

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

The Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022

The Federal Government has introduced legislation which would, among other measures, provide taxpayers with the choice to self-assess the effective life of certain intangible depreciating assets.

The [Treasury Laws Amendment \(Enhancing Tax Integrity and Supporting Business Investment\) Bill 2022](#), which was introduced in the House of Representatives on Wednesday 9 February, proposes to:

- empower the Commissioner of Taxation to direct an entity to complete an approved record-keeping course where the Commissioner reasonably believes the entity has failed to comply with its tax-related record-keeping obligations as an alternative to existing financial penalties;
- provide income tax and withholding tax exemptions for FIFA and its wholly owned subsidiary FWWC2023 Pty Ltd for activities associated with delivering the 2023 FIFA Women's World Cup;
- provide taxpayers with the choice to self-assess the effective life of certain intangible depreciating assets they start to hold on or after 1 July 2023, rather than using the statutory effective life currently specified in the law;
- strengthen and clarify the existing unfair contract terms provisions, to reduce the prevalence of unfair contract terms in consumer and small business standard form contracts;
- provide further support for small businesses and primary producers impacted by Cyclone Seroja in April 2021;
- reduce the effective tax rate on certain income earned by foreign resident workers participating in the Australian Agriculture Worker Program or the Pacific Australia Labour Mobility scheme from 32.5 percent to 15 percent; and
- make minor and technical amendments to various laws in the Treasury, Social Services and Veterans' Affairs portfolios.

Monthly Tax Update

Legislation Update (Cont.)

Legislative instrument registered - STP reporting exemption for WPN holders

A legislative instrument has been issued to exempt certain entities that do not have an Australian business number (ABN) but instead have a withholding payer number (WPN) from reporting under Single Touch Payroll (STP) for the 2021–22 and 2022–23 financial years.

In particular, the Taxation Administration — Single Touch Payroll — 2021–22 and 2022–23 years Withholding Payer Number Exemption 2021 provides an exemption to any entity that:

- pays an amount referred to in column 1 of the table in s 389-5(1) of sch 1 to the *Taxation Administration Act 1953* (TAA)
- does not have an ABN, and
- has been assigned by the ATO a WPN for the purposes of pay as you go withholding.

Entities within this class will continue to be fully exempt from the reporting obligations under s 389-5 of sch 1 to the TAA for the 2021–22 and 2022–23 financial years. The instrument repeals and replaces the legislative instruments that provided a class exemption to relevant entities for 2018–19 to 2020–21.

This instrument applies retrospectively from 1 July 2021 and will be repealed on 1 October 2023.

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

COVID-19 Stimulus Packages Updates

Tax deductibility of COVID-19 test expenses – PCRs and RATs paid for by businesses for employees

The Federal Government has announced that work-related COVID-19 tests (including Polymerase Chain Reaction and Rapid Antigen Tests) will be tax deductible for taxpayers and exempt from fringe benefit tax (FBT) for businesses.

Legislation will be introduced to make clear that COVID-19 test costs are tax deductible when incurred for work-related purposes. This will apply both when an individual is required to attend a physical workplace or has the option to work remotely. Employers will also be exempt from fringe benefits tax for the cost of COVID-19 testing provided to employees for work-related purposes.

This change will take effect from the beginning of the 2021–22 tax year.

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

Monthly Tax Update

OECD Updates

OECD transfer pricing guidelines updated

The Organisation for Economic Cooperation and Development (OECD) has updated the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

The latest edition was approved by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) on 7 January 2022. It updates the 2017 edition and includes the following:

- **Revised Guidance on the Transactional Profit Split Method**, approved by the OECD/G20 Inclusive Framework on BEPS on 4 June 2018, and which replaced the guidance in Ch II, s C (paras 2.114–2.151) found in the 2017 edition and Annexes II and III to Ch II
- **Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles**, approved by the OECD/G20 Inclusive Framework on BEPS on 4 June 2018, which has been incorporated as Annex II to Ch VI
- **Transfer Pricing Guidance on Financial Transactions**, adopted by the OECD/G20 Inclusive Framework on BEPS on 20 January 2020, which has been incorporated into Ch I (new s D.1.2.2) and in a new Ch X, and
- consistency changes to the remaining guidelines.

To find out more information, please refer [here](#).

OECD public consultation on Pillar One revenue sourcing rules

The OECD has released a public consultation document on Pillar One draft rules for nexus and revenue sourcing.

In October 2021, over 135 members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting agreed to a **Two-Pillar Solution** to address tax challenges arising from digitalisation and globalisation of the economy. Pillar One will reallocate some taxing rights over large multinational enterprises from their home countries to markets where they have businesses and earn profits, regardless of their physical presence.

The **Draft Rules for Nexus and Revenue Sourcing** illustrate the framework for identifying the relevant market jurisdictions from which revenue is derived for the purposes of Pillar One. The draft rules have been released to obtain public comments and do not necessarily reflect consensus regarding the substance of the document.

Interested parties are invited to send their written comments by 18 February 2022.

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

February 2022



Collaborating with Andersen Global in Australia

Monthly Tax Update

Other Updates

2021 tax benchmarks and variations statement

Treasury has published its 2021 Tax Benchmarks and Variations Statement which provides annual information on Australian Government tax benchmarks and variations.

The 2021 Statement reflects Australian Government policy up to and including the 2021-22 Mid-Year Economic and Fiscal Outlook.

It lists provisions in the tax system that apply an alternative treatment of particular taxpayers or forms of economic activity and, where possible, estimates the difference in revenue as a result.

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

Reform of Australia's electronic surveillance framework Discussion Paper

The government has released a discussion paper which includes a proposal to provide the ATO with power to access telecommunications data.

The Reform of Australia's Electronic Surveillance Framework Discussion Paper contains background information and 37 questions seeking feedback on the principles that will guide the development of a new legislative framework to govern electronic surveillance in Australia.

The discussion paper advises that under the framework, the government is considering providing the ATO with the power to access telecommunications data for the purpose of protecting public revenue from serious financial crimes.

The closing date for submissions to the discussion paper is 11 February 2022.

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

Draft R&D Tax Incentive Determination on clinical trials (Phase 0-III) for an unapproved therapeutic good

A draft determination proposes to allow clinical trials to be eligible for the Research and Development Tax Incentive (R&D Tax Incentive).

The draft Industry Research and Development (clinical trials, Phase 0, I, II, III for an unapproved therapeutic good) Determination 2021 would make it clear that Phase 0-III clinical trials would be eligible activities for the purpose of the R&D Tax Incentive and would provide a simplified registration process for businesses to invest in clinical trials.

The draft determination is the first of its kind to be made under the R&D Tax Incentive reforms announced in the 2020-21 Federal Budget.

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

Monthly Tax Update

Other Updates (Cont.)

TPB guidance on verifying client identities

The Tax Practitioners Board (TPB) has finalised its practical guidance on verifying client identities.

Practice Note [TPB\(PN\) 5/2022](#) sets out the TPB's proposed proof of identity requirements for registered tax practitioners and provides information on:

- relevant provisions of the Tax Agent Services Act 2009 (TASA) including the Code of Professional Conduct
- the TPB's minimum requirements
- identifying discrepancies
- consequences of non-compliance under the TASA
- case studies
- further guidance on issues relating to client verification.

The practice note was released earlier as draft guidance [TPB\(PN\) D45/2021](#).

ATO Rulings and Activity

Draft notices for lodgment of 2021–22 tax returns

The ATO has released the following draft legislative instruments setting out the proposed requirements to lodge income tax returns for the 2021–22 income year:

- [Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2022 \(LODGE 2022/D1\)](#), and
- [Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2022 \(LODGE 2022/D2\)](#).

Comments on both draft legislative instruments are due by 4 March 2022.

Draft effective life determinations released

The ATO has released draft effective life determinations for assets used in the casino operation industry and electric bicycles and scooters and is seeking comments on these drafts:

- [Draft effective life of assets used in the casino operation industry](#)
- [Draft effective life of electric bicycles and electric scooters \(e-bikes and e-scooters\)](#)

Submissions are open until 18 February and 25 February respectively.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Guidance for Top 1000 taxpayers preparing for a combined assurance review

The ATO has released a guidance to assist Top 1000 taxpayers review their income tax risk management and governance frameworks and prepare for a combined assurance review.

The ATO is providing examples of better practices in relation to income tax governance for different types of Top 1000 corporate entities which can then be extrapolated.

Tax governance is a key focus area under the justified trust methodology for large public and multinational businesses.

Demonstrating how good income tax governance is embedded in positions taken, disclosures in returns and tax calculations provides the ATO with evidence it can rely upon which can reduce the intensity of enquiries.

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

TD2022/1 – Income tax: commercial debt forgiveness

The ATO has finalised guidance on the exclusion for debts forgiven for reasons of natural love and affection from the commercial debt forgiveness provisions under s 245-40(e) of ITAA 1997.

Taxation Determination TD 2022/1 clarifies that the exclusion for debts forgiven for reasons of natural love and affection requires the creditor to be a natural person. The context of s 245-40(e) requires a direct causal nexus between the forgiveness and the natural love and affection, such that the natural love and affection must arise from ordinary human interaction. This can only occur where the creditor and the object of the creditor's love and affection are natural persons.

The determination also provides that there is no requirement for the debtor to be a natural person where the conditions of the exclusion are otherwise satisfied.

TD 2022/1 applies to income years commencing both before and after its date of issue. As the determination takes a different view to ATO Interpretative Decision **ATO ID 2003/589** (withdrawn), the Commissioner will not devote compliance resources in relation to debts forgiven prior to the decision's withdrawal on 6 February 2019.

The determination was previously issued as draft TD 2019/D9. The ATO has published a [compendium](#) of the feedback it received.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

GST administration annual performance report 2020-21

According to the ATO's annual GST administration annual performance report., the net GST gap calculated for 2019-20 is estimated to be 7.8 percent.

According to the report, the ATO raised \$73.1 billion in GST cash collections in 2020–21 which was 4.7 percent (or \$3.3 billion) above the revised budget estimate and 21.3 percent higher than in 2019–20.

GST cash collections included:

- \$4.8 billion (net) from the Department of Home Affairs;
- \$1 billion in GST for supplies of digital products and services, and low value imported goods;
- \$2.3 billion in liabilities through client engagement activities, including:
 - \$1.1 billion from compliance and lodgement enforcement activities as part of the GST compliance program; and
 - \$0.5 billion in compliance liabilities raised from high-risk refund case work.

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

Class rulings issued:

- Class Ruling [CR 2021/101](#) Western I.V.F. Pty Ltd - scrip for scrip roll-over. This Ruling applies from 1 July 2021 to 30 June 2022.
- **Addendum** to Class Ruling [CR 2021/92](#) - Victorian Department of Justice and Community Safety – early retirement scheme 2021–2023. It amends CR 2021/92 to clarify the class of employees specifically excluded from participating in the scheme.
- Class Ruling [CR 2022/1](#) - rhipt Ltd – scheme of arrangement and special dividend. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/2](#) - Cuscal Ltd – equal access off-market share buy-back and selective off-market share buy-back. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/3](#) - Think Childcare Ltd – scheme of arrangement, interim dividend and permitted dividend. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/4](#) - 1300 - Smiles Ltd – scheme of arrangement and special dividend. The 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 2022/5** - AIA Australia Ltd – provision of free membership, allocation of points, and free or discounted goods and services to members of a health and wellness program. The ruling applies from 1 April 2020 to 31 March 2024.
- Class Ruling **CR 2022/6** - Bingo Industries Ltd – scheme of arrangement and special dividend. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling **CR 2022/7** - RAM Australia Retail Property Fund – return of capital and formation of a stapled security. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling **CR 2022/8** - RAM Australia Medical Property Fund – return of capital and formation of a stapled security. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling **CR 2022/9** - Afterpay Ltd – scrip for scrip roll-over. The ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling **CR 2022/10** - Chalice Mining Ltd – demerger of Falcon Metals Ltd. The ruling applies from 1 July 2021 to 30 June 2022.

Latest Australian Tax Cases

- **Worldwide freezing order (Mareva injunction)** - The High Court has held that the Federal Court rules on granting freezing orders in respect of a taxpayer's assets located outside Australia do not require proof of a realistic possibility of enforcement of a judgment debt against the assets in each foreign jurisdiction to which the order pertains (thereby allowing the Deputy Commissioner's appeal against the Full Federal Court decision cited as [2020] FCAFC 141). [DFC of T v Huang 2021 ATC - 8 December 2021]
- **Capital allowances; petroleum exploration** - The Full Federal Court decision has dismissed the Commissioner's appeal and allowed the taxpayer's cross-appeal from the decision reported at 2021 ATC ¶¶20-791 concerning capital allowance deductions for costs incurred in acquiring additional proportional interests in statutory titles that conferred authority to explore for petroleum. [FC of T v Shell Energy Holdings Australia Ltd 2022 ATC - 25 January 2022]
- **SGC; "employee"** - The AAT has affirmed the Commissioner's decision that a plumber was engaged to perform services as an employee under the expanded meaning of the term in s 12(3) of the Superannuation Guarantee (Administration) Act 1992 (the Act) as he worked under a contract that was wholly or principally for his labour. [Trustee for Virdis Family Trust t/a Rickard Heating Pty Ltd v FC of T 2022 ATC - 5 January 2022]
- **COVID-19 measures; JobKeeper** - The AAT has held that yet another taxpayer was not eligible for JobKeeper payments applied for as a business participant after finding that the taxpayer's part-time work as a promotional make-up artist did not constitute the carrying on of a business. [RWPY v FC of T 2021 ATC – 24 December 2022]

Monthly Tax Update

Latest Australian Tax Cases (Cont.)

- **COVID-19 measures; JobKeeper** - The AAT has held that a taxpayer who provided rooms for rent through the AirBnB platform was not carrying on a business as required by the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 and thus was not eligible to receive JobKeeper payments as a business participant. [FFYS v FC of T 2021 ATC – 24 December 2021]
- **GST; approved valuation** - In a matter remitted to the AAT by the Federal Court, the AAT has held that a land valuation that used a discounted cash flow methodology and hindsight information was an “approved valuation” for GST margin scheme purposes. [Decleah Investments Pty Ltd & Anor as trustee for the PRS Unit Trust v FC of T 2021 ATC – 24 December 2021]]
- **Assets betterment assessments** - The AAT has held that a taxpayer was assessable on unexplained bank deposits and credit entries to his director loan accounts, but that his stay-at-home wife was not. [Buzadzic & Anor v FC of T 2021 ATC – 24 December 2021]
- **COVID-19 measures; JobKeeper** - The AAT has refused to overturn the Commissioner’s objection decision that a taxpayer who provided her employer with a JobKeeper nomination that she later withdrew in order to give a nomination notice to the Commissioner in her capacity as a business participant instead failed to meet the requirement of s 12(4)(b)(iii) of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020. [DGSC v FC of T 2021 ATC – 24 December 2021]
- **Trust income; reimbursement agreements** - The Federal Court of Australia has set aside the Commissioner’s objection decisions in respect of both primary income tax assessments issued to a trust and alternative income tax assessments issued to the principal of the trust after finding no reimbursement agreement pursuant to s 100A nor scheme pursuant to Pt IVA in circumstances where a corporate beneficiary had been created to receive the benefit of the trust. [Guardian AIT Pty Ltd (as trustee of Australian Investment Trust) & Anor v FC of T 2021 ATC - 21 December 2021]
- **Disclosure of taxpayer information** - The New South Wales Court of Criminal Appeal has allowed the Crown’s appeal from the decision of R v Kinghorn (No 7) 2020 ATC ; [2020] NSWSC 1483, finding that disclosures of a compulsory examination of the taxpayer under former s 264 made by the ATO to the AFP and DPP were not in breach of the accusatorial principle and companion rule. R v Kinghorn 2021 ATC – 21 December 2021]
- **Transfer pricing** - The Federal Court has upheld assessments disallowing interest deductions of \$894 million to an Australian company that had obtained a transfer pricing benefit from a Loan Note Issuance Agreement with a related overseas company. [Singapore Telecom Australia Investments Pty Ltd v FC of T 2021 ATC – 17 December 2021]
- **Objections, reviews & appeals** - The Full Federal Court has dismissed a bankrupt’s appeal against an AAT decision ([2020] AATA 5308) after affirming that she was not a person “dissatisfied” within the meaning of s 14ZZ(1) of the Taxation Administration Act 1953 so as to have standing to seek review of the relevant objection decisions. [Pitman v FC of T 2021 ATC – 16 December 2021]

February 2022



Collaborating with Andersen Global in Australia

Monthly Tax Update

Latest Australian Tax Cases (Cont.)

- **Information-gathering powers** - The Federal Court has refused to grant an undertaking sought by a company to limit the Commissioner's use of documents it produced to court under subpoena, after rejecting the company's arguments that the Commissioner was bound by the Harman undertaking or obligation not to use the subpoenaed documents just like any other litigant in a proceeding. [La Mancha Africa S.A.R.L. v FC of T & Anor 2021 ATC - 15 December 2021]
- **Assessable income; residency** - The AAT has held that a taxpayer who was based in either Indonesia or Mongolia during the 2015 to 2018 income years was a resident of Australia according to the ordinary concepts test due to his continuity of association with Australia. [Oberg v FC of T 2021 ATC - 13 December 2021]
- **Disclosure of protected information** - The Supreme Court of New South Wales has refused to set aside a notice to produce documents served on the Commonwealth, finding that production of the documents in accordance with the rules of court was not inconsistent with the obligations placed on taxation officers since such production would be for the purpose of performing their duties as taxation officers. [Kupang Resources Pty Ltd v Commonwealth of Australia 2021 ATC - 21 December 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

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, February 2022. All rights reserved.