

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.

Underpinning this month's update, are announcements that focus on the digital and tech space with Government consultations underway into Crypto clarification and foreign currency, Digital Assets and Transactions in Australia and exposure draft legislation for small business investment to develop digital capability.

Legislation Update

Since our last update, the following tax related Bills were introduced into the Federal Parliament:

- Treasury Laws Amendment (2022 Measures No. 3) Bill 2022
- Income Tax Amendment (Labour Mobility Program) Bill 2022

Treasury Laws Amendment (2022 Measures No. 3) Bill 2022 (the Bill) and Income Tax Amendment (Labour Mobility Program) Bill 2022 were introduced into the House of Representatives on 8 September 2022.

The Bills include the following proposals and amendments:

- Data sharing to support government responses to major disasters

Schedule 2 to the Bill amends the Taxation Administration Act 1953 (TAA) to allow protected information to be disclosed to Australian government agencies for the purpose of administering major disaster support programs approved by the Minister. This measure has not been previously announced.

- Modification power in response to COVID-19

Schedule 3 to the Bill extends a temporary mechanism for responsible Ministers to make alternative arrangements for meeting information and documentary requirements under Commonwealth legislation, including requirements to give information and produce, witness and sign documents, in response to the challenges posed by COVID-19. This mechanism currently terminates at the end of 31 December 2022.

- Tax treatment for new or revised visa programs

Schedule 4 to the Bill and the Income Tax Amendment (Labour Mobility Program) Bill 2022 reduce the tax rate on certain income earned by foreign resident workers participating in the Pacific Australia Labour Mobility scheme from marginal rates starting at 32.5% to a flat 15%. This ensures that such workers pay tax at an appropriate rate on program income, consistent with similar migration programs. The amendments apply in relation to salary, wages, commission, bonuses or allowances paid to an employee under the Pacific Australia Labour Mobility scheme with effect from 1 July 2022.

- Alternative annual performance test for faith-based super products

Schedule 5 to the Bill amends the SIS Act to provide for an alternative annual performance test for faith-based products. APRA may determine that a product is a faith-based product if a trustee for the product provides APRA with a valid application.

September 2022



Monthly Tax Update

Legislation Update (Cont.)

■ Draft legislation to clarify crypto not taxed as foreign currency

On 22 June 2022, the Government announced it would introduce legislation to exclude crypto assets such as Bitcoin from being treated as a foreign currency for Australian income tax purposes. The proposed legislation maintains the current tax treatment of crypto assets and removes uncertainty following the decision of the Government of El Salvador to adopt Bitcoin as a legal tender.

Draft legislation has been released to exclude crypto assets from being treated as a foreign currency for Australian income tax purposes.

The proposed legislation maintains the current tax treatment of crypto assets such as Bitcoin and removes uncertainty following the decision of the Government of El Salvador to adopt Bitcoin as a legal tender.

The draft legislation relies on amending the existing definition of digital currency in the GST Act (A New Tax System (Goods and Services Tax) Act 1999) before adopting it as an exclusion from the definition of foreign currency in the Income Tax Assessment Act 1997.

Interested parties are invited to comment on this consultation. The closing date for comments is 30 September 2022.

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

OECD Updates

Global Forum releases eight new peer review reports on transparency and exchange of information on request

The Global Forum has published on 16 August 2022 eight new peer review reports on transparency and exchange of information on request (EOIR) for the Cook Islands, Ecuador, Finland, Pakistan, Poland, Portugal, Sint Maarten and Sweden.

Travel restrictions due to the COVID-19 pandemic having prevented assessment teams from performing on-site visits to evaluate the practical implementation of the EOIR standard, six of the eight reports only cover the first phase of the assessment, analysing the jurisdictions' legal and regulatory frameworks. Ratings for each of the ten elements of the assessment and overall ratings will be attributed at a later stage for these six jurisdictions, once on-site visits are carried out and full reviews encompassing the implementation of the standard in practice can be undertaken.

Please refer [here](#) for key findings and recommendations for each of the relevant country.

September 2022



Monthly Tax Update

Other Updates

Review of the Tax Treatment of Digital Assets and Transactions in Australia

The Board of Taxation (the Board) has released its Consultation Guide (the Guide) for the review of the tax treatment of digital assets and transactions in Australia. Please refer here for a copy of the [Guide](#).

The Guide follows the former government's release, on 21 March 2022, for a review to be undertaken by the Board into the appropriate policy framework for the taxation of digital assets and transactions (i.e. crypto assets) in Australia. The government has noted that the reference aligns with its commitment to improve tax transparency in the Australian taxation system and ensure the global system is more robust.

The Guide provides an overview of crypto assets and their current taxation treatment in Australia. The Guide also outlines recent relevant reports and announcements and poses a series of questions under the following headings:

- Current tax treatment of crypto assets
- Awareness of the tax treatment of crypto assets
- Characteristics and features of crypto assets
- International treatment of crypto assets and experience
- Changes to Australia's taxation laws for crypto assets, and
- Administration of Australia's taxation laws for crypto assets.

Written submission responses to this Consultation Guide are due by 30 September 2022.

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

Exposure draft legislation: Technology Investment Boost

The Government is consulting on exposure draft legislation to introduce a Technology Investment Boost to help small businesses operate digitally.

The technology investment boost will provide a bonus of 20% deduction to small and medium businesses on eligible expenditure supporting digital adoption. The additional deduction is proposed to apply for businesses with aggregated annual turnover less than \$50 million. To be eligible, expenditure must have a direct link to an entity's digital operations for its business.

Eligible expenditure may include, but will not be limited to, business expenditure on:

- digital enabling items, such as on hardware, software, systems and services that form and facilitate use of computer networks
- digital media and marketing, such as on audio and visual content
- e-commerce.

The boost will apply from 7:30 pm (AEDT) on 29 March 2022 until 30 June 2023. An annual cap will apply so that expenditure up to \$100,000 will be eligible for the boost, with the bonus deduction capped at \$20,000 per year.

Interested parties are invited to submit responses to this consultation up until 19 September 2022. For more details, please refer [here](#).

Monthly Tax Update

Other Updates (Cont.)

Exposure draft legislation: Small business tax incentives

The government has released draft legislation that will introduce two tax incentives that support small businesses to train and upskill employees, and improve their digital and tech capacity.

Small businesses with an annual turnover of less than \$50 million will have access to a bonus 20% deduction for eligible expenditure on external training of employees by providers registered in Australia, until 30 June 2024. To be eligible, expenditure must be incurred on external training for employees of the business. The additional deduction will not apply for the training of non-employee business owners, including sole traders, partners in a partnership and independent contractors.

External training expenditure for employees must meet the following criteria to be eligible:

- The expenditure must be charged, directly or indirectly, by a registered training provider and be for training within the scope of the provider's registration (if applicable).
- The registered training provider must not be the entity claiming the additional deduction or an associate of the entity, and
- The expenditure must already be deductible under tax law.

The additional deduction will only apply to expenditure incurred between 7:30pm (AEDT) on 29 March 2022 and 30 June 2024. The expenditure must be for the provision of training where the enrolment or arrangement occurs at or after 7:30pm (AEDT) on 29 March 2022.

Interested stakeholders are encouraged to provide a submission by 19 September 2022.

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

ATO Rulings and Activity

Corporate tax transparency income threshold for resident private companies

Changes to the corporate tax transparency income threshold for Australian-owned resident private companies were introduced into Parliament as an amendment in July 2022. These changes became law by the Treasury Laws Amendment (2022 Measures No. 1) Act 2022 on 9 August 2022.

According to the ATO, each year, they are required to publish corporate tax transparency reports which contain information reported to them by large corporations. The corporate tax transparency population refers to the entities which are included in the reports.

The amendment changes the \$200 million income threshold for Australian-owned resident private companies to \$100 million. From the 2023 income year onwards, the ATO will include in their corporate tax transparency reports, information reported to them by Australian-owned resident private companies with an income of \$100 million or more.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO guidance on Division 7A updated

The ATO has updated the following guidance to reflect the publication of TD 2022/11 on unpaid present entitlements and private company deemed dividends under the rules in Division 7A of the Income Tax Assessment Act 1936.

As a background information, **TD 2022/11** was issued on 13 July 2022 to consider when an unpaid present entitlement or amount held on sub-trust would become the provision of “financial accommodation” for the purposes of Div 7A of ITAA 1936.

- Taxation Determination **TD 2011/15** Income tax: Division 7A — unpaid present entitlements — factors the Commissioner will take into account in determining the amount of any deemed entitlement arising under s 109XI of the Income Tax Assessment Act 1936;
- Taxation Determination **TD 2015/20** Income tax: Division 7A: is a release by a private company of its unpaid present entitlement a “payment” within the meaning of Div 7A of Pt III of the Income Tax Assessment Act 1936?
- Taxation Ruling **TR 2015/4** Income tax: CGT small business concessions: unpaid present entitlements and the maximum net asset value test, and
- Practical Compliance Guideline **PCG 2017/13** Div 7A — PS LA 2010/4 sub-trust arrangements maturing in or after the 2016–17 income year.

Trust capital gains of foreign residents — determinations finalised

The ATO has finalized the following guidance addressing the taxation of capital gains that flow to foreign resident beneficiaries from a resident trust in light of the full court decision in *Peter Greensill Family Co Pty Ltd (Trustee) v Commissioner of Taxation* [2021] FCAFC 99.

- **TD 2022/12** - Income tax: is the source concept in Division 6 of Part III of the Income Tax Assessment Act 1936 relevant in determining whether a non-resident beneficiary of a resident trust, or trustee for that trust, is assessed on an amount of trust capital gain arising under Subdivision 115-C of the Income Tax Assessment Act 1997?

TD 2022/12 provides that a non-resident beneficiary of a resident trust is assessable on an amount of trust capital gain, irrespective of whether the gain has a source in Australia.

The Commissioner considers the source concept in Div 6 of Pt III of ITAA 1936 to no longer be relevant in determining whether an amount of trust capital gain is assessable to a non-resident beneficiary or trustee. The same view applies to a non-resident beneficiary's share of taxable Australian property gains of a non-resident trust and a trustee's share of a capital gain to which s 115-222 of ITAA 1997 applies.

The determination applies to arrangements entered into before and after its issue. For 2018–19 and earlier income years, the Commissioner will not devote compliance resources to identify arrangements which would give rise to adjustments solely on the basis of this determination. The Commissioner will apply the law consistent with the views in the determination if asked to provide advice or otherwise becoming aware of a relevant arrangement in the course of compliance activities.

TD 2022/12 was previously issued as draft TD 2019/D7. The ATO has published a **compendium** of the feedback it received.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Trust capital gains of foreign residents — determinations finalized (Cont.)

- TD 2022/13: Income tax: does Subdivision 855-A (or subsection 768-915(1)) of the Income Tax Assessment Act 1997 disregard a capital gain that a foreign-resident (or temporary-resident) beneficiary of a resident non-fixed trust has because of subsection 115-215(3)?

TD 2022/13 sets out the Commissioner's view that Div 855 of ITAA 1997 does not enable a foreign-resident beneficiary of a resident non-fixed trust to disregard their share of a non-taxable Australian property trust capital gain.

The Taxation Determination also clarifies that s 855-40 only operates to disregard a capital gain that a foreign-residency beneficiary has because of s 115-215(3) if the trust is a fixed trust. Section 768-915(1) also does not disregard capital gains that a temporary-resident beneficiary has because of s 115-215(3).

TD 2022/13 applies both before and after its date of issue. The determination was previously issued as draft TD 2019/D6.

The ATO has published a **compendium** of the feedback it received.

ATO update on eInvoicing

With currently more than 18,000 businesses already using eInvoicing, the ATO is expecting significant growth in the use of eInvoicing over the next 12 months to make their transactions faster, simpler and more secure.

eInvoicing is the new, standardised way to send and receive electronic invoices directly in software, via a secure network. eInvoicing offers a streamlined way of managing invoices. With eInvoicing, suppliers no longer need to print, post or email paper-based or PDF invoices and buyers would not need to manually enter or scan invoices into their software.

ATO Deputy Commissioner Mr Will Day said eInvoicing reduces the risk of fake or compromised invoices and email billing scams as the invoice is delivered directly into the customer's software via a secure network.

Businesses can get started with eInvoicing by registering in their software or talking to their advisers.

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

GST treatment of financial supplies and related supplies and acquisitions

The ATO has provisionally updated its ruling on the GST treatment of financial supplies and related supplies and acquisitions. The draft outlines the proposed changes to GSTR 2002/2 to reflect changes in the GST law (for instance, changes to the GST legislation applicable to cross-border supplies and in relation to digital currency), include new references to public guidance released relating to financial supplies, and provide some proposed changes to modernise parts of the Ruling.

The draft inserts a buy-now pay-later example that applies the ATO's longstanding view on interest free loans. Schedule 2 of the Ruling has also been provisionally updated to indicate when certain foreign currency-denominated products and overseas payment products are GST-free.

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply. For more details, please refer [here](#).

Monthly Tax Update

ATO Rulings and Activity (Cont.)

GST treatment of financial supplies and related supplies and acquisitions

The ATO has provisionally updated its ruling on the GST treatment of financial supplies and related supplies and acquisitions. The draft outlines the proposed changes to GSTR 2002/2 to reflect changes in the GST law (for instance, changes to the GST legislation applicable to cross-border supplies and in relation to digital currency), include new references to public guidance released relating to financial supplies, and provide some proposed changes to modernise parts of the Ruling.

The draft inserts a buy-now pay-later example that applies the ATO's longstanding view on interest free loans. Schedule 2 of the Ruling has also been provisionally updated to indicate when certain foreign currency-denominated products and overseas payment products are GST-free.

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

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

GST Adjustment Note Information Requirements Determination 2022.

The ATO has released for comment a GST related draft determination (LI 2022/D11), A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2022.

It outlines the additional information requirements specified under s 29-75(1)(c) of the GST Act for a document to be an adjustment note or recipient created adjustment note.

The draft determination replaces the A New Tax System (Goods and Services Tax) Adjustment Note Information Requirements Determination 2012 (F2013C00796).

The due date for comments was 26 August 2022.

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

GST deferred transfer farm-out arrangements

A draft explanatory statement (LI 2022/D12) has been issued. It sets out specific attribution rules for deferred transfer farm-out arrangements (defined in section 4 of the determination) where a supply or acquisition made under a contract is subject to preconditions. The determination is necessary to prevent Division 29 and Chapter 4 of the GST Act applying inappropriately to these arrangements.

This determination replaces A New Tax System (Goods and Services Tax) Particular Attribution Rules for Deferred Transfer Farm-out Arrangement Determination 2012 (F2012L00866).

The due date for comments was 26 August 2022.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO update on COVID-19 Pandemic event (Subclass 408) visa

A COVID-19 Pandemic event (Subclass 408) visa (408 Pandemic event visa) is a temporary Australian Government Endorsed Events visa that allows eligible individuals to legally stay in Australia and continue to work during the COVID-19 pandemic.

The ATO has released a guide on how the tax outcome of the visa holder may or may not change, depending on their residency status and previous visa.

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

Redundant STP legislative instruments repealed

The ATO has registered the Taxation Administration – Single Touch Payroll – Spent Instruments Repeal Determination 2022 legislative instrument, which repeals six redundant legislative instruments related to Single Touch Payroll reporting (STP).

The six legislative instruments relating to STP reporting that are no longer required and being repealed are:

- [PAYG Withholding annual reporting exemptions: Single Touch Payroll optional year \(F2018L00494\)](#).
- [Taxation Administration – Single Touch Payroll – Exemption for Employers from Reporting Contribution Amounts Paid to a Superannuation Fund \(F2019L00121\)](#).
- [Taxation Administration – Single Touch Payroll – Exemption for Insolvency Practitioners and Employers subject to their appointment \(F2019L00440\)](#).
- [Taxation Administration – Single Touch Payroll – Exemptions for payments made to Members by Portable Long Service Leave and Portable Redundancy Scheme Providers \(F2019L00457\)](#).
- [Taxation Administration – Single Touch Payroll – 2020–21 year Portable Long Service Leave and Portable Redundancy Scheme Providers Exemption 2020 \(F2020L00800\)](#). [Taxation Administration – Single Touch Payroll – 2019–20 and 2020–21 Income Years Closely Held Payees Exemption 2021 \(F2021L01037\)](#).

According to the legislation, the repeal of these instruments will not affect their prior operation in the relevant financial years, due to the operation of section 13 of the Legislation Act 2003 and section 7 of the Acts Interpretation Act 1901.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Practice Statement Law Administration PS LA 2004/10: Tax law claimed to be invalid

The ATO has refreshed its guidance on how to deal with correspondence from taxpayers who claim that they will not comply with tax laws because the laws are invalid or do not apply to them.

The Practice Statement has been updated to provide more complete references, including to internal procedures, and to improve readability.

According to the Practice Statement, any correspondence claiming tax laws are invalid or do not apply, which is not part of an ongoing matter or where there is any doubt about the validity of the taxpayer's arguments, should be escalated in accordance with the published Constitutional correspondence procedures.

Given that many claims of this type have been rejected by the courts, it is inappropriate for ATO staff to spend time and resources producing detailed responses to these claims. Generally, the appropriate response would be a short letter of rejection, directing the taxpayer to PS LA 2004/10 for further information.

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

Class rulings issued :

- Class Ruling [CR 2022/72](#) - Qantas Airways Ltd - Executive Recovery Retention Plan. This ruling applies from 1 July 2021 to 30 June 2024.
- Class Ruling [CR 2022/73](#) - Qantas Airways Ltd - Employee Recovery Retention Plan. This ruling applies from 1 July 2021 to 30 June 2024.
- Class Ruling [CR 2022/74](#) - Police & Nurses Ltd - PNL Capital Notes. This ruling applies from 1 July 2021 to 30 June 2027.
- Class Ruling [CR 2022/75](#) - Uniti Group Ltd - scheme of arrangement and special dividend. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/76](#) - Firefinch Ltd - demerger of Leo Lithium Ltd. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/77](#) - DGO Gold Ltd - scrip for scrip roll-over. This Ruling applies from 1 July 2021 to 30 June 2023.
- Class Ruling [CR 2022/78](#) - Vimy Resources Ltd - scrip for scrip roll-over. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/79](#) - New World Resources Ltd - return of capital by distribution of shares in Koba Resources Ltd. This ruling applies from 1 July 2021 to 30 June 2022.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Class rulings issued (Cont.) :

- Class Ruling [CR 2022/80](#) - Metals X Ltd - return of capital by distribution of shares in NICO Resources Ltd. This ruling applies from 1 July 2021 to 30 June 2022
- Class Ruling [CR 2022/81](#) - Victoria Police - early retirement scheme 2022–2023. This ruling applies from 8 September 2022 to 30 June 2023
- Class Ruling [CR 2022/82](#) - Australian Construction Industry Redundancy Trust - employer contributions. This ruling applies from 1 April 2022 to 31 March 2027
- Erratum to [CR 2022/35](#) - Urban Mobility Pty Ltd - use of an electric bicycle by an employee.

Other rulings issued:

- Product Ruling [PR 2022/7](#) - Bell Equity Lever — instalment receipts. This ruling applies from 1 July 2022 to the specified class of entities.
- Product Ruling [PR 2022/8](#) - Bell Geared Equities Investment. This ruling applies from 1 July 2022 to the specified class of entities.
- **Addendum** to Product Ruling PR 2021/12 Challenger Lifetime Annuity (Liquid Lifetime). This addendum amends PR 2021/12 to incorporate a new product disclosure statement, applicable before and after its date of issue.

Latest Australian Tax Cases

- **GST; group registration** - The AAT has upheld a decision by the Commissioner to revoke a GST group's registration because the group did not meet the ownership requirements in the GST legislation. [Adcon Resources Vic Pty Ltd v FC of T 2022 ATC - 16 August 2022]
- **Superannuation** - The AAT has found that additional payments made to an SMSF member were correctly treated as a superannuation income stream benefit in the absence of a clear choice, if not formal election, by the member that they were *not* to be treated as such. [Prescott v FC of T 2022 ATC - 4 August 2022]
- **Distributions from foreign trust** – The AAT has found that the default assessments issued by the ATO to the taxpayer in respect of the distribution received from a foreign trust were not excessive and that there is no basis for the penalty to be remitted. The decision under review is affirmed. [Campbell and Commissioner of Taxation (Taxation) [2019] AATA 2043 - 22 July 2019]

September 2022



Collaborating with Andersen Global in Australia

Monthly Tax Update

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, September 2022. All rights reserved.