

The ATO has issued a draft update (TR 2005/5DC2) to its Taxation Ruling TR 2005/5 on the right to tax United States (US) and United Kingdom (UK) resident financial institutions under the US and the UK double tax agreements (DTAs) in respect of interest income arising in Australia.

The further draft update replaces a previous draft update issued by the ATO on 28 November 2018, which has since been withdrawn with effect from 21 September 2022.

The Ruling discusses the circumstances under which the US or UK resident will not be subject to tax in Australia under the Conventions on interest income arising in Australia. This Ruling focuses on the definition of 'financial institution' contained in Article 11(3)(b) of the Conventions. The definition of 'financial institution' distinguishes two types of entities; those that are 'banks' and those that are 'other enterprises'. This Ruling is intended to assist residents of the US and the UK in receipt of interest arising in Australia to establish their income tax liability, and also assist payers of interest of this type determine their withholding tax obligations.

The further draft update will also apply to residents of other countries with a DTA with Australia if they contain an article that is similarly worded and has the same effect as the US or UK DTA.

Comments can be made on the updated ruling by 11 November 2022.

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

Top 1000 combined assurance review program for large super funds.

The ATO has commenced the combined assurance review (CAR) program for large super funds.

Funds under management in the large fund sector has hit \$2.4 trillion. These funds have evolved to not only play an important role in our economy as taxpayers, but also as major investors. According to the ATO, they continue to focus their efforts on data governance to provide government and community confidence that large funds are meeting their tax and reporting obligations.

The CAR program will use the 4 pillars of justified trust, focusing on governance over third party data, as well as the funds' GST and member reporting obligations. Given the importance of quality member data to the operation of the super system, the ATO will also focus on improving the quality of member data reported by these funds.

This program will see the ATO looking for additional evidence from the Top 1,000 taxpayers to be assured of their tax compliance. Large funds are advised to review their tax governance using the relevant ATO guidance available.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Class rulings issued:

- Class Ruling [CR 2022/83](#) Prospect Resources Ltd - return of capital and special dividend. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/84](#) SGH Australia Plus - scrip for scrip roll-over. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/85](#) ATI Global Ltd - demerger of Commercial Credit Holdings Ltd. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/86](#) Slack Technologies, Inc - employee share scheme — exchange of rights and shares for rights and shares in salesforce.com, inc. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/87](#) Iluka Resources Ltd — demerger of Sierra Rutile Holdings Ltd. It applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/88](#) Firefly Resources Ltd — demerger and scrip for scrip roll-over. It applies from 1 July 2021 to 30 June 2022,
- The [addendum](#) to Class Ruling CR 2022/14 Cardno Ltd — return of capital and special dividend to clarify the assessability of the special dividend for non-residents.

Other rulings issued:

- Product Ruling [PR 2022/9](#) Challenger Life Company Ltd CarePlus Annuity and Insurance. This ruling applies from 1 July 2022.

Latest Australian Tax Cases

- **Trust income** - The Federal Court has upheld an assessment issued to the trustee of a trust after a beneficiary was deemed not to have been presently entitled to trust income. [Blood Enterprises Pty Ltd & Anor v FC of T 2022 ATC - 19 September 2022]
- **Customs; anti-dumping** - The AAT has held that certain imported steel pallet racking met the description of goods the subject of a dumping duty notice and were therefore liable for dumping duties. [One Stop Pallet Racking Pty Ltd v Comptroller-General of Customs 2022 ATC - 7 September 2022]

Monthly Tax Update

Latest Australian Tax Cases (Cont.)

- **Deductions; rental expenses.** The AAT has held that certain expenses incurred in regard to extensive water damage to a taxpayer's rental property were to be allowed as deductions on the basis of the evidence of the carpenter who performed the work, which enabled the AAT to ascertain what constituted repair and what constituted improvement. [Wulf v FC of T 2022 ATC - 21 September 2022]
- **Deductions; rental expenses.** The AAT has upheld amended assessments that denied a taxpayer's claim for unsubstantiated rental property expenses where the relevant property was leased to her husband well below the market rate, but exercised the discretion to remit the imposed penalties by 25% due to her particular circumstances. [Rizkallah v FC of T 2022 ATC - 16 September 2022]
- **GST; input tax credits.** The AAT has upheld a decision by the Commissioner to disallow input tax credits claimed in business activity statements (BAS) lodged outside the 4-year time limit set out in s 93-5 of the GST Act. [JHKW v FC of T 2022 ATC - 5 September 2022]

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

Cameron Allen
Office Managing Director
Tel: +61 (0) 3 9939 4488
Email: cameron.allen@aa.tax
MELBOURNE | SYDNEY

www.aa.tax

This and other A&A Publications are available on www.aa.tax

This document is of a general nature and is not intended to be relied upon as, nor be a substitute for, specific professional advice. We accept no responsibility for any loss suffered as a result of reliance placed on this document by any party. Please contact your A&A adviser if you wish to discuss how the topics covered in this document will affect your specific circumstances.

Liability limited by a scheme approved under Professional Standards Legislation.

© A&A TAX LEGAL CONSULTING, October 2022. All rights reserved.