

June 2023

# Monthly Tax Update

In the June 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

### Social Services and Other Legislation Amendment (Strengthening the Safety Net) Bill 2023

The Social Services and Other Legislation Amendment (Strengthening the Safety Net) Bill 2023 (the Bill) has been introduced to Parliament to implement income support measures announced in the 2023–24 Federal Budget.

The Bill amends the Social Security Act 1991 (Cth), the A New Tax System (Family Assistance) Act 1999 (Cth) and the Veterans' Entitlements Act 1986 (Cth) to:

- expand qualification for Parenting payment (single) to single principal carers whose youngest child is aged under 14 years (up from under 8 years)
- increase the rates of working age and student payments by \$40 per fortnight, including Jobseeker payment, Youth allowance, Parenting payment (partnered), Austudy payment, Disability support pension (youth)
- expand eligibility for the higher rate of Jobseeker payment to recipients aged 55 years and over who have been on payment for 9 or more continuous months (reducing the qualifying age from 60 years), and
- increase the maximum rates of Commonwealth rent assistance by 15%.

### Taxation Administration (Remedial Power – Work Test for Personal Superannuation Contributions) Determination 2023

The ATO has registered a legislative instrument (Taxation Administration (Remedial Power – Work Test for Personal Superannuation Contributions) Determination 2023) that clarifies the definition of 'employee' for 'work test' eligibility for personal superannuation contribution deductions.

The instrument modifies the operation of subsection 290-165(1A) of the Income Tax Assessment Act 1997 (ITAA 1997), so that a person is able to meet the 'work test' in that section if they are an employee under the expanded meaning in section 15A of the Superannuation Industry (Supervision) Act 1993 (SIS Act) and otherwise meet relevant criteria.

The legislative modification ensures that all individuals aged 67 to 75 years who are employees under section 15A of the Superannuation Industry (Supervision) Act 1993 are eligible to claim a deduction for their personal superannuation contributions.

The instrument was introduced to follow-up on the 2022 relocation of the 'work test' from the Superannuation Industry (Supervision) Regulations 1994 (SISR) and Retirement Savings Accounts Regulations 1997 (RSAR) to the ITAA 1997, which lacks a definition of 'employee'. The instrument applies to personal superannuation contributions made on or after 1 July 2022.

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## Other updates

### ASIC to extend date for financial adviser registration requirement

ASIC is extending the date by which financial advisers must be registered from 1 July 2023 to 1 October 2023.

The extension will allow:

- Parliament to consider the improvements proposed by the Treasury Laws Amendment (2023 Measures No 1 Bill) 2023;
- ASIC to assist the financial advice industry to understand and comply with the registration requirement by issuing regulatory guidance and conducting webinars, and
- Australian financial service (AFS) licensees to understand the registration requirement and to make necessary applications to register their relevant providers with ASIC.

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

## ATO Rulings and Activity

### ATO finalises individual tax residency guidance in Taxation Ruling TR 2023/1

The ATO has finalised its guidance on residency tests for individuals, replacing 3 older rulings and to reflect key case law developed in the matters of *Harding v FC of T 2019 ATC*, *Pike v FC of T 2019 ATC* and *Addy v FC of T 2019 ATC*.

Taxation Ruling TR 2023/1 consolidates and replaces the Commissioner's view on residency for individuals in Taxation Ruling IT 2650 Income tax: residency - permanent place of abode outside Australia, Taxation Ruling IT 2681: Residency status of business migrants and Taxation Ruling TR 98/17 Income tax: residency status of individuals entering Australia.

IT 2650 and TR 98/17 were withdrawn with effect from the date this ruling was issued as a draft for public comment, being 6 October 2022. Taxation Ruling IT 2681 is withdrawn with effect 7 June 2023.

The views reflected are updated to take developments in case law into account and further examples are provided taking into account more global work practices and at the request of advisors.

The Ruling contains information on the 183-day residency test which will assist a large number of individual taxpayers; especially those that come to Australia on short term work and holiday visas.

The ruling was previously issued in draft form as TR 2022/D2.

Please refer [here](#) for a copy of the taxation ruling.

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## ATO Rulings and Activity (Cont.)

TR 2023/2- Income tax: application of paragraph 8-1(2)(a) of the Income Tax Assessment Act 1997 to labour costs related to the construction or creation of capital assets

The ATO has issued a ruling setting out the Commissioner's view on the appropriate treatment of labour costs related to the construction or creation of capital assets in new taxation ruling, TR 2023/2.

This Ruling sets out the Commissioner's view on the appropriate treatment of labour costs related to the construction or creation of capital assets. It explains when expenses a business incurs on employees are treated as capital expenses related to the construction of a capital asset, rather than being immediately deductible, and has been developed following extensive consultation with external stakeholders.

It is acknowledged that labour costs are generally revenue in nature and would form part of a business' working expense. The ruling, however, addresses a particular category of labour costs — capital asset labour costs — and when they will be considered to be on capital account.

Please refer [here](#) for a copy of the taxation ruling.

## Lodgment amnesty for small businesses announced

The ATO is encouraging small businesses that have overdue income tax returns, fringe benefits tax returns or business activity statements to take advantage of a lodgment amnesty, as announced in the 2023–24 Budget, that will run until 31 December 2023.

The amnesty applies to tax obligations that were originally due between 1 December 2019 and 28 February 2022 and has been available since 1 June 2023.

To be eligible for the amnesty, the small business must be an entity with an aggregated turnover of less than \$10 million at the time the original lodgment was due.

During this time, eligible small businesses can lodge their eligible overdue forms and the ATO will then remit any associated failure-to-lodge penalties.

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

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## ATO Rulings and Activity (Cont.)

### Revised practical compliance draft guideline on intangibles arrangements involving international related parties

The ATO has issued a revised draft guideline (draft Practical Compliance Guideline PCG 2023/D2) setting out its compliance approach to intangibles arrangements involving international related parties.

The draft PCG has been revised to reflect feedback received during consultation on the earlier draft PCG 2021/D4. The revised draft guideline focuses on tax issues related with restructure or change associated with intangible assets (migration) or mischaracterisation of Australian activities in connection with intangible assets. It also includes broader risk factors in the risk assessment framework to guide taxpayers in risk assessment.

PCG 2023/D2 does not the proposed multinational enterprise integrity measure denying deductions for payments relating to intangible assets connected with low corporate tax jurisdictions which was announced as part of the 2022–23 Budget. The draft guideline also does not affect the ATO's compliance approach for other tax issues that may arise in relation to intangible assets, such as for tax risks outlined in Taxpayer Alerts TA 2018/2 (mischaracterisation of activities or payments in connection with intangible assets) and TA 2022/2 (treaty shopping arrangements).

When finalised, the draft guideline is proposed to apply both before and after its date of issue.

Comments are invited on the draft guideline until 16 June 2023.

Please refer [here](#) for a copy of the ATO guideline.

### Right to tax foreign financial institutions in respect of Australian interest income

The ATO has updated Taxation Ruling TR 2005/5 in the addendum to TR 2005/5 on the right to tax United States (US) and United Kingdom (UK) resident financial institutions under the US and the UK double tax agreements in respect of interest income arising in Australia.

The addendum clarifies certain aspects of the second limb of the definition of "financial institution" as used in Australia's double tax agreements with the US and the UK. The update provides further guidance on when an enterprise is substantially deriving its profits from carrying on a business of "spread activities" and whether certain activities constitute the provision of finance.

The updated ruling will also apply to residents of other countries with double-tax agreements that contain a financial institution interest withholding tax rates exemption or reduction on identical terms as the US or UK double tax agreements.

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

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## ATO Rulings and Activity (Cont.)

### Trust Estate Taxation - Guidance on assessable income of a presently entitled beneficiary updated – Tax Determination TD2021/22

The ATO has issued an [addendum to Taxation Determination TD 2012/22](#) on working out a beneficiary's share of the net income of a trust estate for the purposes of s 97(1)(a) of ITAA 1936.

The addendum updates TD 2012/22 to include guidance on income variation resolutions to reflect the decision in *Lewski v FC of T* 2017 ATC ; [2017] FCAFC 145. That decision confirmed that, where a trustee makes an income variation resolution, the determination of a beneficiary's share of the net income of a trust estate will depend on the facts and circumstances of the case. Examples 6 and 7 in the determination have also been omitted as they did not explain facts in sufficient detail, such that there were circumstances in which the outcomes expressed could be incorrect.

The addendum applies from 31 May 2023.

The ATO has indicated compliance resources will not be devoted to examining the effect of variation of income resolutions made before 31 May 2023, provided all net income has been declared and there is no evidence of tax avoidance, evasion or fraud.

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

### Trustee resolutions

The ATO has updated the information for trustees who wish to make beneficiaries of a trust presently entitled to trust income for an income year by way of making resolutions. This includes where doing so, they also want to make beneficiaries specifically entitled to franked dividends and capital gains included in that income. It is also for trustees who wish to make beneficiaries specifically entitled to capital gains forming part of the trust capital.

The ATO information page includes the requirements for a trust resolution to be effective. If a resolution is not effective, other beneficiaries or the trustee may instead be assessed on the relevant share of the trust's net (taxable) income. Where a trustee is assessed, that may be at the top rate of tax.

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

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## ATO Rulings and Activity (Cont.)

### ATO Decision impact statement - The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)

The ATO released a decision impact statement on 18 May 2023, outlining the Commissioner's view of the Federal Court decision in *The Buddhist Society of Western Australia Inc v Commissioner of Taxation (No 2)* [2021] FCA 1363. This decision is relevant for not-for-profit organisations seeking deductible gift recipient endorsement for the operation of a school building fund.

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

### Taxpayers Note - ATO key focus areas of tax filing mistakes released

The ATO has announced three key focus areas for this Tax Time where tax filing mistakes are often being made. The three focus areas are:

- rental property deductions;
- work-related expenses; and
- capital gains tax.

For rental property deductions, the ATO is focused on interest expenses and ensuring rental property owners understand how to correctly apportion loan interest expenses where part of the loan was used for private purposes (or the loan was re-financed with some private purpose).

When it comes to work-related expenses, the ATO wants to make sure taxpayers understand the changes to the working from home methods and are able to back up their claims.

The ATO is also reminding taxpayers of the importance of keeping records of the income-producing period and the portion of the property used to produce income to calculate their capital gain for capital gains tax.

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

### Available services for Australia's largest taxpayers

The ATO has updated its guide on service channels for taxpayers or tax agents of a large business to use to help meet their tax and super obligations. Please refer [here](#) for further information.

Taxpayers can engage the ATO's online services for business for most business reporting and transactions where possible. Top 100 and Top 1000 taxpayers will also have access to specialist relationship managers and Large Service Team channels.

Please refer to the [ATO website](#) for more information.

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## ATO Rulings and Activity (Cont.)

### Cars and tax

The ATO has updated its guide on the following car thresholds for the financial year 2023-24. From 1 July 2023, the following car threshold amounts will apply:

#### Income tax:

- The car limit for 2023–24 is \$68,108.
- This is the maximum value that can be used for calculating depreciation on the business use of a car first used, or leased in the 2023–24 income year.

#### Goods and services tax (GST):

- For 2023-23, if a car is purchased and the price is more than the car limit, the maximum GST credit that can be claimed (except in certain circumstances) is 1/11 of the car limit, which is \$6,191.
- Luxury car tax paid when purchasing a luxury car is not allowed for claim of a GST credit, regardless of the amount of usage of the car for business purposes.

#### Luxury car tax (LCT):

The LCT thresholds for 2023/24 are:

- Fuel efficient vehicles - \$89,332 (up from \$84,916 in FY2022-23); and
- Other vehicles - \$76,950 (up from \$71,849 in FY2022-23).

In the ATO's updated guide, a formular is available to work out the LCT amount one must pay if a car is sold. Please refer [here](#).

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

### Changes to minimum annual payments for super income streams

In response to COVID-19, the government temporarily reduced superannuation minimum drawdown requirements for account-based pensions and similar products by 50% for 2019–20, 2020–21, 2021–22 and 2022–23 financial years. This will no longer apply for the 2023–24 financial year.

The ATO has reminded that the 50% reduction will not apply when calculating the minimum annual payment required based on a pension balance as at 1 July 2023. The minimum drawdown requirements were temporarily reduced in response to COVID-19 for the 2019–20, 2020–21, 2021–22 and 2022–23 financial years.

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

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## ATO Rulings and Activity (Cont.)

### Class rulings issued:

- Class Ruling [CR 2023/25](#) Qantas Airways Ltd - 2022/23 Qantas Short Term Incentive Plan. This ruling applies from 1 July 2022 to 30 June 2027.
- Class Ruling [CR 2023/26](#) Qantas Airways Ltd - 2023–2025 Qantas Long Term Incentive Plan. This ruling applies from 1 July 2022 to 30 June 2027.
- Class Ruling [CR 2023/27](#) OZ Minerals Ltd - scheme of arrangement and special dividend. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2023/28](#) National Rugby League Ltd - the provision of meals and accommodation to employees and their associates during the COVID-19 pandemic. This ruling applies to the fringe benefits tax year ending 31 March 2022 (the 2022 FBT year).
- Class Ruling [CR 2023/29](#) ASC Pty Ltd - early retirement scheme (operational employees) 2023. This ruling applies to ASC employees who receive a payment under the ASC early retirement scheme (operational employees) 2023 and applies from 1 June 2023 to 1 March 2024.
- Class Ruling [CR 2023/30](#) Wesbeam Holdings Ltd — selective off-market share buy-back. This ruling applies from 1 July 2022 to 30 June 2023.
- [Addendum to Class Ruling CR 2015/76](#) Income tax: Sidney Myer Creative Fellowship grants. This addendum class ruling amends CR 2015/76 to update certain eligibility criteria.

### Other rulings issued:

- Product Ruling [PR 2023/5](#) Future Rent Capital Pty Ltd — lease (transfer of rental income). This ruling applies from 1 July 2022. It applies only to the specified class of entities that enter into the scheme from 1 July 2022 until 30 June 2025, being its period of application. This ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.
- Product Ruling [PR 2023/6](#) CSBP Ltd prepayment agreement. This ruling applies from 1 May 2023. It therefore applies only to the specified class of entities that enter into the scheme from 1 May 2023 until 30 June 2025, being its period of application. The ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.
- Product Ruling [PR 2023/7](#) W.A. Blue Gum Project 2023. This ruling applies from 7 June 2023, the date it was published. It applies only to the specified class of entities that enter into the Project from 7 June 2023 until 30 June 2023, being the closing date for entry into the Project.



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## Latest Australian Tax Cases

- **Income tax deductions** - The AAT has held that a taxpayer failed to prove an amended assessment disallowing deductions claimed was excessive or otherwise incorrect. In so finding, the AAT considered whether expenses were deductible under ss 8-1, 8-5 and 40-730(1) of ITAA 1997 and whether the taxpayer was carrying on a business. [Mathews v FC of T [2023] AATA 1329, 24 May 2023.]
- **Superannuation guarantee** - The Full Federal Court has held that a lecturer engaged by a provider of higher education programs was an independent contractor of the provider, and not an employee, so that the provider was not liable to make superannuation guarantee contributions in respect of the lecturer. In so doing, the Full Federal Court allowed the appeal by the higher education provider from the decision reported at 2022 ATC; [2022] FCA 750. [JMC Pty Ltd v FC of T 2023 ATC; [2023] FCAFC 76, 23 May 2023.]
- **Income tax deductions** - The Federal Court has confirmed that a taxpayer was entitled to a deduction for a \$200,000 payment in settlement of legal proceedings. In so doing, it dismissed the Commissioner's appeal from a decision of the AAT reported at XPTC v FC of T 2022 ATC; [2022] AATA 4147 [FC of T v Wood 2023 ATC; [2023] FCA 574, 2 June 2023]
- **Income tax deductions** - The AAT has held that a taxpayer was not entitled to deductions for work-related self-education expenses claimed, finding the expenses were not incurred in the course of deriving assessable income. [Anders v FC of T [2023] AATA 1471, 31 May 2023.]

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