

# 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.

## Federal Budget 2022/23

The 2022-2023 Federal Budget was handed down on 25 October 2022 by the newly elected Treasurer Jim Chalmers. This budget focuses on the Labor Government's key priorities following the May 2022 Federal election.

Alongside an overview of key measures, our team has provided insight and commentary on what this budget means for you, your employees and your business. The key measures we have covered:

- Corporate measures
- Multinational measures
- Compliance measures
- Individual measures
- Superannuation measures
- Other key measures

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

## Legislation Update

Since our last update, the following are the legislation / regulations that have been passed and/or introduced:

### Privacy penalty bill passes House

The Albanese Government's legislation to significantly increase penalties for repeated or serious privacy breaches has passed the House of Representatives on 9 November 2022.

The **Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022** proposes to increase the maximum penalties for serious or repeated privacy breaches from the current \$2.22 million to whichever is the greater of:

- \$50 million;
- three times the value of any benefit obtained through the misuse of information; or
- 30 percent of a company's adjusted turnover in the relevant period.

In addition to that, the Bill also provides the Australian Information Commissioner with greater powers to resolve privacy breaches and quickly share information about data breaches to help protect customers.

According to the Government, the Attorney-General's Department will carry out a comprehensive review that will be completed this year, ahead of an overhaul of the Privacy Act next year.

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## Legislation Update (Cont.)

Bill to increase Commonwealth penalty unit value introduced following Federal Budget from 1 January 2023

A Bill has been introduced to increase the penalty unit value from \$222 to \$275 for offences committed on or after 1 January 2023.

The **Crimes Amendment (Penalty Unit) Bill 2022** amends the Crimes Act 1914 to increase the value of the penalty unit for Commonwealth criminal offences. The existing indexation mechanism to automatically increase the value of the penalty unit every 3 years in line with the Consumer Price Index (CPI) will continue to apply, with the next indexation to occur on 1 July 2023.

The measure was first announced in the 2022 October Federal Budget.

## OECD Updates

OECD releases updated guidance on implementation of country-by-country reporting (CbCR)

The Organisation for Economic Cooperation and Development (OECD) issued guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13, a report to assist tax administrations and multinational enterprise (MNE) groups on the implementation and operation of country-by-country (CbC) reporting under base erosion and profit shifting (BEPS) Action 13.

The updated guidance will assist tax administrations and taxpayers on questions of interpretation to provide consistent implementation of the standard.

The updates concern:

- Positive and negative figures in completing Table 1;
- reporting permanent establishment information; and
- short accounting periods / long accounting periods.

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

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## Other Updates

### Game on: Digital Games Tax Offset to transform Australian industry

The Federal Government is backing in the digital games sector by introducing legislation to establish a Digital Games Tax Offset (DGTO) in the coming months.

According to Minister for the Arts Tony Burke, the legislation will introduce a 30 percent refundable tax offset to eligible games developers that spend a minimum of \$500,000 on qualifying Australian development expenditure.

The DGTO will be administered by the Office for the Arts and the Australian Taxation Office, with legislation forming part of the Income Tax Assessment Act 1997 that already provides incentives to the screen sector.

According to the Government, the global video games industry is the largest creative industry in the world, worth approximately \$250 billion. In Australia, game development studios generated \$226.5 million of income and employed 1,327 fulltime workers in 2020-21.

The legislation will form part of the Income Tax Assessment Act 1997, which already provides incentives to the screen sector.

According to the Office for the Arts, games with gambling elements and games that would not be able to achieve classification will be ineligible for the DGTO.

The DGTO was initially announced in the 2021-2022 Federal Budget, as part of the government's Digital Economy Strategy. For further information, please refer [here](#).

### Strengthening the ABN system

In the 2019-20 Budget, the former Government announced an intention to make ongoing ABN registration contingent on ABN holders meeting 2 additional obligations:

- the obligation to comply with income tax return lodgement requirements, and
- the obligation to update the accuracy of their details on the Australian Business Register (ABR), annually.

The new conditions will make ABN holders more accountable for meeting their government obligations, while minimising the regulatory impact on businesses doing the right thing.

The Government is seeking the community's views on the exposure draft legislation and accompanying explanatory materials.

Consultation closes 29 November 2022.

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

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## ATO Rulings and Activity

Director identification number – Must apply by 30 November 2022

The ATO has reminded directors of companies in Australia to apply for their director identification number (director ID). Individuals are required to apply for a director ID by 30 November 2022 if they are the director or alternate director of a company, registered Australian body or registered foreign company under the Corporations Act 2001.

A director ID is also required for the director or alternate director of an Aboriginal and Torres Strait Islander corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act). The due date CATSI Act directors to apply for a director ID is 30 November 2023. New CATSI Act directors must apply for their director ID before appointment from 1 November 2022.

The fastest way to apply for a director ID is online. They can streamline their online application by setting up their myGovID with a strong identity strength. This means they'll only need to provide either their TFN or residential address, as held by the ATO, at the proof of record ownership step.

For further details, please refer to the information available on ATO website [here](#).

## ATO's report on international related party dealings

The ATO has issued key statistics on international related party dealings (IRPDs). sourced from processed international dealings schedules (IDS) and local file – part A (LFPA) lodgements for the 2019–20 and earlier income years.

The findings include information such as total revenue and expenditures, jurisdictions, and loans.

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

## ATO country-by-country reporting guidance

The ATO has issued guidance on country-by-country (CBC) reporting in Australia.

The guidance outlines the ATO administrative practice on CBC reporting to assist relevant taxpayers in understanding and meeting their obligations under Subdivision 815-E of the ITAA 1997.

The 3 types of statements required under the CBC reporting regime as represented in Annexes I, II and III to Chapter V of the final report, correspond to:

- master file
- local file
- CBC report.

According to the ATO, there are approved forms for each of these statements.

For further details, please refer to the information available on ATO website [here](#).

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## ATO Rulings and Activity (Cont.)

### New ATO Guide on Business Record Keeping Requirements

The ATO has published a guide to help businesses check what business records they need to keep based on its size, structure and nature, its current situation, and stage it is in.

The ATO guide covers:

- record-keeping tips;
- record-keeping requirements when starting a business;
- records to keep while running a business;
- records to keep when changing a business structure;
- records to keep when selling or closing a business; and
- record-keeping requirements for gifts or loans received from related overseas entities.

For further details, please refer to the information available on ATO website [here](#).

### PCG 2022/D4: Claiming a deduction for additional running expenses incurred while working from home - ATO compliance approach

The ATO has released draft Practical Compliance Guideline PCG 2022/D4 setting out its approach to claiming a deduction for additional running expenses incurred while working from home.

This draft Guideline will allow taxpayers working from home to use a new method to claim the additional running expenses they incur as a result of working from home. When this Guideline is finalised, the new method (the revised fixed method) will be available for taxpayers to calculate their working from home expenses from 1 July 2022.

This Guideline will apply from 1 July 2022 and for the 2022-23 income year and later income years, the shortcut method outlined in Practical Compliance Guideline PCG 2020/3 Claiming deductions for additional running expenses incurred whilst working from home due to COVID-19 and the fixed-rate method outlined under “Special rules for home office running expenses” in Practice Statement PS LA 2001/6 Verification approaches for home office running expenses and electronic device expenses are no longer available for taxpayers to calculate their deduction for expenses incurred as a result of working from home.

The last day for comments on the draft PCG 2022/D4 is 30 November 2022.

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

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## ATO Rulings and Activity (Cont.)

### TR 2021/2DC1 Fringe benefits tax: car parking benefits

The ATO has proposed to amend Taxation Ruling TR 2021/2 which sets out when the provision of car parking is a car parking benefit for the purposes of the Fringe Benefits Tax Assessment Act 1986.

The draft update amends this ruling to incorporate changes which address the concept of “primary place of employment”, in light of the decision in *FC of T v Virgin Australia Regional Airlines Pty Ltd & Anor*; [2021] FCAFC 209.

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

### TD 2022/15 Income tax: value of goods taken from stock for private use for the 2022-23 income year

The ATO has updated amounts it will accept as estimates for the value of goods removed from trading stock for private use for taxpayers of certain industries.

TD 2022/15 provides an update of amounts that the Commissioner will accept as estimates of the value of goods taken from trading stock for private use by taxpayers in named industries.

It is recognised that greater or lesser values may be appropriate in particular cases. Taxpayers may be able to justify a lower value for goods taken from stock than that shown in the schedule. In that case, the lower amount should be used. Where the value of goods ex-stock would be significantly greater, the actual amount should be used.

TD 2017/9 Income tax: value of goods taken from stock for private use for the 2016–17 income year has been withdrawn from 20 October 2022 as its period of effect has passed.

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

### New employment form

The ATO has rolled out a new employment form on its online services platform to help reduce a business’ administration needs when hiring a new employee.

Employees will need the business’ Australian Business Number (ABN) to complete the form. The submitted form will include the employee’s Tax File Number (TFN) declaration details, which are sent to the ATO, bypassing the business’ need to submit it. A summary of the employee’s tax details will be provided to the business to input into their system.

The new employment form will also enable employees to update their tax circumstances such as:

- a change in residency status;
- no longer having a government study and training loan; or
- claiming the tax-free threshold from a different employer.

For further details, please refer to the information available on ATO website [here](#).

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## ATO Rulings and Activity (Cont.)

### Class rulings issued:

- Class Ruling [CR 2022/89](#) Home Consortium stapled group — destapling and restructure. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/90](#) Oklo Resources Ltd — scrip for scrip roll-over. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/91](#) Sandon Capital Activist Fund — reclassification of units using “series of units” methodology. This ruling applies from 1 July 2022 to 30 June 2028.
- Class Ruling [CR 2022/92](#) Avant Mutual Group Ltd — retirement reward dividend. This ruling applies from 1 July 2022 to 30 June 2026.
- Class Ruling [CR 2022/93](#) Afterpay Ltd — employee share scheme — acquisition by Block, Inc. under scheme of arrangement. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2022/98](#) Single Cell Mobile Consulting Pty Ltd — Portt Options Plan — reducing the minimum holding period. This Ruling applies from 1 July 2019 to 30 June 2022.
- Class Ruling [CR 2022/99](#) Central Equity Ltd — off-market share buy-back. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2022/100](#) Child Dental Benefits Schedule — payments assigned to representative public dentists. This ruling applies from 1 July 2022.
- Class Ruling [CR 2022/101](#) Blackmores Ltd — Employee and Director Rights Plan. This ruling applies from 3 December 2021 to 30 June 2026.
- Class Ruling [CR 2022/102](#) McMillan Shakespeare Ltd — off-market share buy-back. This ruling applies from 1 July 2022 to 30 June 2023.
- **Addendum** to Class Ruling CR 2021/53 ICSGlobal Ltd — return of share capital and special dividend. The ruling has been amended to clarify the assessability of the special dividend for non-residents. The addendum applies from 4 August 2021.

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## Latest Australian Tax Cases

- **Residency.** The AAT has held that the taxpayer who is an Australian citizen remained an Australian tax resident while working on an international cruise ship as he has not shown that he had changed his domicile to a place outside of Australia during the year of question. [Duff v FC of T 2022 ATC – 2 November 2022]
- **GST; input tax credits.** The AAT has held that the taxpayer was not entitled to claim input tax credits claimed in the business activity statements lodged outside the 4-year time limit. [H & B Auto Repair Centre Pty Ltd v FC of T2022 ATC – 25 October 2022]

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

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