

March 2023

Monthly Tax Update

In the March 2023 edition of Andersen in Australia's **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

Treasury Laws Amendment (2022 Measures No. 5) Bill 2022

Since our last update, **Treasury Laws Amendment (2022 Measures No. 5) Bill 2022**, which contains amendments to the list of deductible gift recipient entities, has received Royal Assent on 16 February 2023.

Treasury Laws Amendment (2023 Measures No. 1) Bill 2023

The **Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (Bill)** which passed by the House of Representatives on 9 March 2023, has been referred to the Senate Economics Legislation Committee.

The Bill contains measures to:

- implement the recommendations of the Independent Review of the Tax Practitioners Board (TPB Review) to reform the TPB;
- align the tax treatment of off-market share buy-backs undertaken by listed public companies with the tax treatment of on-market share buy-backs, with effect for off-market buy-backs announced to the market by listed public companies after 7:30pm, by legal time in the Australian Capital Territory, on 25 October 2022. It will also amend the income tax law in respect of selective share cancellations to ensure alignment of tax treatment across capital management activities for listed public companies; and
- prevent frankable distributions that are funded by capital raisings activity with effect for distributions that occurred on or after 15 September 2022.. This ensures that arrangements cannot be put in place to release franking credits that would otherwise remain unused where they do not significantly change the financial position of the entity.

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Legislation Update (Cont.)

Financial Accountability Regime Bills

Legislation to enact a new accountability regime for the banking, insurance and superannuation industries (the Financial Accountability Regime) has been re-introduced in parliament.

The **Financial Accountability Regime Bill 2023** (the Bill) introduces the Financial Accountability Regime. It contains provisions similar to those contained in the **Financial Accountability Regime Bill 2022**.

The **Financial Accountability Regime (Consequential Amendments) Bill 2023** contains consequential amendments to relevant Acts to support the Financial Accountability Regime. It contains provisions similar to those contained in Schedule 1 and 2 to the **Financial Sector Reform Bill 2022**.

The Bill commences the day after assent. The regime will apply to the banking industry 6 months after commencement of the Bill and to any new entrants beyond that, from the time they become an authorised deposit-taking institution (ADI) or a non-operating holding company. The regime will apply to the insurance and superannuation industries 18 months after commencement of the Bill, and to any new entrants beyond that, from the time they become licensed.

Paid Parental Leave Amendment Bill 2022

The **Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022** (the Bill) has been passed by both Houses and awaits assent.

The Bill gives more families access to the paid parental leave, gives parents increased flexibility in how they take leave and encourages parents to share care to promote gender equality.

The changes will come into effect for parents whose children are born or adopted from 1 July 2023.

Single parents will now be able to receive the full 20-week entitlement, up from 18-weeks currently. Parents can pre-claim up to 3 months before the expected date of birth or adoption so there is no delay to receiving payment. Pre-claims under the improved scheme will be open from the end of March.

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OECD Updates

The design of presumptive tax regimes

As many countries are challenged by the informal economy, presumptive tax regimes target “hard-to-tax” businesses and aim at encouraging tax compliance by reducing tax compliance costs and by levying lower tax rates as compared to the standard tax system.

The OECD Taxation Working Papers No. 59 on ‘The design of presumptive tax regimes’ present an analytical framework that allows for cross-country comparability providing a series of best practices on the design of these regimes.

Presumptive tax regimes, also known as simplified tax regimes, simplify the tax compliance process for micro and small businesses. By reducing tax compliance costs and levying lower tax rates compared to the standard tax system, these regimes aim at encouraging business formalisation and compliance. They are particularly useful in situations where actual taxable income is difficult to quantify as a taxpayer’s tax base is determined using alternative indicators. Although these regimes exist in many tax systems, they vary greatly in their design.

This OECD working paper provides an analytical framework for characterising and comparing these regimes. It also highlights key design aspects that deserve further consideration and lists a series of best practices on the design and administration of these regimes.

For more information, please refer to the [OECD website](#).

Other updates

Superannuation tax breaks

The government has announced a change to the concessional tax rate for superannuation balances above \$3 million.

From 2025-26, the concessional tax rate applied to future earnings for balances above \$3 million will be 30%. Currently, earnings from superannuation in the accumulation phase are taxed at a concessional rate of up to 15%. This will continue for all superannuation accounts with balances below \$3 million.

The change does not impose a limit on the size of superannuation account balances in the accumulation phase and it applies to future earnings, ie it is not retrospective.

The government is yet to introduce enabling legislation to implement the measure. Further consultation will be undertaken with the superannuation industry and other relevant stakeholders.

For more information, please refer to the [Treasury website](#).

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Other updates (Cont.)

Register of Foreign Ownership of Australian Assets

Treasury has released draft legislation that prescribes circumstances in which foreign persons would be required to provide information to be included on the Register of Foreign Ownership of Australian Assets for consultation.

As outlined in the explanatory statement of the draft legislation – Treasury Laws Amendment (Measures for Future Instruments) Instrument 2023 – the Register is an integral part of Australia’s foreign investment review framework. Regulatory burden is mitigated by continuing existing exemptions from some notification obligations and the design of the regime to minimise duplication of notifications, according to Treasury.

Consultation of the legislation closes 31 March 2023.

In relation to the Register, the Australian Taxation Office (ATO) has also released [draft data standards](#) that describe the technical requirements for submitting information to the Register for consultation.

Consultation for the draft data standards closes 24 March 2023.

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

ATO Rulings and Activity

Client-agent linking: ATO explains the new agent nomination process

The ATO has updated its client-to-agent linking in online services web content to include more information about reasons for the changes and the phased roll out approach. The ATO explains that the security and fraud environments are shifting and it is seeing increasing attempts to commit identity theft and fraud. These attempts impact taxpayers and practitioners.

More taxpayer groups will be progressively introduced into the new agent nomination process. The ATO recognises this change to the client-to-agent linking process may require more time and effort for tax agents and some of their clients, mainly those who are not yet set up to use the ATO online services. For those who are already set up, there are a reduced number of steps to complete the agent nomination process. For those who need to get set up to use the ATO online services or need help, ATO support is available.

For more information, please refer to the [ATO website](#).

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ATO Rulings and Activity (Cont.)

ATO-led taskforce executes raids in Australia's biggest GST Fraud – "Operation Protego"

The ATO-led Serious Financial Crime Taskforce has executed search warrants and issued warning letters in Operation Protego, which tackled the biggest GST fraud in Australia's history.

The recent operation marks a significant milestone in the ATO's crackdown on the biggest GST fraud in Australia's history.

The GST fraud was first detected in early 2022 and involves offenders inventing fake businesses and Australian business number (ABN) applications, then submitting fictitious Business Activity Statements in an attempt to gain a false GST refund.

Operation Protego has entered the compliance phase. The ATO took compliance action in 2022 against more than 53,000 clients and stopped approximately \$2.5 billion in fraudulent GST refunds from being paid to individuals seeking to defraud the system. It has commenced writing to more than 20,000 individuals involved in the fraud, warning them of the serious consequences unless they come forward and repay the money they had defrauded.

Recently, warrants were executed in 3 states against 10 individuals suspected of promoting the fraud, including on social media. Two individuals have been sentenced to jail time for their crimes so far, and more charges are expected to be laid over coming months.

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

GST industry guidance on digital products supply withdrawn

The ATO has withdrawn GST industry guidance on the supply of digital products to Australian residents from non-resident suppliers where the supply is made online.

The Goods and Services Tax Industry Issue — 'Application of GST to supplies of digital products made to Australian recipients from non-resident suppliers' is withdrawn with effect from 2 March 2023. The ruling is no longer current due to changes to s 9-25(5), s 9-26 and Subdivs 84-A and 84-B of the A New Tax System (Goods and Services Tax) Act 1999, made as a result of the Tax and Superannuation Laws Amendment (2016 Measures No 1) Act 2016.

GST Ruling [GSTR 2019/1](#) Goods and services tax: supply of anything other than goods or real property connected with the indirect tax zone (Australia) and GST Ruling [GSTR 2017/1](#) Goods and services tax: making cross-border supplies to Australian consumer provide the current ATO view on the GST treatment of a supply of digital products to Australian residents from non-resident suppliers.

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

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ATO Rulings and Activity (Cont.)

ATO practice statements on penalties updated

The ATO has made miscellaneous amendments and updated references to the source of the penalty unit values in the following Law Administration Practice Statements:

- [PS LA 2011/19](#) Administration of the penalty for failure to lodge on time
- [PS LA 2012/4](#) Administration of the false or misleading statement penalty — where there is no shortfall amount
- [PS LA 2012/5](#) Administration of the false or misleading statement penalty — where there is a shortfall amount, and
- [PS LA 2014/4](#) Default assessment penalty.

No substantive changes have been made to the views expressed by the ATO in the updated practice statements.

Working from home deduction

The ATO has finalised and outlined a new 'fixed rate method' for taxpayers to calculate their deduction for certain additional running expenses while working from home from 1 July 2022.

The revised method contained in Practical Compliance Guideline PCG 2023/1 published by the ATO on 16 February 2023, allowing taxpayers to claim at a rate of 67 cents per hour for the following additional running expenses for working from home from 1 July 2022:

- energy expenses (electricity and gas) for lighting, heating, cooling and electronic items used while working from home;
- internet expenses;
- mobile and home phone expenses; and
- stationery and computer consumables.

The revised fixed rate method contained in PCG 2023/1 does not include the decline in value of depreciating assets used for work purposes such as a computer, laptop or similar device, therefore a deduction for the decline in value of these items can be claimed separately to the rate per hour method.

PCG 2023/1 was previously issued in draft form as PCG 2022/D4. The ATO has also published a [compendium](#) of the feedback it received.

For more information, please refer to the Practical Compliance Guideline [here](#).

The ATO has also published information on [home-based business expenses](#) and deductions for [sole trader or partnership home-based businesses](#).

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ATO Rulings and Activity (Cont.)

Car parking fringe benefits

Following the decision by the Full Federal Court in *Commissioner of Taxation v Virgin Australia Regional Airlines Pty Ltd* [2021] FCAFC 209, Taxation Ruling TR 2021/2 has been amended to confirm the ATO's views on the meaning of 'primary place of employment' for the purposes of the car parking benefit provisions in the Fringe Benefits Tax Assessment Act 1986.

The addendum to Taxation Ruling TR 2021/2, TR 2021/2A1, Fringe benefits tax: car parking benefits was published on 22 February 2023. The updated ruling outlines two tests to determine the primary place of employment:

- sole or primary place of employment of the employee, and
- business premises that are otherwise the sole or primary place from which, or at which, the employee performs duties of his or her employment.

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

ATO fact sheet on FBT and electric vehicles

The ATO has released a fact sheet for employers on FBT obligations when providing an employee with an electric vehicle and associated items for their private use. The fact sheet highlights the following key points:

- An FBT exemption may apply to a car benefit arising from making available an electric vehicle (EV) to an employee, or their associates, for their private use.
- From 1 April 2025, private use of a plug-in hybrid EV is no longer eligible for the exemption unless:
 - (i) use of the plug-in hybrid electric vehicle was exempt before 1 April 2025; and
 - (ii) the employer has a financially-binding commitment to continue providing private use of that vehicle on and after 1 April 2025.
- If an employer or lessor provides an employee with the use of a car by means of a lease arrangement, the benefit provided is only a car benefit if it is a bona fide car leasing arrangement.
- Associated benefits arising from the provision of certain car expenses provided with the EV are also exempt from FBT. They are not included when working out the reportable fringe benefits amount.
- Providing an employee with a home charging station is a fringe benefit.
- If the use of the car and the associated car expenses are provided under a salary sacrifice arrangement, the exemption can still apply.
- Even if an exemption applies for the EV car benefit, the employer still needs to work out the taxable value of the car benefit provided, in working out if the employee has a reportable fringe benefits amount.

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ATO Rulings and Activity (Cont.)

ATO fact sheet on FBT and electric vehicles (Cont.)

- An employee's reportable fringe benefits amount is reported on their income statement or payment summary. Employees do not pay income tax on this amount, but it does impact their income tests and thresholds for family assistance, child support assessments and some other government benefits and obligations.
- The government will complete a review of this exemption by mid-2027 to consider electric vehicle take-up.

For more information, please refer to the [ATO website](#).

Draft FBT determinations on adequate alternative records

The ATO has released 4 draft FBT determinations dealing with adequate alternative records the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits.

The draft determinations are:

- **Draft Fringe Benefits Tax Assessment (Adequate Alternative Records - Overseas Employment Holiday Transport) Determination 2023** (LI 2023/D3) — which specifies records the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits where the employer seeks to reduce the taxable value of a benefit in respect of overseas employment holiday transport, the benefit consists in whole or part of a reimbursement of a “Division 28 car expense” incurred by the employee or family member in relation to a car they own or lease, and the reimbursement is calculated on a cents per kilometre basis.
- **Draft Fringe Benefits Tax Assessment (Adequate Alternative Records - Car Travel to Employment Interview or Selection Test) Determination 2023** (LI 2023/D4) — which specifies records that the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits where the employer seeks to reduce the taxable value of a benefit in respect of travel to an employment interview or selection test, the benefit consists in whole or part of a reimbursement of a “Division 28 car expense” incurred by the employee in relation to a car they own or lease, and the reimbursement is calculated on a cents per kilometre basis.
- **Draft Fringe Benefits Tax Assessment (Adequate Alternative Records - Remote Area Holiday Transport) Determination 2023** (LI 2023/D5) — which specifies records the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits where the employer seeks to reduce the taxable value of a benefit in respect of remote area holiday transport, the benefit consists in whole or part of a reimbursement of a “Division 28 car expense” incurred by the employee in relation to a car they own or lease, and the reimbursement is calculated on a cents per kilometre basis.

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ATO Rulings and Activity (Cont.)

Draft FBT determinations on adequate alternative records (Cont.)

- **Draft Fringe Benefits Tax Assessment (Adequate Alternative Records - Car Travel to Certain Work-Related Activities) Determination 2023** (LI 2023/D6) — which specifies records that the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits where the employer seeks to reduce the taxable value of a benefit in respect of car travel for a work-related medical examination, work-related medical screening, work-related preventative health care, work-related counselling or migrant language training, and the benefit consists in whole or part of a reimbursement of a “Division 28 car expense” incurred by the employee or their associate in relation to a car they own or lease, and the reimbursement is calculated on a cents per kilometre basis.

Feedback on the draft FBT determinations can be provided to the ATO by 17 March 2023.

Class rulings issued:

- Class Ruling **CR 2023/4** Controlled Thermal Resources Limited - exchange of shares for shares in Controlled Thermal Resources Holdings Inc. This Ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling **CR 2023/5** Royal Institute for Deaf and Blind Children - arrangements for donations of medical fees from participating ear, nose and throat surgeons. This Ruling applies from 15 February 2023 to 30 June 2028.
- Class Ruling **CR 2023/6** Australia and New Zealand Banking Group Limited - exchange of shares for shares in ANZ Group Holdings Limited. This Ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling **CR 2023/7** Link Administration Holdings Limited - demerger of PEXA Group Limited. This Ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling **CR 2023/8** Insurance Australia Group Limited - IAG Capital Notes 2. This Ruling applies from 1 July 2022 to 30 June 2032.
- Class Ruling **CR 2023/9** Pandal Group Limited - dividend and scheme of arrangement. This Ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling **CR 2023/10** Xero Ltd — employee share scheme - Restricted Stock Unit and Option Plan. This Ruling applies from 1 July 2021 to 30 June 2026.

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Latest Australian Tax Cases

- **Income tax, penalties, GIC** - This is an appeal case which challenges a refusal in the original jurisdiction of declaratory and other relief claimed by the Appellants under the Judiciary Act 1903 (Cth). The underlying issue concerns the ability of the Commissioner of Taxation to recover tax, penalties and general interest charge (GIC) in respect of liabilities arising under assessments issued to different taxpayers, as further to or as alternative assessments in respect of amounts sourced in the net income of a particular trust for a particular income year. [Hyder & Ors v FC of T – 8 March 2023]
- **Goods and services tax** – This was an appeal and cross-appeal from a decision of the AAT reported at 2021 ATC. The taxpayer company conducted a business of purchasing scrap gold to be refined into bullion. The taxpayer would sell the resultant gold bullion to the refiner that had refined the scrap gold (ABCRA or La Gajjar) without the taxpayer ever having possession of either the scrap gold or the bullion. The taxpayer claimed that it made GST-free supplies of gold bullion and creditable acquisitions of scrap gold between August and November 2016 (the First Period) and GST-free supplies by way of export sales of scrap gold bars between December 2016 and January 2017 (the Second Period). On that basis, it claimed it was not liable for GST on its sales and was entitled to input tax credits (ITCs) on its acquisitions. The Commissioner claimed that the taxpayer's supplies did not satisfy the requirements for GST-free supplies or, alternatively, that the general anti-avoidance provisions in Div 165 of the GST Act applied. [FC of T v Complete Success Solutions Pty Ltd ATF Complete Success Solutions Trust – 23 February 2023.]

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

Tel: +61 (0) 2 8226 8756

Email: cameron.allen@au.Andersen.com

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