

Monthly Tax Update

In this edition of the Monthly Tax Update for October 2021, we provide the recent updates in legislation along with tax developments in the areas of corporate tax, individual 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 receive assent

Since our last update, the following Bills have received assent and are now law:

- **Paid Parental Leave Amendment (COVID-19 Work Test) Bill 2021** as Act No 99 of 2021. The Act amends the Paid Parental Leave Act 2010 to provide that a person in receipt of an Australian government COVID-19 payment, as specified by the Paid Parental Leave Rules 2021, or the COVID-19 Disaster Payment will be considered to be performing qualifying work for the work test for Parental Leave Pay and Dad and Partner Pay.

The amendments also provide for similar matters regarding future payments to be addressed in the Paid Parental Leave Rules. The work test for Paid Parental Leave will also be met where the relevant Secretary is satisfied that prescribed special circumstances, such as domestic violence, natural disaster or severe illness, exist.

The amendments apply from 4 September 2021.

The Paid Parental Leave Rules 2021 have also been amended to give effect to these amendments.

- **Treasury Laws Amendment (2021 Measures No 2) Bill 2021** as Act No 110 of 2021. This Bill contains changes to deductible gift recipient endorsement and the Offshore Banking Unit (OBU) regime.
- **Treasury Laws Amendment (2021 Measures No 6) Bill 2021** as Act No 111 of 2021. This Bill includes amendments related to refunds of large-scale generation shortfall charges, actuarial certificates for certain superannuation funds and superannuation information for family law proceedings.
- **Industry Research and Development Amendment (Industry Innovation and Science Australia) Bill 2021** as Act No 101 of 2021. This Bill includes consequential amendments to the Income Tax Assessment Act 1997, Taxation Administration Act 1953, Pooled Development Funds Act 1992 and Venture Capital Act 2002 to replace references to Innovation and Science Australia with references to Industry Innovation and Science Australia.

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COVID-19 Stimulus Packages Updates

COVID-19 Disaster Payment

In a joint media release on 29 September 2021, Treasurer Josh Frydenberg says the COVID-19 Disaster Payment will be phased out as a state or territory reaches certain vaccination targets.

The payment will begin to transition once a state or territory reaches 70% full vaccination of its population (16 years and older), in line with the movement into Phase B of the National Plan agreed to at National Cabinet. Once a state or territory reaches 70% full vaccination, the automatic renewal of the temporary payment will end and individuals will have to reapply each week that a Commonwealth Hotspot remains in place to confirm their eligibility.

Further, where a Commonwealth Hotspot remains in place and a state or territory reaches 80% full vaccination of its population (16 years and older), the temporary payment will step down over a period of 2 weeks before ending. In the first week after a state or territory has reached 80% vaccination, there will be a flat payment of \$450 for those who have lost more than 8 hours of work, while those on income support will receive \$100. In the second week, the payment will be brought into line with JobSeeker at \$320 for the week for those who have lost more than 8 hours of work, while the payment will end for those on income support.

For those who have not already returned to the workforce following the end of the temporary payment as the economy opens up, the social security system will support eligible individuals back into work.

The Pandemic Leave Disaster Payment will remain until 30 June 2022.

For further details, please refer to the media release [here](#).

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COVID-19 Stimulus Packages Updates (Cont.)

New JobKeeper reporting obligations

As a result of recent legislative amendments to the Corporations Act 2001 (Cth) (Treasury Laws Amendment (2021 Measures No. 2) Act 2021) listed entities are required to provide a notice disclosing certain information to their market operator regarding JobKeeper payments received by the listed entity and any of its subsidiaries. The notices will be released publicly by the relevant market operator, as well as be compiled into a consolidated report to be issued by ASIC.

Under the amended legislations, for each relevant financial year, the listed entity must disclose:

- the listed entity's name and ABN
- the number of individuals for whom a JobKeeper payment was received for a JobKeeper fortnight that ended in the financial year
- the total sum of all JobKeeper payments received in a JobKeeper fortnight that ended in the financial year
- whether the entity has made any voluntary repayments to the Commonwealth in respect of any payments received by the entity in the financial year
- the sum of any voluntary repayments.

The disclosure must be made within 60 days of lodging a financial report for the relevant year with Australia Securities and Investments Commission (ASIC), or where the financial report for the relevant year has already been lodged with ASIC, within

60 days of commencement of the relevant legislation (which was 14 September 2021). There is also a requirement to provide updated information if the entity becomes aware of an error in its original disclosure.

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

OECD Updates

OECD Economic Outlook Interim Report

Based on the Interim Report of Economic Outlook published by the OECD for September 2021, the global economic recovery from the COVID-19 pandemic remains strong, yet too uneven. Uneven progress is increasing economic tensions that could undermine the recovery if not well managed by policymakers. Rising commodity and shipping prices and stretched supply chains as economies re-open rapidly are pushing up inflation everywhere but this is expected to be temporary.

Please refer [here](#) for a copy of the OECD report.

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Other Updates

List of information exchange countries effected

The 2021–22 Budget measure to add several jurisdictions to the list of information exchange countries has been effected.

The **Taxation Administration Amendment (Updating the List of Exchange of Information Countries No 2) Regulations 2021** (the Regulations) amend s 34 of the Taxation Administration Regulations 2017 to add Armenia, Cabo Verde, Kenya, Mongolia, Montenegro, and Oman to the list of information exchange countries for the purposes of s 12-385(4) of sch 1 to the Taxation Administration Act 1953.

Under s 12-385, recipients of fund payments with an address or place of payment in an information exchange country are eligible to access the reduced Managed Investment Trust (MIT) withholding tax rate of 15% on certain distributions, instead of the default rate of 30%. Fund payments made by a Clean Building MIT are subject to a withholding rate of 10% where the recipient's address or place for payment is in an information exchange country.

The Regulations commence on 1 October 2021 and the amendments in the Regulations apply from 1 January 2022.

Consultation on reducing red tape and increasing transparency of charity sector

The government has released exposure draft legislation to reduce the regulatory burden for registered charities imposed by the current reporting requirements and increase public confidence in the accountability of charities.

The draft Australian Charities and Not-for-profits Commission Amendment (2021 Measures No 3) Regulations 2021 implement the government's responses to the Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review (2018) by increasing the revenue thresholds defining small, medium and large registered charities, and require all registered charities to disclose related party transactions, with small, registered charities to make a simplified disclosure involving a brief description of related party transactions.

The closing date for submission of comments was Friday, 8 October 2021.

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

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Other Updates (Cont.)

Second round of miscellaneous amendments to Treasury portfolio laws 2021

Several exposure draft legislation and regulations have been released to propose minor and technical amendments to the Treasury portfolio laws. The community's views are sought on the proposed amendments.

The amendments seek to ensure the law operates as intended by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes. The amendments are part of the Government's commitment to the ongoing care and maintenance of Treasury laws.

The draft changes are the second round of miscellaneous changes in 2021, following the first round of changes that were released in May 2021.

Exposure draft legislation contains provisions to amend:

- the Income Tax Rates Act 1986 to ensure the working holiday maker regime functions properly despite disruptions caused by COVID-19;
- ITAA 1997 and the Taxation Administration Act 1953 to ensure the tax regime for the seasonal labour mobility program functions properly despite disruptions caused by COVID-19, and
- ITAA 1936 to replace the LIBOR with a qualified rate to act as a ceiling rate in relation to certain intra-bank loans by a foreign bank to an Australian branch, as the LIBOR will no longer be published from 31 December 2021. In particular, the Commissioner will be empowered to determine the qualified rate for a particular currency by legislative instrument made under s 160ZZZA of ITAA 1936.

Exposure draft regulations have also been released to:

- move an ASIC class order relating to the long-term performance superannuation disclosure reporting requirements into the Corporations Regulations 2001;
- repeal Div 2.2 of Pt 2 of the Retirement Savings Accounts Regulations 1997 (the RSA Regulations), which prescribed information for the purposes of the now repealed s 52(2)(a) of the Retirement Savings Account Act 1997;
- remove the reference in the note to s 2.18A of the RSA Regulations to the now repealed s 53 of the Retirement Savings Account Act 1997, and
- amend the Superannuation (Unclaimed Money and Lost Members) Regulations 2019 to ensure the recovery of overpayment in Pt 4B of the Superannuation (Unclaimed Money and Lost Members) Act 1999 operates properly and consistent with the other recovery of overpayment provisions in that Act.

The closing date for comments is 19 October 2021. For more details, please refer [here](#).

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ATO Rulings and Activity

ATO focus on undeclared foreign income – income disguised as gifts or loans

The Australian Taxation Office (ATO) has issued Taxpayer Alert 2021/2 which relates to arrangements of concern that involve an Australian tax resident who attempts to evade taxation on foreign assessable income by disguising funds received from overseas as a gift or loan.

The ATO will undertake reviews, audits and actively engaging with taxpayers who have entered into arrangements where taxpayers are aware of their residency status, but attempt to avoid or evade tax on their foreign assessable income by concealing the character of funds upon their repatriation to Australia by disguising the funds received as a gift, or a loan, from a related overseas entity.

Taxpayer Alert TA 2021/2 describes the features of relevant arrangements that the ATO is concerned. A number of examples are also included in the Taxpayer Alert (TA).

In addition, as indicated in the TA, the ATO is using its exchange of information powers to gather information from other countries, including the foreign assessable income derived by taxpayers in those countries. The ATO also use other sources of information, such as data from the Australian Transaction Reports and Analysis Centre (AUSTRAC) which identifies movements of funds into Australia as well as the data it receives via the Common Reporting Standard and the Foreign Account Tax Compliance Act.

Penalties may apply to participants in, and promoters of, this type of arrangement. This includes serious penalties under Div 290 of sch 1 to the Taxation Administration Act 1953 for promoters. In more serious cases, sanctions under criminal law may apply. Registered tax agents involved in the promotion of this type of arrangement may be referred to the Tax Practitioners Board to consider whether there has been a breach of the Tax Agent Services Act 2009.

For further details, please refer to the Taxpayer Alert [here](#).

ATO focus on income from shares

In the recent media release from the ATO, the ATO has reminded that share investors who reinvest their dividends or distributions are generally required to still declare this income in their tax returns, despite not having received any money. The ATO reiterated that data collected from ASIC, brokers and share registries are analysed to identify taxpayers that are not fully disclosing income or incorrectly claiming losses.

With the onset of micro-investment platforms and exchange traded funds, first-time share investors are advised to check the data that is pre-filled in their tax returns, to ensure all relevant information is included so as to avoid tax refund delays. Exchange traded funds also provide investors with a distribution statement showing capital gains and losses which are to be included in tax returns.

In order to deduct capital losses from shares, the share must have been sold, as deductions are not available for “paper losses” where only the value of the share has fallen but the investor still holds the share. Share investors should also keep good records of their trades and expenses incurred. For more details, please refer [here](#).

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ATO Rulings and Activity (Cont.)

Draft guidance on administrative penalties for electronic sales suppression tools

The Australian Taxation Office (ATO) has issued a draft guidance (Draft Law Administrative Practice Statement PS LA 2021/D2) which provides a provisional guidance to ATO staff on the application and remission of the administrative penalties for producing, supplying, possessing and incorrectly keeping records using an electronic sales suppression tools (ESSTs). ESSTs are hardware or software tools designed and used to manipulate sales records, understate income and assist in avoiding tax obligations.

The Practice Statement includes guidance on:

- when an ESST penalty applies
- factors to consider when deciding whether to remit an ESST penalty
- notifying a taxpayer of their penalty.

The production, supply, possession and use of ESSTs contributes to the black economy and undermines the integrity of the tax system. This draft Practice Statement provides a framework for staff on establishing when an administrative penalty applies for ESST conduct and the principles to consider when remitting the penalties.

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

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ATO Rulings and Activity (Cont.)

Expanding STP Phase 2

In the 2019–20 Budget, the Government announced that Single Touch Payroll (STP) would be expanded to include additional information.

The expansion of STP, also known as STP Phase 2, will reduce reporting burden for employers who need to report information about their employees to multiple government agencies. It will also help Services Australia's customers, who may be your employees, get the right payment at the right time.

The mandatory start date for Phase 2 reporting is 1 January 2022.

The ATO has announced that they will allow flexible approach to transition to STP Phase 2 based on employers' business readiness/individual circumstances.

- Where employers can start reporting from 1 January 2022, the ATO will support and encourage them to transition.
- If employers can start reporting the expanded data by 1 March 2022, they will be considered to have started on time. They do not need to apply for more time.

Deferrals are available for Digital Service Providers (DSPs) who will not be ready. DSPs will advise their clients who are covered by their deferral. There is no need for employers to apply for more time where their DSP has a deferral that will cover them. For any employers that need even more time, a delayed transition will be available.

An online tool for employers to apply for a delayed transition for Phase 2 will be made available in December 2021. Further information will be available from the ATO subsequently.

No penalties will be applied for honest mistakes made during the first year of reporting the expanded data. This will cover transitions until 31 December 2022. This includes employers who have already started Phase 2 reporting.

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

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ATO Rulings and Activity (Cont.)

ATO guidance on aggregated turnover calculations

The ATO has finalised Taxation Determination TD 2021/7, a guidance on calculating a taxpayer's aggregated turnover under s 328-115 of ITAA 1997 where a connected entity or affiliate has a different accounting period.

Taxation Determination TD 2021/7 provides that when working out a taxpayer's aggregated turnover, the relevant annual turnovers of connected entities and affiliates are determined by reference to the taxpayer's income year. The taxpayer should calculate its aggregated turnover based on its income year, whether that ends on 30 June or some other date. (for example, where the taxpayer has a substituted accounting period approved by the Commissioner).

The determination finalises draft TD 2021/D1 and applies both before and after its date of issue.

Please refer [here](#) for the relevant guidance for further details.

Class rulings issued:

- Class Ruling [CR 2021/59](#) New South Wales Minerals Council Ltd — access arrangements under the Mining Act 1992 (NSW) between holders of exploration licences and assessment leases and landholders on whose land prospecting operations are undertaken. The ruling applies to entities that enter into the scheme from 8 September 2021 to 8 September 2025.
- Class Ruling [CR 2021/60](#) Macquarie Bank Ltd — Macquarie Bank Capital Notes 3. The ruling applies from 1 July 2021 to 30 June 2032.
- Class Ruling [CR 2021/61](#)_Metcash Ltd — offmarket share buyback. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2021/62](#) Quest Payment Systems Pty Ltd — evidence of a deduction for donations made to a deductible gift recipient via the use of an electronic donation collection device. The ruling applies from 1 July 2021 to 30 June 2026 and will continue to apply after 30 June 2026 to all entities within the specified class who enter the scheme during the term of the ruling.
- Class Ruling [CR 2021/63](#) Rox Resources Ltd — demerger of Cannon Resources Ltd. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2021/64](#) Suncorp Group Ltd — Suncorp Capital Notes 4. The ruling applies from 1 July 2021 to 30 June 2031.
- Class Ruling [CR 2021/65](#) Westpac Banking Corporation — Westpac Capital Notes 8. The ruling applies from 1 July 2021 to 30 June 2032.

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ATO Rulings and Activity (Cont.)

Class rulings issued (Cont.):

- Class Ruling [CR 2021/66](#) Edith Cowan University — early retirement scheme 2021. The ruling applies from 30 September 2021 to 31 January 2022.
- Class Ruling [CR 2021/67](#) Primewest (HICT) Pty Ltd — return of capital. The ruling applies from 1 July 2020 to 30 June 2021
- Class Ruling [CR 2021/68](#) FAR Ltd — return of capital. The ruling applies from 1 July 2021 to 30 June 2022, and
- Class Ruling [CR 2021/69](#) Latitude Group Holdings Ltd — Latitude Capital Notes. The ruling applies from 1 July 2021 to 30 June 2027.
- Addendum to Class Ruling [CR 2007/15A2](#) Fringe benefits tax: employer clients of Community Sector Banking Pty Ltd who are subject to the provisions of s 57A of the Fringe Benefits Tax Assessment Act 1986 that make use of a CSB Salary Benefit Card Account facility. It amends [CR 2007/15](#) to change the name of the company in CR 2007/15 from Community Sector Banking Pty Ltd to Bendigo and Adelaide Bank Ltd, in view of Bendigo and Adelaide Bank Ltd acquiring Community Sector Banking Pty Ltd from 3 March 2020.
- Addendum to Class Ruling [CR 2016/29A1](#) Fringe benefits tax: employer clients of Community Sector Banking Pty Ltd who are subject to the provisions of either s 57A or 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of a B-Entertained MasterCard debit card facility. It amends [CR 2016/29](#) to:
 - change the name of the company in [CR 2016/29](#) from Community Sector Banking Pty Ltd to Bendigo and Adelaide Bank Ltd, in view of Bendigo and Adelaide Bank Ltd acquiring Community Sector Banking Pty Ltd from 3 March 2020, and
 - extend the date of application from 31 March 2020 to 31 March 2024.
- Addendum to Class Ruling [CR 2017/38A1](#) Fringe benefits tax: employer clients of Community Sector Banking Pty Ltd who are subject to the provisions of either s 57A or 65J of the Fringe Benefits Tax Assessment Act 1986 that make use of a B-Maximised MasterCard credit card facility. It amends [CR 2017/38](#) to:
 - change the name of the company in [CR 2017/38](#) from Community Sector Banking Pty Ltd to Bendigo and Adelaide Bank Ltd, in view of Bendigo and Adelaide Ltd acquiring Community Sector Banking Pty Ltd from 3 March 2020, and
 - extend the date of application from 31 March 2020 to 31 March 2024.

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ATO Rulings and Activity (Cont.)

Product rulings issued:

- Product Ruling **PR 2021/10** Income tax: Morgan Stanley Option and Loan Facility. The ruling applies from 1 July 2021 only to the specified class of entities that enter into the scheme from 1 July 2021 until 30 June 2024, being its period of application.
- Product Ruling **PR 2021/11** Tax consequences for Australian policyholders of a Quilter executive investment bond. The ruling applies prospectively from 1 July 2021 only to the specified class of entities that enter into the scheme and are a resident of Australia for taxation purposes from 1 July 2021 to 30 June 2024, being its period of application.
- Product Ruling **PR 2021/12** Challenger Lifetime Annuity (Liquid Lifetime). The ruling applies prospectively from 4 October 2021 only to the specified class of entities that enter into the scheme from 4 October 2021 until 30 June 2024, being its period of application.

Latest Australian Tax Cases

- **Commissioner's access powers** - The Full Federal Court has dismissed the applicant's appeal against the first instance decision of *CUB Australia Holding Pty Ltd v FC of T 2021 ATC*, which had upheld the validity of a notice issued by the Commissioner under s 353-10 that the applicant claimed had the improper purpose of determining the validity of its legal professional privilege claims. [*CUB Australia Holding Pty Ltd v FC of T (No 2) 2021 ATC* - 21 September 2021]
- **GST; scrap gold** - The AAT has held that a taxpayer in the business of purchasing scrap gold did not make GST-free supplies to 2 refiners in one period (due to the lack of evidence showing that each refiner was a dealer in precious metal at the relevant time), but did make GST-free supplies by way of export sales of scrap gold in another period. [*STNK v FC of T 2021 ATC* - 17 September 2021]
- **COVID-19; cash flow boost scheme** - The AAT has determined that a taxpayer company that recorded a \$25,000 payment to its sole director in its payroll account in the last week of March 2020 entered into a scheme for the sole or dominant purpose of obtaining a cash flow boost and thus fell foul of the Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020. [*MJ and IT Holdings Pty Ltd v FC of T 2021 ATC* - 8 September 2021]
- **Collection and recovery; serious hardship** - The AAT has affirmed the Commissioner's decision not to grant the CEO of NewSat Ltd release from his tax liabilities on the grounds of serious hardship after finding that he had been the author of his own misfortune. [*Ballintine v FC of T 2021 ATC* - 29 July 2021]
- **Travel expenses** - The AAT has affirmed the Commissioner's decision to disallow a medical practitioner's claims for work-related car expenses and other work-related expenses, finding that the expenses were incurred for travel to work rather than on work, and were thus private in nature. [*Mfula v FC of T 2021 ATC* - 30 August 2021]

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Latest Australian Tax Cases (Cont.)

- **GST; margin scheme** - The AAT has held that consideration for the acquisition of a long-term lease for the purposes of the margin scheme did not include building works required to be undertaken as a condition of the lease. [WYPF v FC of T 2021 ATC – 25 August 2021]
- **GST; registration** - The AAT has affirmed GST assessments issued following an ATO audit and found that the taxpayer company was required to be registered for GST. [Royal Lion Capital Pty Ltd v FC of T 2021 ATC - 25 August 2021]

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

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