

# Monthly Tax Update

In the May 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.

## 2023-24 Federal Budget

Andersen in Australia has issued a 2023-24 Budget Report, outlining this year's Federal Budget 2023/24 key economic forecast indicators and key tax and economic measures as announced by the Government on 9 May 2023. Please refer [here](#) a copy of the Budget Report.

## Legislation Update

### Treasury Laws Amendment (2023 Measures No. 2) Bill 2023

**Treasury Laws Amendment (2023 Measures No. 2) Bill 2023** (the Bill) has been introduced to amend the Medicare levy and Medicare levy surcharge (MLS) income thresholds, to allow eligible primary producers to treat certain carbon abatement income as primary production income and to reduce the GDP adjustment factor to work out certain PAYG and GST instalments.

- Schedule 1 – Medicare levy and Medicare levy surcharge income thresholds

Schedule 1 to the Bill contains the 2023–24 Budget measure to increase the Medicare levy and Medicare Levy Surcharge (MLS) low-income thresholds for the 2022–23 and later income years.

- Schedule 2 - Maintaining the Commonwealth Bank superannuation fund guarantee

As part of the privatisation of the Commonwealth Bank, the Commonwealth Government provided a guarantee to ensure that pre-privatisation members of the CBA Super fund would not risk losing their superannuation following privatisation. Schedule 2 to the Bill ensures that those members will continue to have the assurance of the existing Commonwealth guarantee if the CBA Super fund is merged with another superannuation fund.

- Schedule 3 - Tax accounting for primary producer registered emissions units

Schedule 3 to the Bill proposes to allow eligible primary producers to treat certain carbon abatement income as primary production income for the purposes of the Farm Management Deposit Scheme and accessing income tax averaging arrangements for primary producers.

May 2023

# Monthly Tax Update

## Legislation Update (Cont.)

### Treasury Laws Amendment (2023 Measures No. 2) Bill 2023 (Cont.)

- Schedule 4 - Cash flow relief for small and medium businesses

Schedule 4 to the Bill contains the 2023–24 Budget measure to reduce the GDP adjustment factor for the 2023–24 income year from 12% to 6%. The GDP adjustment factor is applied by the Commissioner to work out the amount of PAYG and GST instalments payable by a taxpayer in certain circumstances.

### Treasury Laws Amendment (Refining and Improving Our Tax System) Bill 2023

Since our last update, the [Treasury Laws Amendment \(Refining and Improving Our Tax System\) Bill 2023](#) has passed the House of Representatives.

The Bill includes amendments related to the Icelandic Convention, income tax exemption and franking credit refund for certain subsidiaries of the Future Fund Board, deductible gift recipient (DGR) registers reform, and excise and customs has passed the House of Representatives

### [Taxation Administration \(Exemption from Providing Payment Summaries to Passbook Account Holders\) Legislative Instrument 2023 \(F2023L00361\)](#)

A legislative instrument has been made to exempt passbook account providers from the requirement to provide a payment summary to a holder of passbook savings account for certain payments made to that account.

The instrument, which is made under TAA sch 1 s 16-180 exempts a passbook account provider from the requirement in TAA sch 1 s 16-155 to give a payment summary for a financial year to a passbook account holder if:

- the payment summary relates to a payment made to a passbook account issued by the passbook account provider during the relevant financial year. The passbook account must have been open or in use at any time during the financial year, although it may have since been closed, and
- an amount has been withheld from this payment under Subdiv 12-E or 12-F of sch 1 to the TAA.

The exemption will not apply if the passbook account holder requests a payment summary.

The instrument commences on 29 March 2023 and repeals and replaces the Notice of exemption from providing payment summaries to passbook account holders (30/11/2012) (F2012L02333) which is due to sunset on 1 April 2023.

May 2023

# Monthly Tax Update

## OECD Updates

### OECD Pillar Two update on compliance and certainty aspects of global minimum tax

On 16 March 2023, the Organisation for Economic Cooperation and Development (OECD) hosted a virtual consultation to discuss the implementation of the Pillar Two Global Anti-Base Erosion (GloBE) rules, designed to ensure a minimum effective tax rate of 15% has been paid by large multinational enterprises.

The session included discussion and presentation of comments received from contributors on:

- tax certainty and why certainty is important for the implementation of the GloBE rules;
- how the rules can be implemented to prevent disputes and differences in the application of the rules;
- how any disputes that arise could be resolved;
- the GloBE Information Return;
- simplification of data points and returns; and
- standardisation of the administration of the GloBE rules.

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

## Other updates

### Tax Transparency - MNEs CBC reporting to be published on Australian Government website

As part of the October 2022-23 Budget, the government announced a transparency measure for multinational entities (CBC reporting parents) to prepare for public release certain tax information on a country-by-country (CBC) basis and a statement on their approach to taxation.

The information is to be published on an Australian government website, with publication facilitated by the Commissioner. Its objective is to improve information flows to help investors and the public compare entity tax disclosures, to better assess whether an entity's economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction. The measure is proposed to apply to income years commencing from 1 July 2023.

The last day for comments on the exposure draft legislation and explanatory materials is 28 April 2023.

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

May 2023

# Monthly Tax Update

## Other updates (Cont.)

### Tax Transparency – Public Company Disclosure of subsidiary information

As part of the October 2022-23 Budget, on 16 March 2023 Treasury released draft law addressing tax transparency measures for multinational groups requiring Australian public companies (listed and unlisted) other than a corporate collective investment vehicle, to disclose information on their subsidiaries including details on their tax residency, ownership breakdown and entity type (partnership, body corporate etc) in financial reports applicable to financial years commencing on or after 1 July 2023.

These proposals complement the Government's commitment to implement a public beneficial ownership register as part of its multinational tax integrity package which applies to a broader range of covered entities. These proposed amendments are part of the Government's broader regulatory mix to improve corporate disclosures and include but are not limited to disclosures of tax residency of subsidiaries of Australian public companies.

While there is clearly a global trend towards mandating public reporting as a means of enhancing public scrutiny of multinational tax arrangements, the disclosure of tax residency status of entities into the financial reports of public companies has largely been voluntary up to now.

With the trend of more information in the public domain and multinationals tax affairs under greater public scrutiny, organisations need to ensure they have robust approach to tax governance practices, in order to support their public tax reporting.

The comment period on this transparency measure closes on 13 April 2023.

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

### MNEs - Denying deductions for payments relating to intangible assets connected with low corporate tax jurisdictions

Treasury has released exposure draft legislation for public consultation an anti-avoidance measure to prevent large multinationals from claiming tax deductions for payments relating to intangibles connected with low corporate tax jurisdictions.

The proposed legislation amends the ITAA 1997 to introduce an anti-avoidance rule designed to deter significant global entities (SGEs) from avoiding income tax, including withholding tax, under certain arrangements involving intangibles. Under the arrangements, income from exploiting intangible assets is derived in a low corporate tax jurisdiction by an associate of the SGE. However, deductions are claimed in Australia for payments the SGE makes to an associate that are attributable to those or related intangible assets. Under this rule, no deduction will be allowable for the payments made by the SGE to its associate.

May 2023

# Monthly Tax Update

## Other updates (Cont.)

### MNEs - Denying deductions for payments relating to intangible assets connected with low corporate tax jurisdictions (Cont.)

Where an SGE makes a payment to an associate that is attributable to a right or permission to exploit an intangible asset, and as a result of that or a related arrangement, income from the exploitation of those or related intangible assets is directly or indirectly derived by an associate of the SGE in a low corporate tax jurisdiction, the SGE will not be entitled to deduct an amount for that payment.

The proposed amendments operate in respect of payments or credits an SGE makes to an associate, as well as liabilities incurred by an SGE from an associate, on or after 1 July 2023, under an arrangement where the entry into that arrangement, or the acquisition or exercise of the right results in income from the exploitation of an intangible asset being derived in a low corporate tax jurisdiction.

Interested parties are invited to provide comments on the draft legislation and associated explanatory material until 28 April 2023.

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

### Multinational Tax Integrity – strengthening Australia’s interest limitation (thin capitalisation) rules

Treasury has released for consultation exposure draft materials on 16 March 2023 setting out the proposed legislative changes for new interest limitation rules (ie thin capitalisation amendments) as part of the Government’s proposed multinational tax package as announced in its October 2022 Federal Budget.

The draft Bill will introduce new thin capitalisation earnings-based tests to disallow an amount of an entity’s debt deductions based on the entity’s earnings or profits. A fixed ratio test will replace the existing safe harbour test, and a group ratio test will replace the existing worldwide gearing test. The new tests will apply for the existing “general” classes of entities, being “outward investor (general)”, “inward investment vehicle (general)” and “inward investor (general)”. The tests will not apply to financial entities and authorised deposit-taking institutions (ADIs).

The draft Bill will also establish a new arm’s length test in the form of an external third party debt test for general class investors and financial entities that are not ADIs. The external third party debt test will disallow all debt deductions which are not attributable to third party debt and that satisfy certain other conditions. This test will replace the arm’s length test for all entities previously subject to that test.

The amendments are proposed to apply to income years commencing on or after 1 July 2023. The proposed measures are subject to consultation and submissions from interested parties can be made by 13 April 2023.

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

For more information on the proposed measures and what businesses might look out for, please refer to the Andersen Tax Brief [here](#).

May 2023

# Monthly Tax Update

## Other updates (Cont.)

### Consultation on major reform of Australia's anti-money laundering and counter-terrorism financing laws

The Government has commenced consultation on overdue reforms to Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

Reform was recommended by the 2016 Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the 2016 Statutory Review), as well as the Senate Legal and Constitutional Affairs References Committee Inquiry into the adequacy and efficacy of Australia's AML/CTF regime in 2022 (the 2022 Senate Inquiry).

The government has now released the first of 2 consultation papers on the AML/CTF regime for comments by 16 June 2023. Part 1 of the consultation paper contains changes to simplify and modernise the operation of the regime, as recommended in the 2016 Statutory Review. In particular, the review found that the scale, structure and density of the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) was a significant issue.

Part 2 of the consultation paper proposes to extend the AML/CTF regime to certain high-risk professions referred to as "tranche-two entities", ie lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones. This was one of the 4 bipartisan recommendations contained in the 2022 Senate Inquiry.

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

## ATO Rulings and Activity

### Upcoming R&D Tax Incentive application deadline

The ATO is reminding companies operating on a standard income year (ie 1 July to 30 June) that the statutory deadline to apply for the R&D Tax Incentive is 30 April, that is, within 10 months after the income period closes.

For the 2021–22 financial year, the deadline to submit a registration application is 2 May 2023.

The R&D Tax incentive applications can only be submitted through the R&DTI customer portal. The portal will display the due date for application once a draft application is started.

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

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### FBT determinations withdrawn

The following FBT determinations have been withdrawn but continue to be binding on the Commissioner for the relevant period to which they applied:

- **TD 2017/2** Fringe benefits tax: for the purposes of section 135C of the Fringe Benefits Tax Assessment Act 1986, what is the exemption threshold for the fringe benefits tax year commencing on 1 April 2017?
- **TD 2017/3** Fringe benefits tax: what is the benchmark interest rate to be used for the fringe benefits tax year commencing on 1 April 2017?
- **TD 2017/4** Fringe benefits tax: what are the rates to be applied on a cents per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the fringe benefits tax year commencing on 1 April 2017?
- **TD 2017/5** Fringe benefits tax: reasonable amounts under section 31G of the Fringe Benefits Tax Assessment Act 1986 for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit for the fringe benefits tax year commencing on 1 April 2017.
- **TD 2017/6** Fringe benefits tax: for the purposes of section 28 of the Fringe Benefits Tax Assessment Act 1986 what are the indexation factors for valuing non-remote housing for the fringe benefits tax year commencing on 1 April 2017?
- **TD 2017/14** Fringe benefits tax: for the purposes of section 39A of the Fringe Benefits Tax Assessment Act 1986 what is the car parking threshold for the fringe benefits tax year commencing on 1 April 2017?

### FBT reasonable food and drink amounts

The ATO has issued Taxation Determination TD 2023/2 which sets out the amounts that the Commissioner considers reasonable under s 31G of the Fringe Benefits Tax Assessment Act 1986 for food and drink expenses incurred by employees receiving a living-away-from-home allowance (LAFHA) fringe benefit for the FBT year commencing on 1 April 2023.

Where the total of food and drink expenses for an employee (including eligible family members) does not exceed the amount the Commissioner considers reasonable, those expenses do not have to be substantiated under s 31G. If an employer wants to reduce the taxable value of an employee's LAFHA fringe benefit by the exempt food component, the expenses must be either:

- equal to or less than the amount that the Commissioner considers reasonable under s 31G(1)(b), or
- substantiated in accordance with s 31G(2).

If the total of an employee's food or drink expenses exceeds the amount that the Commissioner considers reasonable, the substantiation provisions under s 31G will apply. For more information, please refer [here](#).

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### ATO draft guideline on electric vehicle home charging expenses

The ATO has issued guidance on calculating the cost of charging an electric vehicle in Practical Compliance Guideline PCG 2023/D1.

The draft guideline provides a cents per kilometre rate of \$0.042 (the EV home charging rate) which can be used to calculate electricity costs of charging an electric vehicle at a residential premises. The rate is multiplied by the total number of kilometres travelled by the electric vehicle in the relevant income or FBT year. This methodology addresses compliance challenges associated with calculating those costs where total electricity consumption of a household cannot be separately identified and valued.

The guideline will apply to zero emissions vehicles that use one or more electric motors to drive and are fuelled by either an off-vehicle electrical power source, a battery, an electric generator, or a hydrogen fuel cell. The guideline will not apply to plug-in hybrid electric vehicles, which are not considered low emissions vehicles.

The guideline applies to:

- Employers if they:
  - provide the electric vehicle to an employee or associate for private use resulting in the provision of a car fringe benefit, residual fringe benefit or pays for expenses associated with the car resulting in a car expense payment benefit;
  - provide the electric vehicle to an employee or associate who charges the electric vehicle using electricity at a residential premises, where the electricity cost directly attributable to charging the electric vehicle cannot be practically segregated from the cost of running other electrical appliances in the home, and
  - are required to calculate the taxable value for one or more of the following as part of their FBT obligations:
    - car fringe benefit
    - residual fringe benefit
    - car expense payment benefit — where the electricity charging cost incurred by the employee is reimbursed by the employer
    - the grossed-up taxable value for reporting an employee's reportable fringe benefit amount (RFBA) — which continues to be reportable, even if the relevant car benefit is exempt.
- Individual taxpayers if they use an electric vehicle while carrying out their income earning activities. Relevant records must be kept for the income year to substantiate business kilometres travelled and show that electricity costs have been incurred.

The Guideline will apply for FBT purposes, from 1 April 2022, when calculating the taxable value of benefits covered by the Guideline.



May 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### ATO draft guideline on electric vehicle home charging expenses (Cont.)

For income tax purposes, the Guideline will apply from 1 July 2022 when calculating the relevant car or motor vehicle expenses.

The last day for comments on draft PCG 2023/D1 is 26 May 2023.

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

### First home super saver scheme

The ATO has updated guidance on the operation of the First Home Super Saver (FHSS) Scheme.

An addendum has been issued to Law Companion Ruling LCR 2018/5 to reflect recent legislative amendments. It also clarifies the Commissioner's views on an individual's freehold interest in real property for purposes of eligibility for the scheme. The Commissioner's [Guidance Note GN 2018/1](#) has been updated accordingly as well.

The FHSS Scheme was introduced to help individuals save for their first home by allowing them to build up superannuation savings to use as a deposit. The updated guidance particularly reflects the increased maximum of \$50,000 that an individual may contribute into superannuation for the purpose of release under the scheme. The maximum was \$30,000 before 1 July 2022.

The Commissioner is also of the view is that a reference to freehold interest in the scheme provisions includes both legal and equitable interests in a real property (such as those acquired before settlement or completion of a contract). The guidance note states that an individual is not eligible to request for an FHSS determination if they have already signed a contract to acquire property.

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

### ATO online services for foreign investors

On 26 June 2023, the ATO will be launching Online services for foreign investors. This new service will be used by foreign investors to manage a range of obligations related to Australian assets. The ATO reminds agents and their foreign investor clients to prepare for Online services for foreign investors now.

Online services for foreign investors supports a new Register of Foreign Ownership of Australian assets (the Register), due to start on 1 July. The Register will merge existing agricultural land, water and residential registers. It will include new asset types foreign investors will need to register, including all commercial land as well as business acquisitions. The Register will give government better oversight of foreign investment in a range of Australian assets. For more details, please refer [here](#).

May 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Residential investment property loan data matching program

In a Gazette Notice, it is said that the ATO will obtain data on residential investment property loans from authorised financial institutions for the period from 2021–22 to 2025–26.

The ATO will collect the following data items from its data matching program:

- client identification details
- account details
- transaction details, and
- property details.

The data helps the ATO execute strategies to:

- identify relevant cases for administrative action
- inform rental property owners of their taxation obligations as part of an educative campaign, and
- avoid unnecessary contact to those that are correctly reporting and claiming rental property income or expenses.

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

### Single touch payroll reporting exempting entities with withholding payer numbers

A draft legislation instrument proposes to exempt entities that do not have an Australian Business Number (ABN) but instead have a Withholding Payer Number (WPN) from Single Touch Payroll (STP) reporting.

The draft instrument proposes an exemption from STP reporting to any entity that:

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

Entities within this class will be exempt from the requirement to report under s 389-5 from 1 July 2023 to 30 June 2026. According to the ATO, these entities may still choose to report under STP in accordance with Div 389 in sch 1 of the TAA, notwithstanding the exemption provided by this instrument.

The instrument is proposed to commence on 1 July 2023. It renews the existing exemption provided for by the Taxation Administration – Single Touch Payroll – 2021–22 and 2022–23 years Withholding Payer Number Exemption 2021 (F2022L00016), which is due to end on 30 June 2023.

The last day for comments is 14 April 2023. For further information, please refer [here](#).

May 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Draft determination on car expenses cents per kilometre rate for 2023-24

The ATO has released a draft legislative instrument that outlines a new rate which work-related car expense deductions may be claimed in an income year when using the cents per kilometre method.

The draft legislative determination proposes to set the cents per kilometre rate for calculating work-related motor vehicle expense deductions at 85 cents per kilometre for the income year commencing 1 July 2023.

LI 2023/D12 applies to the eligible taxpayers who use the cents per kilometre method to calculate the income tax deductions for their work-related car expenses.

Section 28-25(4) of the ITAA 1997 allows the Commissioner to determine the rate for the cents per kilometre method for an income year. The rate will remain applicable to subsequent income years until the Commissioner, having regard to s 28-25(5) of the ITAA 1997, determines to vary it.

The determination is proposed to commence on 1 July 2023 and will repeal Income Tax Assessment - Cents per Kilometre Deduction Rate for Car Expenses Determination 2022 (F2022L00813) registered on 9 June 2022.

The closing date for comments is 22 May 2023.

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

### Notice of ride sourcing data matching program

The ATO will acquire ride sourcing data to identify individuals that may be engaged in providing ride sourcing services during the 2022–23 financial year.

The data items include:

- identification details (driver identifier; ABN, driver name; birth date; mobile phone number; email address; address);
- transaction details (bank account details, aggregated payment details, gross fares, net amount paid to driver, and all other income to which GST may or may not apply to) of all payments received in the relevant period.

The ATO estimates that records relating to approximately 200,000 individuals will be obtained each financial year.

The data in this program will be used to identify and inform ride sourcing providers (or drivers) of their tax obligations as part of information and education campaigns.

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

May 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Draft instrument on work test for personal super contributions

The ATO proposes to modify the operation of ITAA 1997 s 290-165(1A), so that a person is able to meet the “work test” in that section for superannuation if they are an employee under the expanded meaning in s 15A of the Superannuation Industry (Supervision) Act 1993 (SIS Act) and otherwise meet relevant criteria.

Prior to 1 July 2022, the work test in Superannuation Industry (Supervision) Regulations 1994 and Retirement Savings Accounts Regulations 1997 allowed a superannuation fund or retirement savings account provider to accept personal superannuation contributions in respect of persons aged 67 to 75 if they are “gainfully employed” for a relevant period. In other words, they must be “employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment” in a relevant period.

For contributions made on or after 1 July 2022, the work test was relocated to s 290-165(1A) of ITAA 1997. That provision similarly requires those aged 67 to 75 to have been “gainfully employed” for a relevant period.

However, both the SIS Act and the Retirement Savings Accounts Act 1997 (RSA Act) contain an expanded definition of employee to capture certain employees who may not be common law employees (eg company directors, constitutional or statutory office holders, parliamentarians and members of the Australian Defence Force). By contrast, there is no definition of “employee” in ITAA 1997. It takes its ordinary common law meaning. Accordingly, there may be some people who were previously able to claim deductions (because they fell within the expanded definition of employee in the SIS Act and the RSA Act) but are not “gainfully employed” for ITAA 1997 purposes because they are not common law employees or self-employed.

The modification in Draft Taxation Administration (Remedial Power — Work Test for Personal Superannuation Contributions) Determination 2023 resolves the above issue. According to the instrument, all individuals aged 67 to 75 who are employees under the SIS Act or the RSA Act, and who would have been eligible to claim a deduction for their personal superannuation contributions had the “work test” not been relocated from the to the ITAA 1997 in 2022, continue to be eligible to do so. The previous eligibility criteria for deducting personal superannuation contributions are thus maintained.

When finalised, the instrument will apply to personal superannuation contributions made on or after 1 July 2022. For more details, please refer [here](#).

May 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Draft instrument on remission of penalty and interest charges

LI 2023/D10 (Taxation Administration (Remedial Power - Remission of Charges and Penalties) Determination 2023) has been issued with proposals to remove any doubt the Commissioner's power to make remission decisions in relation to classes of entities, as well as in circumstances where a charge or penalty has not yet become due and payable (but may become due and payable in the future).

The Taxation Administration Act 1953 (TAA) permits the remission of the general interest charge (GIC) (s 8AAG), shortfall interest charge (SIC) (s 280-160(1) in Sch 1) and administrative penalties including the failure to lodge (FTL) penalty (s 298-20(1) in Sch 1).

It has been a long-standing practice of the Commissioner to remit GIC, SIC and FTL penalties in cases that meet certain criteria (ie for an affected taxpayer or class of taxpayers) based on a general remission decision that is made before the liabilities arise.

LI 2023/D10 (Taxation Administration (Remedial Power - Remission of Charges and Penalties) Determination 2023) modifies the remission provisions to ensure that the Commissioner can continue their long-standing practice of providing:

- remissions as an administrative response to a natural disaster or other serious and external adverse event impacting the community
- low value or low risk remissions, and
- agreement-based remissions, where a remission is agreed to prior to the relevant liability arising.

The modifications will support the use of automated processes that remit interest or penalties as soon as those liabilities arise, without requiring a separate request from a taxpayer and a decision from the ATO every time a liability arises.

The last day for comments is 19 May 2023.

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

### Updated GST Ruling dealing with financial supplies

The ATO has issued an [addendum to GSTR 2002/2](#) which deals with the GST treatment of financial supplies and related supplies and acquisitions. The addendum amends GSTR 2002/2 to reflect changes in the GST law applicable to cross-border supplies and in relation to digital currency, includes new references to public guidance released relating to financial supplies, and contains some changes to modernise parts of the ruling.

Draft Ruling update on treatment of ATM service fees, credit card surcharges and debit card surcharges The ATO has provisionally updated GSTR 2014/2 which deals with the GST treatment of ATM service fees, credit card surcharges and debit card surcharges. The draft update reflects changes to the industry self-regulatory documents containing the definition of "ATM" or "ATM Terminal" (the replacement of the Consumer Electronic Clearing System Regulations and Manual with the Issuers and Acquirers Community Regulations and Code Set), changes in Reserve Bank of Australia rules for merchant surcharging, and the Reserve Bank of Australia designation of prepaid cards.

Comments on the draft updated ruling can be made by 21 April 2023.

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### GST considerations for buy-now, pay-later providers

The ATO has updated its guidance on GST considerations for buy-now, pay-later (BNPL) providers.

The updated guidance discusses how an entity's entitlement to input tax credits (ITCs) on related costs can be determined and how the ATO assesses risk in this area. It addresses instances where BNPL providers provide credit to customers, rather than in alternate scenarios such as where BNPL providers supply software to businesses which enable each business to provide credit to its customers.

It is important to be mindful that the GST consequences for a BNPL provider always depends on the particular facts and circumstances. The key GST considerations for BNPL providers are:

- Tax governance - It's critical to make sure that BNPL providers have a well-designed tax control framework which is fit for purpose in mitigating the tax risks that arise in their businesses. For GST, the *ATO's GST governance, data testing and transaction testing guide* sets out how the ATO will review GST governance for top 100 and top 1,000 taxpayers.
- GST classification of supplies - Businesses must ensure that supplies are classified correctly for GST purposes, and that GST is remitted on taxable supplies they make. The ATO indicated that errors are commonly seen where supplies are incorrectly treated which has resulted in significant GST shortfalls. Goods and Services Tax Ruling GSTR 2002/2 *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions* provides the ATO view on classification of financial supplies.
- Claiming input tax credits - Under Division 11 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), input tax credits are generally not available on acquisitions to the extent they relate to making input taxed supplies.

Apportionment methodologies used to determine the extent of recoverable GST must be fair and reasonable and reflective of the objective use of the business costs in making input taxed and non-input taxed supplies. Businesses must ensure that their apportionment methodology is well-documented and regularly reviewed. Guidance on apportionment methods that can be used for calculating extent of input tax credit entitlement is available in ATO public rulings; for example, Goods and Services Tax Ruling GSTR 2006/3 *Goods and services tax: determining the extent of creditable purpose for providers of financial supplies*.

- Claiming reduced input tax credits (RITCs) - Where input tax credits are denied under Division 11 of the GST Act, businesses may still be entitled to 75% RITCs under Division 70 of that Act for specified acquisitions that qualify under the *A New Tax System (Goods and Services Tax) Regulations 2019* (GST Regulations). Documentation (for example, relevant workpapers, invoices and supporting general ledger records) should be provided to support RITCs claimed on these acquisitions, which demonstrates that the acquisition falls within an item in the GST Regulations. Goods and Services Tax Ruling GSTR 2004/1 *Goods and services tax: reduced credit acquisitions* provides guidance on which acquisitions are reduced credit acquisitions.

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### GST considerations for buy-now, pay-later providers (Cont.)

- Reverse charged GST - Cross-border acquisitions that relate partly or solely to making input taxed supplies must be reverse charged under Division 84 of the GST Act (subject to exceptions). For these transactions, GST on purchase will need to be accounted for, and any available input tax credits can then be claimed back.

ATO has observed that a number of entities have failed to reverse charge cross-border acquisitions from third-party suppliers or overseas related parties, which has resulted in significant GST shortfalls. This is often caused by a poorly designed tax governance framework. The ATO has published guidance on the [application of the reverse charge provisions](#) with practical recommendations for how you can minimise compliance risk in this area.

- Significant and unusual transactions - The GST consequences of significant and unusual transactions require careful consideration. One example is ensuring that input tax credits on costs associated with initial public offerings, capital raising activities and costs associated with funding the buy-now, pay-later product are identified and appropriately denied.

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

### GST - Waiver of requirement to provide tax invoices

Legislative instruments have been made on the waiver of the requirement to provide a tax invoice as follows:

- A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions Where Total Consideration Not Known) Determination 2023 (F2023L00322)** waives the requirement for a recipient to hold a tax invoice in certain circumstances, where the total price of the acquisition cannot be ascertained at the time the acquisition is made, and they hold documents that meet specific requirements. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Where Total Consideration Not Known) Legislative Instrument 2013 and finalises draft LI 2022/D19.
- A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Offer Documents and Renewal Notices) Determination 2023 (F2023L00323)** waives the requirement to hold a tax invoice when the recipient holds an offer document or a renewal notice that meets the requirements prescribed in the determination. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Offer Documents and Renewal Notices) Legislative Instrument 2013 and finalises draft LI 2022/D20.
- A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions from or by a Partnership) Determination 2023 (F2023L00325)** waives the requirement for a recipient or a partnership to hold a tax invoice when they hold a document that meets the requirements prescribed in the determination. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Partnership) Legislative Instrument 2013 and finalises draft LI 2022/D21.

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### GST - Waiver of requirement to provide tax invoices (Cont.)

- **A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Creditable Acquisition of Taxi Travel) Determination 2023 (F2023L00326)** waives the requirement for a recipient making a creditable acquisition of taxi travel to hold a tax invoice when they hold a document (for the supply of taxi travel) that meets the requirements prescribed in the determination. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Creditable Acquisition of Taxi Travel) Legislative Instrument 2013 and finalises draft LI 2022/D23.
- **A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions from or by a Beneficiary of a Bare Trust) Determination 2023 (F2023L00329)** waives the requirement for a recipient or a beneficiary of a bare trust to hold a tax invoice when they hold a document that meets the requirements prescribed in the determination. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Beneficiary of a Bare Trust) Legislative Instrument 2013 and finalises draft LI 2022/D17.
- **A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions by Recipients Using Electronic Purchasing Systems) Determination 2023 (F2023L00330)** waives the requirement for a recipient making a creditable acquisition using electronic purchasing systems to hold a tax invoice when they hold a document that meets the requirements prescribed in the determination. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions by Recipients Using Electronic Purchasing Systems) Legislative Instrument 2013 and finalises draft LI 2022/D18.
- **A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions under an Agency Relationship) Determination 2023 (F2023L00339)** waives the requirement for a recipient making a creditable acquisition through their agent or insurance or reinsurance broker, or by way of a supply made through the supplier's agent, to hold a tax invoice when they hold a document that meets the requirements prescribed in the determination. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions under an Agency Relationship) Legislative Instrument 2013 and finalises draft LI 2022/D16.
- **A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisitions from Property Managers) Determination 2023 (F2023L00342)** waives the requirement for a recipient making a creditable acquisition through a property manager to hold a tax invoice when they hold a document that meets the requirements prescribed in the determination. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from Property Managers) Legislative Instrument 2013 and finalises LI 2022/D22.



May 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### GST - Waiver of requirement to provide tax invoices (Cont.)

- **A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Creditable Acquisition Following a Sale of a Reversionary Interest in Commercial Premises) Determination 2023 (F2023L00345)** waives the requirement for a lessee or sub-lessee (as recipient) of commercial premises to hold a tax invoice in certain circumstances when they hold documents that meet the information requirements prescribed in the determination. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Creditable Acquisition by a Lessee or Sub-Lessee Following a Sale of a Reversion in Commercial Premises) Legislative Instrument 2013 and finalises LI 2022/D24.
- **A New Tax System (Goods and Services Tax): Waiver of Tax Invoice Requirement (Acquisition of a Motor Vehicle Under a Novated Lease Arrangement) Determination 2023 (F2023L00353)** waives the requirement for an employer making a creditable acquisition of a motor vehicle by way of a lease through a full or split full novation arrangement to hold a tax invoice, where the document meets specific requirements. It replaces A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisition of a Motor Vehicle Under a Full or Split Full Novated Lease Arrangement) Legislative Instrument 2013 and finalises LI 2022/D25.

### Class rulings issued:

- Class Ruling **CR 2023/11** Logbook Me Pty Ltd - In-Car Logbook Solution for reporting of road tolls. This Ruling applies from 1 April 2022 to 31 March 2028.
- Class Ruling **CR 2023/12** Warwick Credit Union Limited - Capital Notes. This Ruling applies from 1 July 2022 to 30 June 2028.
- Class Ruling **CR 2023/13** Charter Hall Direct Industrial Fund No.2 - scrip for scrip roll-over. This Ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling **CR 2023/14** Logbook Me Pty Ltd - LogbookMe In-Car Logbook Solution for calculating car parking benefits. This Ruling applies from 1 April 2019 to 31 March 2028.
- Class Ruling **CR 2023/15** Australia and New Zealand Banking Group Ltd - restructure - employee share scheme - treatment of shares or rights. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling **CR 2023/16** Sky Network Television Ltd — capital return. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling **CR 2023/17** Australia and New Zealand Banking Group Ltd - ANZ Capital Notes 8. This ruling applies from 1 July 2022 to 30 June 2023.

May 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Class rulings issued (Cont.):

- Class Ruling [CR 2023/18](#) InterContinental Energy Australia Pty Ltd - employee share option scheme — InterContinental Energy Holdings Group Ltd 2021 Omnibus Incentive Plan. This ruling applies from 1 July 2021 to 30 June 2022.
- Class Ruling [CR 2023/19](#) EROAD telematics system - use for car logbook and odometer records. This ruling applies from 1 April 2023 to 31 March 2028.
- Class Ruling [CR 2023/20](#) Navman Wireless Australia Pty Limited - use of FTC Manager for fuel tax credits. This ruling applies to taxable fuel acquired on or after 1 July 2022 to 30 June 2024.
- Class Ruling [CR 2023/21](#) Cardno Limited - return of capital and special dividends. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2023/22](#) Museums Victoria — early retirement scheme 2023. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling [CR 2023/23](#) Unitywater — early retirement scheme 2023. This ruling applies from 11 May 2023 to 30 September 2023.
- Class Ruling [CR 2023/24](#) Challenger Ltd — Challenger Capital Notes 4. This ruling applies from 1 July 2022 to 30 June 2032.

### Other rulings issued:

- Product Ruling [PR 2023/3](#) PPS Mutual Professionals Choice — Profit-Share Plan. This ruling applies from 1 July 2022 to 30 June 2025.
- Product Ruling [PR 2023/4](#) Fuel tax: Navman Wireless Australia Pty Limited and FTC Manager - FTC Self Claim level clients, This Product Ruling applies to taxable fuel acquired on or after 1 July 2022 by the class of entities that enter into the scheme for the fuel tax credit results from the FTC Manager Product from 1 July 2022 until 30 June 2024, being its period of application.
- [Addendum to Goods and Services Tax Ruling GSTR 2002/2](#) GST treatment of financial supplies and related supplies and acquisitions.

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Other rulings issued (Cont.):

- **Addendum to Product Ruling PR 2022/11** (Allianz Guaranteed Income for Life) amends the ruling to incorporate the final Product Disclosure Statement and Group Policy Deed.
- **Addendum to Goods and Services Tax Ruling GSTR 2002/2** GST treatment of financial supplies and related supplies and acquisitions.

## Latest Australian Tax Cases

- **Income tax – Deductions** - The AAT has held that 2 taxpayers who provided agistment for stock owned by their company were not able to claim deductions for expenditure exceeding the amount of income returned, as their agistment arrangements did not constitute the carrying on of a business. However, the first taxpayer was allowed a deduction for a proportion of the legal expenses she incurred relating to proceedings against her former employer and also succeeded in having her penalties partly remitted. [DQTB & Anor v FC of T 2023 ATC; [2023] AATA 515 - 28 March 2023.]
- **GST** - The Federal Court has held that a taxpayer was not entitled to input tax credits for acquisitions of legal services that were not made in carrying on an enterprise. [Konebada Pty Ltd ATF William Lewski Family Trust v FC of T 2023 ATC; [2023] FCA 257 - 24 March 2023.]
- **Superannuation guarantee** - The Full Federal Court has held that the primary judge was correct to find that the applicants were not “employees” for superannuation guarantee purposes [Jamsek v ZG Operations Australia Pty Ltd (No 3) 2023 ATC; [2023] FCAFC 48, 24 March 2023.]

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