

July 2022



Collaborating with Andersen Global in Australia

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

Federal Parliament has not yet reconvened following the formation of the new Government and accordingly there have been no new tax or superannuation Bills introduced. The new Parliament is scheduled to resume sittings on 26 July 2022

OECD Updates

OECD International Compliance Assurance Programme (ICAP)

ICAP is a voluntary risk assessment and assurance programme to facilitate open and co-operative multilateral engagements between MNE groups willing to engage actively and transparently and tax administrations in jurisdictions where they have activities.

By coordinating conversations between an MNE group and multiple tax administrations, ICAP supports the effective use of transfer pricing documentation, including the MNE group's Country-by-Country report, providing a faster, clearer and more efficient route to improved multilateral tax certainty. ICAP should reduce the resource burden on both MNE groups and tax administrations and mean fewer disputes requiring resolution through mutual agreement proceedings. Where an area is identified as needing further attention, work conducted in ICAP can improve the efficiency of compliance action taken outside the program, if needed.

The International Compliance Assurance Programme: Handbook for tax administrations and MNE groups contains information on the process for ICAP reflecting the experience and feedback of tax administrations and MNE groups that participated in two pilots for the program, commencing in 2018 and 2019. The handbook includes a detailed description of each stage of the ICAP process, the documentation and information an MNE group participating in ICAP will provide, the level of comfort they may achieve as a result of participation in the program, and a comparison of ICAP with other possible routes to greater tax certainty.

To access a copy of the ICAP handbook, please click [here](#).

Monthly Tax Update

OECD Updates (Cont.)

OECD updated transfer pricing country profiles

The OECD has released new transfer pricing profiles for Egypt, Liberia, Saudi Arabia and Sri Lanka, bringing the total number of countries covered to 73.

These country profiles focus on countries' domestic legislation regarding key transfer pricing principles, including the arm's length principle, transfer pricing methods, comparability analysis, intangible property, intra-group services, cost contribution agreements, transfer pricing documentation, administrative approaches to avoiding and resolving disputes, safe harbours and other implementation measures. The information contained in these profiles is intended to clearly reflect the current state of countries' legislation and to indicate to what extent their rules follow the OECD Transfer Pricing Guidelines.

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

Other Updates

ABS – Lending indicators

The Australian Bureau of Statistics (ABS) has released the new borrower-accepted finance commitments for housing, personal and business loans.

According to the ABS key statistics, in May 2022 in seasonally adjusted terms, the value of new loan commitments are:

- rose 1.7% for housing
- rose 5.1% for personal fixed term loans
- fell 3.5% for business construction (a typically volatile series)
- rose 19.5% for business purchase of property (a typically volatile series)

According to the ABS, the value of new housing loan commitments in May totalled \$32.4 billion, with new owner-occupier housing loan commitments rising 2.1 percent and comprised 82 percent of the rise in total lending.

Over the month, Victoria recorded the largest rise in new owner-occupier loan commitments (up 6.1%), followed by Queensland (up 2.5%), and South Australia (up 2.8%). While Western Australia and the Northern Territory recorded falls of 3.3% and 7.3% respectively.

New investor loan commitments crept up by 0.9% in May, which was driven by New South Wales (up 3.1%) and Victoria (up 2.8%), with Queensland recording the largest decline of 4%.

The rise in new commitments for fixed-term personal finance in May was driven by a 10.2% rise in lending for personal investment, as well as a 3.2% rise in lending for road vehicle purchases.

Monthly Tax Update

Other Updates (Cont.)

ABS – Lending indicators (Cont.)

Though lending for travel rose 11.4%, it remained 20.4% below pre-pandemic levels.

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

ATO Rulings and Activity

ATO update: How to lodge a TPAR for the engagement of contractor services

The ATO has released a guide to assist taxpayers lodge a Taxable payments annual report (TPAR) if they provide or pay contractors for services.

Due to COVID-19, many taxpayers may have engaged more contractors in the past year, for services such as cleaning or delivery. They may now need to lodge a TPAR for the first time.

What the taxpayers need to report in their TPAR depends on the services their organisation provides.

Taxpayers may need to lodge a TPAR by 28 August 2022 if their organisation provides, or pays contractors for, the following services:

- cleaning;
- courier, delivery or road freight;
- building and construction;
- information technology (IT); and
- security, surveillance or investigation.

To lodge a TPAR report involves three steps:

- prepare – work out if a report is necessary;
- record – keep the right records, such as total payments made to each contractor (including cash payments). Make sure to provide this information to any engaged tax or BAS agent so they can lodge the TPAR by the due date; and
- report – lodge the TPAR by 28 August online using business software, Online services for business, or through a registered tax or BAS agent.

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

Monthly Tax Update

ATO Rulings and Activity (cont.)

ATO benchmark interest rate for Div 7A loans

The ATO has released the current benchmark interest rate for Div 7A loans purposes. The benchmark interest rate for the 2022–23 income year is 4.77% pa.

This benchmark interest rate is relevant to private company loans made or deemed to have been made after 3 December 1997 and before 1 July 2022 and to trustee loans made after 11 December 2002 and before 1 July 2022. It is used to:

- determine if a loan made in the 2021–22 income year is taken to be a dividend (ITAA 1936 s 109N(1)(b) and as applicable, s 109D(1) or s 109XB), and
- calculate the amount of the minimum yearly repayment for the 2022–23 income year on an amalgamated loan taken to have been made before 1 July 2022 (ITAA 1936 s 109E(5)).

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

ATO withdrawals of taxation ruling and practice statement relating to Division 7A, trust entitlements.

TR 2010/3 - Income tax: Division 7A loans: trust entitlements and PS LA 2010/4 Division 7A: trust entitlements are being withdrawn with effect from 1 July 2022. The updated guidance in Draft Taxation Determination [TD 2022/D1](#) had provided guidance on the administrative aspects of TR 2010/3. That ruling dealt with the ATO position that unpaid present entitlements could give rise to a Div 7A loan.

When finalised, [TD 2022/D1](#) will apply to trust entitlements created on or after 1 July 2022.

An entity may continue to rely on TR 2010/3 and PS LA 2010/4 in respect of trust entitlements conferred on or before 30 June 2022. The ATO will not devote compliance resources to arrangements conducted in accordance with TR 2010/3 in respect of trust entitlements arising on or before 30 June 2022. In addition, the ATO will not devote compliance resources to sub-trust arrangements conducted in accordance with PS LA 2010/4 in respect of trust entitlements arising on or before 30 June 2022, even though those sub-trust arrangements may commence after 30 June 2022.

For further information, please refer to the below:

- For PS LA 2020/4 withdrawal notice – please refer [here](#).
- For TR 2020/3 withdrawal notice – please refer [here](#).

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO employees guide for work expenses

The ATO has updated the 'Employees guide for work expenses' to reflect the new work-related expenses that can be claimed for the first time in the 2021-22 income year. These include the cost of COVID-19 tests incurred after 1 July 2021 where these are work-related.

The ATO guidance on travel and accommodation expenses issued in [TR 2021/4](#) The ATO has also been updated to include electric cars expenses. when discussing car expenses. The information on deducting the cost of protective items during the pandemic has also been updated.

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

TD 2022/10 - Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2022-23 income year?

The ATO has issued TD 2022/10 and set out its view of the amounts considered to be reasonable in relation to claims made by employees for the 2022–23 income year in respect of:

- overtime meal expenses — for food and drink when working overtime
- domestic travel expenses — for accommodation, food and drink, and incidentals when travelling away from home overnight for work (particular reasonable amounts are given for employee truck drivers, office holders covered by the Remuneration Tribunal and Federal Members of Parliament), and
- overseas travel expenses — for food and drink, and incidentals when travelling overseas for work.

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

Crypto not taxed as foreign currency

The Government has announced that Crypto currencies will continue to be excluded from foreign currency tax arrangements.

Following the government of El Salvador allowing Bitcoin as legal tender, the Albanese Government will clarify the current arrangements in legislation that will mean crypto assets will be excluded from foreign currency for tax purposes.

Capital gains tax will continue to apply to crypto assets that are held as investments.

The clarification will be backdated to 1 July 2021 to avoid ambiguity following the decision by the government of El Salvador.

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO update: New offshore hybrid mismatch questions in 2022 International Dealings Schedule

The ATO has released a guide on the new questions included in the recently released 2022 International Dealings Schedule (IDS).

The ATO indicated that the new inclusions, Q47, Q47a and Q47b, will help them to assess tax risks associated with offshore hybrid structures and arrangements.

Taxpayers would need to indicate 'Yes' at Q45 of the IDS if during the 2021-22 financial year, they had an arrangement that has the potential to give rise to a hybrid mismatch under Division 832 of the Income Tax Assessment Act 1997 (ITAA 1997).

If 'Yes' is answered at Q45, taxpayers need to answer the three new offshore hybrid mismatch questions, which covers:

- any importing payments you made under a structured arrangement (Q47);
- any offshore hybrid mismatches that exist within your Division 832 control group(s), regardless of whether deductions are denied under Subdivision 832-H (Q47a); and
- their top three most material offshore hybrid mismatches of any kind (Q47b).

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

PCG 2018/9 - Central management and control test of residency: identifying where a company's central management and control is located

The ATO has issued PCG 2018/9 with an update to extend the transitional compliance approach period for foreign incorporated companies for a further 6 months (until 31 December 2022) to bring them in line with the ATO's view on "central management and control" for the purposes of determining their Australian tax residency status.

The extension is reflected in paragraph 104AA of the PCG..

Technical amendments announced by the previous Coalition government to clarify the corporate residency test rules are also still pending and subject to consideration by the new Labor government. These amendments would give effect to a 2020 Budget announcement that foreign incorporated companies will be treated as Australian tax residents where there is a "significant economic connection to Australia".

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

Monthly Tax Update

ATO Rulings and Activity (Cont.)

TD2022/9 - Income tax: is section 951A of the US Internal Revenue Code a provision of a law of a foreign country that corresponds to section 456 or 457 of the Income Tax Assessment Act 1936 for the purpose of subsection 832-130(5) of the Income Tax Assessment Act 1997?

The ATO has issued a tax determination, TD2022/9 to consider the interaction of section 951A of the United States (US) Internal Revenue Code (IRC), referred to as the 'global intangible low-taxed income' (GILTI) regime, with Australia's hybrid mismatch rules in Division 832 of the Income Tax Assessment Act 1997 (ITAA 1997).

The ATO has confirmed that the US GILTI rules do not correspond to either s 456 or 457 of ITAA 1936 in Australia's controlled foreign company (CFC) regime for the purpose of applying Australia's hybrid mismatch rules.

TD 2022/9 states that s 951A of the US Internal Revenue Code of 1986 is not a provision of a law of a foreign country that corresponds to s 456 or 457 for the purpose of the hybrid mismatch rules in s 832-130(5) of ITAA 1997.

The effect of this determination is that, for the purpose of applying Australia's hybrid mismatch rules, an amount of global intangible low-taxed income:

- does not affect whether or not a deduction/non-inclusion outcome arises, and
- will not be regarded as dual inclusion income.
-

The determination applies before and after its date of issue (the hybrid mismatch rules operate from 1 January 2019).

TD2022/9 was previously issued as draft TD 2019/D12 and a compendium of the ATO's response to feedback has also been published.

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

Class rulings issued:

- Class Ruling [CR 2022/50](#) - American Pacific Borates Ltd — exchange of shares for shares in 5E Advanced Materials, Inc. This Ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/51](#) - American Pacific Borates Ltd — exchange of options for options in 5E Advanced Materials, Inc. This Ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/52](#) - Espresso Displays Pty Ltd — portable display monitors. This ruling applies from 1 April 2021 to 31 March 2025.
- Class Ruling [CR 2022/53](#) - Whitefield Ltd — bonus share plan. This ruling applies from 1 July 2019 to 30 June 2024.
- Class Ruling [CR 2022/54](#) - Bionics Institute of Australia — loans from public and private ancillary funds. This ruling applies from 15 June 2022 to 30 June 2027.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Class rulings issued (Cont.):

- Class Ruling [CR 2022/55](#) - Oil Search Ltd — scheme of arrangement and scrip for scrip roll-over. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/56](#) - Tower Ltd — capital return. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/57](#) - PRT Company Ltd — distribution of special dividend and return of capital following sale of assets. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/58](#) - Tabcorp Holdings Ltd — demerger of The Lottery Corporation Ltd. This Ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/59](#) - Cedar Woods Properties Ltd — bonus share plan. This ruling applies from 1 July 2022 to 30 June 2027.
- Class Ruling [CR 2022/60](#) - BHP Group Ltd — dividend by way of in specie distribution of Woodside Energy Group Ltd shares. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/61](#) - Minotaur Exploration Ltd — reduction of share capital and scrip for scrip roll-over. This ruling applies from 1 July 2021 to 30 June 2022.
- [Erratum to Class Ruling CR 2022/14](#) - Cardno Ltd — return of capital and special dividend. It corrects minor errors in CR 2022/14. The erratum applies from 23 February 2022.
- [Addendum to Class Ruling CR 2013/14](#) Goods and services tax: goods and services supplied by dentists. The itemised list of goods and services provided by dentists has been updated.
- Withdrawal of Class Ruling [CR 2021/3](#) - Intelematics Australia Pty Ltd CONNECT tracking and fleet management solution — use for FBT car logbook and odometer records. The ruling is withdrawn because Intelematics Australia Pty Ltd no longer supports the CONNECT TFMS product to which this ruling refers. The withdrawal applies from 16 June 2022.

Other rulings issued:

- Product Ruling [PR 2022/5](#) - Instreet Masti. This ruling applies from 1 July 2022.

July 2022



Collaborating with Andersen Global in Australia

Monthly Tax Update

Latest Australian Tax Cases

- Customs duty - The Full Federal Court has held that the phrase “fails to keep [the] goods safely” in s 35A(1) of the Customs Act 1901 did not apply to circumstances where duty was not paid after the permitted delivery of goods into home consumption. In so finding, the full court allowed the applicant’s appeal against the AAT’s decision in [2021] AATA 3381. [Hurley v Collector of Customs 2022 ATC- 24 May 2022]
- Disclosure of protected information - The New South Wales Court of Appeal has overturned the decision of Ball J reported at 2021 ATC; [2021] NSWSC 1580 (which had refused to set aside a notice to produce pursuant to s 355-75 on the basis that the relevant notice did not require disclosure “to the court” but rather to a party to the proceedings), stating that if the immunity only extended to disclosure to courts or tribunals, there was no protection from disclosure by compulsion to an individual or entity. [Commonwealth of Australia v Kupang Resources Pty Ltd 2022 ATC; [2022] NSWCA 77 – 30 May 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, July 2022. All rights reserved.