

October 2023

# Monthly Tax Update

In the October 2023 edition of Andersen in Australia's Monthly Tax Update, we provide recent updates in legislation along with the latest developments in the areas of corporate tax, individual tax, indirect tax and international tax. We also outline the ATO's recent activities, including its publications, rulings and other guidelines issued in the past month, latest Australian tax cases and other news in this edition.

## Legislation Update

Since the last tax update, the following Bills have received assent and are now law.

### Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2023

The Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2023 (the Bill) has received assent as Act No 69 of 2023.

The Act amends a range of legislation to:

- provide for technology neutral communications between consumers, businesses and regulators (e.g. receipt of documents in electronic form and facilitating electronic payments)(Schedule 1);
- implement recommendations made by the Australian Law Reform Commission (ALRC) to improve the navigability of financial services legislation (Schedule 2);
- implement the rationalisation of ASIC instruments by transferring the instruments into the primary law (Schedule 3), and
- make minor and technical amendments to various Superannuation and Tax Acts to correct drafting errors, repeal inoperative provisions, address unintended outcomes and make other technical changes (Schedule 4).

### Treasury Laws Amendment (2023 Measures No. 3) Bill 2023

The Bill which makes changes to the First Home Super Saver Scheme (FHSS Scheme) and the financial advice industry has received assent as Act No 75 of 2023.

The Bill, among other things, amends:

- the Taxation Administration Act 1953 and ITAA 1997 to make technical changes to the FHSS Scheme to improve the scheme's flexibility, and
- the Corporations Act 2001 to better recognise the experience of existing financial advisers as equivalent to tertiary study for the purposes of meeting the qualifications standards under the law and addresses technical limitations in the current framework, relevant to both new entrants into the financial advice industry and tax agents providing a tax (financial) advice service to retail clients.

October 2023

# Monthly Tax Update

## Legislation Update (Cont.)

### Treasury Laws Amendment (2023 Law Improvement Package No 1) Bill 2023

A Bill to improve the operation of Treasury portfolio legislation has received assent as Act No 76 of 2023. It contains, among other things, amendments to the tax and superannuation laws to implement the Australian Law Reform Commission (ALRC) recommendations to improve the navigability of the law. The Act also makes minor and technical amendments to:

- amend the definition of “year of income” in s 10(1) of the Superannuation Industry (Supervision) Act 1993 to provide that it has the same meaning as it does in the ITAA 1936 for income tax purposes,
- clarify the operation of provisions relating to the GST-free supply of cars and car parts to eligible individuals with current disability certificates;
- amend the GST Act and sch 1 to the Taxation Administration Act 1953 with respect to the withholding of monies (for GST purposes) by purchasers of new residential premises and potential residential land to ensure that the entity that the vendor would be entitled to the credit for the GST paid by the purchaser.

### Other legislation update:

#### Exposure draft to increase tax on super balances above \$3 million

The government has released exposure draft legislation on the proposed additional 15% tax on earnings of super accounts over \$3 million.

Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023 (the Draft Bill) and Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023 propose to effect the changes announced by the Government on 28 February 2023 and in the 2023–24 Budget. Specifically, the draft legislation proposes to:

- reduce the tax concessions available to individuals with a total superannuation balance (TSB) above \$3 million by imposing an additional 15% tax on the earnings that relate to their balance in excess of \$3m (new Division 296 of ITAA 1997);
- amend several Acts to include provisions relating to the calculation of earnings, withdrawals and contributions, modifications for earnings of certain constitutionally protected interests, debt deferral provisions for defined benefit interests in the pre-end benefit phase, and make changes to the definition of TSB.

Special rules for modified treatment of defined benefit and some retirement phase interests, including the valuation of such interests, will be addressed through specific provisions in subsequent regulations.

The last day for comments is 18 October 2023.

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

October 2023

# Monthly Tax Update

## Legislation Update (Cont.)

### Other legislation update (Cont.):

#### Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023

The proposed “new” thin capitalisation rules and enhanced transparency measures (Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023) still remain before Parliament.

The Senate Economics Legislation Committee has issued its report on the Bill and has recommended that the Bill be passed, subject to technical amendments to the thin capitalisation measures foreshadowed by Treasury (in the Senate hearings).

The next opportunity that the Bill can be considered by Parliament is 16 October 2023.

#### Family Law (Superannuation) Amendment (2023 Measures No 1) Regulations 2023

Regulations on division of super between married and de facto couples on a relationship breakdown have been registered. Family Law (Superannuation) Amendment (2023 Measures No 1) Regulations 2023 was registered as F2023L01248 on the Federal Register of Legislation.

The regulations have been made to provide greater clarity about the meaning and application of certain terms and provisions as they relate to lifetime pensions and pensions payable for the life of the member spouse, defined benefit interests, unsplitable interests, and payments that are not splittable payments.

The Regulations:

- clarify that a pension that is nominally payable for life, but which may be subject to review to confirm the member spouse’s continuing entitlement, is not precluded for this reason from being a “lifetime pension” or “pension payable for the life of the member spouse” for the purposes of the FLS Regulations.
- clarify that a superannuation interest, or a component of a superannuation interest, is not a defined benefit interest for the purpose of the FLS Regulations if the only reason (rather than one of the reasons) it is payable is because of the member’s death or invalidity. Whether or not an interest is considered to be a defined benefit interest determines what information the superannuation trustee is required to provide to the member or non-member spouse about the superannuation interest and how that interest is valued for the purpose of a family law superannuation split.
- prescribe that a superannuation interest that a member spouse has in the scheme provided for by the Australian Defence Force Cover Act 2015 and is in the payment phase is to be considered a defined benefit interest for the purpose of the FLS Regulations.
- clarify the difference between “unsplitable interests” and “unsplitable payments” in the FLS Regulations to minimise confusion about the relationship and distinct operation of these two terms, including to clarify that if certain payments from a superannuation interest cannot be split for family law purposes, this does not mean the superannuation interest itself is unsplitable.
- ensure that pension payments from lifetime pensions are considered splittable payments from the time they become payable, because pension payments from lifetime pensions are intended to be paid for the life of the member spouse.

October 2023

# Monthly Tax Update

## Legislation Update (Cont.)

### Other legislation update (Cont):

#### ASIC Corporations (Amendment) Instrument 2023/730

The Australian Securities and Investments Commission (ASIC) has registered an instrument (ASIC Corporations (Amendment) Instrument 2023/730) that further postpones the registration requirement for certain relevant advice providers.

Initially proposed to commence on 1 January 2023, the commencement date was first delayed to 1 July 2023 and then further postponed to 1 October 2023.

The instrument, now postpones the commencement date to 1 February 2024 to allow extra time for:

- Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (TLAB 1) to be further considered by Parliament;
- ASIC to implement TLAB 1 if TLAB 1 is enacted;
- industry to understand its rights and obligations concerning the registration requirement; and
- AFS licensees to register their relevant providers with ASIC prior to the registration requirement commencing.

## OECD updates

### OECD peer review reports on Country-by-Country reporting

The OECD has released the latest outcomes for the implementation of the BEPS Action 13 minimum standard on Country-by-Country (CbC) reporting.

Under BEPS Action 13, tax administrations are required to collect and share detailed information on all large multinational enterprises (MNEs) operating in their jurisdiction. Information collected includes aggregate data on the global allocation of income, profit, taxes paid and economic activity among the tax jurisdictions that an MNE operates in.

The sixth annual review of BEPS Action 13 considers implementation of the CbC reporting minimum standard by jurisdictions as of April 2023. The next peer review report will be released in the third quarter of 2024.

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

# Monthly Tax Update

## OECD updates (Cont.)

### OECD BEPS 2.0: multilateral instrument for Pillar 2 subject to tax rule

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) has concluded negotiations on a multilateral instrument that will protect the right of developing countries to ensure multinational enterprises pay a minimum level of tax on a broad range of cross-border intra-group payments, including for services.

The [Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule](#) (the Convention), which is now open for signature, is an integral part of the [Two-Pillar Solution](#) to Address the Tax Challenges Arising from the Digitalisation of the Economy.

The Subject to Tax Rule (STTR) will enable developing countries to tax certain intra-group payments, in instances where these payments are subject to a nominal corporate income tax rate below 9%.

The STTR MLI, which was delivered in the [Outcome Statement](#) on the two-pillar solution in July 2023, will allow countries to efficiently implement the STTR in existing bilateral tax treaties.

More than 70 developing Inclusive Framework members are entitled to request inclusion of the STTR in their treaties with Inclusive Framework Members that apply corporate income tax rates below 9% to covered payments.

The OECD will be the depositary of the multilateral instrument and will support governments in the process of its signature and ratification.

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

## Other updates

### Consultation on pay day super implementation

Treasury has opened consultation seeking input on the proposal for employers to pay their employees' superannuation guarantee (SG) entitlements on the same day that they pay salary and wages from 1 July 2026. The consultation paper also seeks feedback on how employee onboarding and the choice of fund rules could be improved under "payday super".

The measure, known as 'payday super', was announced in the 2023–24 Budget.

The ATO will consult with industry on the administrative design in 2023 and 2024, while Treasury consultation on the legislative design of the Securing Australians' Superannuation package is planned for 2024.

Consultation on the measure closes [3 November 2023](#).

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

October 2023

# Monthly Tax Update

## Other updates (Cont.)

### Amendments to Australian Accounting Standards - International Tax Reform - Pillar Two Model Rules: Tier 2 Disclosures

The Australian Accounting Standards Board (AASB) has registered a legislative instrument which requires certain entities to disclose information under the Organisation for Economic Development and Cooperation (OECD) Pillar Two model rules.

The Accounting Standard [AASB 2023-4 Amendments to Australian Accounting Standards – International Tax Reform – Pillar Two Model Rules: Tier 2 Disclosures](#) amends AASB 1060 to require a Tier 2 entity to disclose:

- that it has applied the exception to recognising and disclosing information about deferred tax assets and liabilities related to Pillar Two income taxes (see AASB 112 paragraph 4A); and
- its current tax expense (income) related to Pillar Two income taxes.

This Standard also amends AASB 112 to extend the exemption from complying with the disclosure requirements of AASB 112 to entities that apply AASB 1060. This change ensures Tier 2 entities are not required to comply with the new disclosure requirements in AASB 112 when preparing their Tier 2 financial statements.

AASB 2023-4 applies to annual periods beginning on or after 1 January 2023 that end on or after 30 September 2023. Earlier application is permitted for periods that end before 30 September 2023.

### Consultation on Digital ID legislation

The Federal Government had released for consultation exposure draft legislation which proposed to create a national economy-wide Digital ID system in Australia.

According to Minister for Finance Katy Gallagher, the legislation, when passed, will provide for the national regulation of the Digital ID system and also ensure it is accessible across both the public and private sector. The Australian Competition and Consumer Commission (ACCC) will act as the initial regulator.

Specifically, the draft proposes to:

- strengthen voluntary Digital ID accreditation;
- provide legislative authority for the government's Digital ID system to expand;
- strengthen privacy and consumer protections; and
- strengthen governance for the Digital ID system.

Consultation closed on 9 October 2023.

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

October 2023

# Monthly Tax Update

## Other updates (Cont.)

### Treasury consultation on new laws to improve tax practitioner integrity

Treasury has released for consultation four pieces of draft legislation that seek to strengthen the regulation of tax practitioners and provide regulators such as the Tax Practitioners Board (TPB) with greater powers.

The draft legislation for consultation includes:

- Tax promoter penalty reforms;
- Tax secrecy reforms;
- Whistleblower reforms; and
- Tax Practitioners Board reforms.

According to the Treasurer Jim Chalmers, the draft legislation will strengthen the integrity of the tax system by enhancing the tax promoter penalty provisions to further deter and punish advisers and firms promoting tax avoidance. The proposed amendments will:

- increase the maximum penalties for advisers and firms that promote tax avoidance schemes from \$7.8 million to over \$780 million;
- expand the operation of the tax promoter penalty regime such that it is easier for the ATO to apply the rules to advisers and firms that promote tax avoidance; and
- increase the time limit for the ATO to bring Federal Court proceedings on promoter penalties from four years to six years after the conduct occurred.

To increase the power of regulators, the draft legislation proposes to:

- modernise the tax secrecy rules by:
  - removing limitations in the laws that were a barrier to regulators; and
  - enabling the ATO and Tax Practitioners Board to refer ethical misconduct by advisers (including but not limited to confidentiality breaches) to professional associations for disciplinary action,
- protect whistle blowers when they provide the Tax Practitioners Board with evidence of tax agent misconduct; and
- strengthen the Tax Practitioners Board's investigative powers by:
  - giving the Tax Practitioners Board more time – up to 24 months – to complete complex investigations; and
  - improving the Tax Practitioners Board's public register of practitioners, so that the public have more transparency over agent and firm misconduct.

The consultation on reforms to further strengthen our regulatory arrangements will begin in coming months.

The consultation process for the draft legislation was completed on 4 October 2023.

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

October 2023

# Monthly Tax Update

## ATO Rulings and Activity

### ATO update on implementing BEPS Pillar 2 GloBE rules

The ATO is working on the implementation of the BEPS Pillar Two Global Anti-Base Erosion measures (GloBE rules) which is proposed to apply in Australia from 1 January 2024 even though amending legislation is yet to be introduced.

According to the Deputy Commissioner, Hector Thompson, a dedicated team is working on the ATO's compliance approach and systems to allow for lodgment of the GloBE information return (released earlier this year by the OECD). The team is also developing further guidance for taxpayers and tax advisors. The ATO will also be developing separate tax returns to enable assessment of any top-up tax liability under the GloBE rules and anticipates first returns will be due for filing by 30 June 2026 for multinationals with fiscal years ending on 31 December 2024.

The ATO has acknowledged the complexity of the rules and the challenge of complying with a new global tax with potential variations of rules between jurisdictions. While the ATO seeks to have a "reasonable level of comfort or confidence" that affected taxpayers are complying, it does not intend to follow the traditional justified trust methodology to obtain compliance assurance in the initial years of GloBE.

In developing a compliance program that is suited to Australia, the ATO is consulting with stakeholders, including tax administrations in other jurisdictions and is part of a Pillars Knowledge Sharing Network led by the HMRC in the UK.

Technical issues associated with the rules will be addressed through the OECD to ensure consistency across jurisdictions. The ATO is undertaking targeted consultation with affected taxpayers and professional services firms. Preliminary communications will be sent to large businesses potentially coming within the scope of the GloBE rules, and their advisors, to raise awareness and encourage early engagement with the ATO.

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

### ATO updated guidance on s 100A trust reimbursement agreements

The ATO has updated Taxation Ruling [TR 2022/4](#) on s 100A reimbursement agreements in light of recent Full Federal Court decisions.

The [addendum](#) amends TR 2022/4 to reflect the findings of the Full Federal Court in *Commissioner of Taxation v Guardian AIT Pty Ltd ATF Australian Investment Trust* [2023] FCAFC 3 and *B&F Investments Pty Ltd ATF the Iluka Park Trust v Commissioner of Taxation* [2023] FCAFC 89. Central to the operation of s 100A is the existence of a reimbursement agreement. The addendum provides further guidance and clarity on the concept of a "reimbursement agreement" in light of the recent Federal Court decisions. For example, it provides that a taxpayer's advisers may be a party to a reimbursement agreement and also notes that a reimbursement agreement can be imputed from the conduct of the parties to the agreement. The addendum does not substantially alter the Commissioner's view on the operation of s 100A.

Minor amendments have also been made to Practical Compliance Guideline [PCG 2022/2](#) which outlines the ATO's compliance approach for s 100A reimbursement agreements. The amendments provide clarity on features of certain arrangements excluded from the low risk "green zone".



October 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### ATO's key insights on public and multinational business assurance programs

The ATO has released key insights and observations from its public and multinational business assurance programs and information provided by these taxpayers.

According to the ATO, these insights are contained in its findings report for:

- the Top 100 program;
- the Top 1,000 program;
- the Reportable tax position schedule Category C disclosures; and
- the Public and multinational business advice and guidance program.

Acting Assistant Commissioner Britta Finnigan explains how the ATO's findings report for the Top 100 program shows the ATO continues to see a reduction in high-risk transactions being entered into, reflecting the efforts of taxpayers and the ATO to address these concerns.

As for the Top 1,000 program, it is reported that as of 30 June 2023, the ATO has completed 1,332 assurance reviews on 1,085 taxpayers across the Top 1,000 tax performance program and the Top 1,000 combined assurance program, with 247 taxpayers being reviewed for a second time.

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

### ATO's Next 5,000 comprehensive risk review

The Australian Taxation Office (ATO) will be engaging and re-engaging with some privately owned and wealthy groups who are part of the Next 5,000 tax performance program to carry out comprehensive risk reviews.

According to the ATO, some groups who are part of the program will be chosen to undergo a risk-based comprehensive risk review.

These groups will be selected by using data analysis and risk profiling, to identify emerging risks affecting private groups and tax issues relating to the Next 5,000 key priority areas, as outlined in the ATO's [findings report](#).

As for those groups who are being re-engaged for a comprehensive risk review, the ATO reasons that it had found insufficient documented governance controls from their previous streamlined assurance review.

Groups who are selected for the comprehensive risk review will receive a one-month notification period where the ATO will invite them to provide readily available documents.

This will allow the ATO to provide preliminary areas of focus of the review in the commencement letter and will provide a better experience for the reviewed groups.

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

October 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Draft legislative instrument on PAYG withholding variations for payroll donations to DGR

The ATO has released a draft legislative instrument which varies the amount a payer is required to withhold under the PAYG system for payees who make payroll donations to a deductible gift recipient (DGR) under an occasional giving arrangement.

Draft Taxation Administration (Withholding Variation for Occasional Payroll Donations to Deductible Gift Recipients) Legislative Instrument 2023 ([LI 2023/D17](#)) proposes to vary the amount that a payer is required to withhold from a withholding payment to a payee under Subdiv 12-B in sch 1 to the Taxation Administration Act 1953 where:

- all or part of the withholding payment has been made, or will be made, as a donation under an occasional giving arrangement; and
- the payee has not advised the payer that they do not want a variation to the amount withheld.

The varied amount required to be withheld must be worked out in accordance with the method statement in s 6 of the instrument. If the amount calculated using the method statement is zero or negative, the amount that the payer must withhold from the payment is varied to nil.

Step 2 (in s 6(2)(b)) of the method statement requires the payer to multiply the amount of the donation to the DGR under the occasional giving arrangement by 0.32. This rate has been chosen as it is approximately the mid-point tax rate (after accounting for the Medicare levy) for Australian residents for tax purposes.

When finalised, the draft legislative instrument will replace [Taxation Administration Act 1953 – Pay as you go withholding – Occasional payroll donations to deductible gift recipients No 4 \(F2014L00012\)](#).

The draft legislative instrument is proposed to commence on the day after it is registered on the Federal Register of Legislation.

The closing date for comments is [31 October 2023](#).

October 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### ATO decision impact statement regarding GST issues on sale of residential property

The ATO has issued a decision impact statement on the AAT decision in *Domestic Property Developments Pty Ltd ATF Dals Property Trust v FC of T* 2022 ATC; [2022] AATA 4436.

The case concerned whether a sale of residential property was input taxed on the basis that it had been leased as residential property for 5 years, and whether goods and services tax (GST) applied to the sale as it was a taxable supply.

The Commissioner states that the AAT decision is consistent with the ATO view set out in GST Ruling [GSTR 2009/4](#) that marketing a premises for sale constitutes "use" of a premises for the purposes of s 40-75(2)(a). The Commissioner accepts that the term "used" is to be interpreted by reference to its ordinary meaning within the statutory context of the GST Act. The Commissioner will also consider changes to [GSTR 2009/4](#) to clarify the position where there is an overlap between the ordinary meaning of the term "used" in the statutory context of the GST Act and the defined term "apply",

The Commissioner considers the decision also confirms his view that s 40-75(2)(a) requires that a property be leased for a continuous period of 5 years before a sale of real property is an input taxed supply of residential premises. Given the AAT did not provide the reasoning for its position regarding the date from which the 5-year period commences, the Commissioner will maintain the position in [GSTR 2003/3](#) and [GSTR 2009/4](#) and seek to clarify this issue at the first available opportunity before the AAT or Federal Court.

The AAT's findings also provide further support for the Commissioner's view in GST Ruling [GSTR 2015/1](#) on the meaning of "passed on" and "reimburse" for the purposes of Div 142 of the GST Act.

Following the AAT decision, the Commissioner will review [GSTR 2003/3](#) and [GSTR 2009/4](#).

Comments are invited on the decision impact statement until [27 October 2023](#).

For more information, please refer to the [decision impact statement](#).

October 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Determination on correcting GST and fuel tax errors

The ATO has registered two legislative instruments that allow taxpayers to correct errors that were made in working out their net amount for an earlier tax period for GST and fuel tax purposes.

The first instrument, [Fuel Tax \(Correcting Fuel Tax Errors\) Determination 2023](#), replaces Fuel Tax: Correcting Fuel Tax Errors Determination 2013 and:

- allows an error that has been made in working out a net fuel amount for an earlier tax period to be corrected by including the amount of the error in working out the net fuel amount for a later period;
- only applies to errors relating to an amount of fuel tax credit or an adjustment under the Fuel Tax Act 2006;
- does not apply to errors that were made in working out a net fuel amount for a tax period that started before 1 July 2012.

The second instrument, [A New Tax System \(Goods and Services Tax\) \(Correcting GST Errors\) Determination 2023](#), replaces Goods and Services Tax: Correcting GST Errors Determination 2013 and:

- allows taxpayers to correct GST errors made in working out a net amount for an earlier tax period provided certain requirements are satisfied;
- where the requirements in the instrument are satisfied, a taxpayer may choose to correct an error by including the adjustment amount in a GST return for a later tax period, instead of requesting the Commissioner to amend the assessment for the earlier tax period;
- only applies to errors relating to an amount of GST, an input tax credit or a GST adjustment;
- does not apply to any error that results in the net amount for an earlier tax period being incorrect due to the operation of the A New Tax System (Wine Equalisation Tax) Act 1999 or the A New Tax System (Luxury Car Tax) Act 1999;
- does not apply to errors that were made in working out a net amount for a tax period that started before 1 July 2012.

The explanatory statements of both instruments contain definitions on what constitutes an error along with examples of where these instruments apply and how taxpayers can correct these errors.

### Draft ruling on deductibility of self-education expenses incurred by an individual

The ATO has issued draft Taxation Ruling [TR 2023/D1](#) which outlines the ATO's view on the general principles applying to the deductibility of self-education expenses. The draft ruling also provides extensive examples of expenditure that can be deductible as a self-education expense, as well as those that cannot. [TR 2023/D1](#) should be read in conjunction with Taxation Ruling [TR 2020/1](#) which deals with the deductibility of work expenses of individuals generally.

Taxation Ruling [TR 98/9](#) (Deductibility of self-education expenses incurred by an employee or a person in business) and Taxation Ruling [TR 92/8](#) (Deductibility of self education expenses) have been withdrawn with effect from 27 September 2023.

[TR 2023/D1](#) modernises the views expressed in TR 98/9 and TR 92/8 to the extent that they continue to apply and incorporate developments in case law. Comments on the draft ruling are invited with the due date for submissions being [27 October 2023](#).

October 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Draft ruling on composite items and capital allowances

The ATO has issued updated guidance (draft Taxation Ruling [TR 2023/D2](#)) on whether an asset that is made up of a number of parts or components (that is, the composite item) is a “single” depreciating asset, or whether one or more of its components are separate depreciating assets.

The issue is relevant for taxpayers in determining the effective life of the relevant asset and therefore the rate at which depreciation deductions can be claimed. A depreciating asset that is a composite item may have an effective life that is different to the effective life of any individual component or components. Identifying the correct depreciating asset is also relevant for determining eligibility for certain concessions that depend on the time a depreciating asset was first used or installed ready for use and whether the asset's cost is under the relevant instant asset write-off threshold.

[TR 2023/D2](#) sets out the Commissioner's views on:

- relevant principles to assist in determining whether a composite item is itself a depreciating asset or whether its components are separate depreciating assets for the purposes of the capital allowances provisions in Div 40 of ITAA 1997, and
- whether an “interest in an underlying asset” for the purposes of s 40-35 of ITAA 1997 requires an entity to have an interest in all parts of a composite item that is itself a depreciating asset, or whether an interest in any part of the asset is sufficient.

[TR 2023/D2](#) does not deal with capital works deductions available under Div 43 of ITAA 1997.

The draft taxation ruling provides greater clarity on the issues previously considered in [TR 2017/D1](#). The draft ruling applies both before and after its date of issue. The ATO has also published a [compendium](#) of comments received for TR 2017/D1.

Draft Taxation Ruling [TR 2023/D2](#) replaces TR 2017/D1.

The closing date for submissions on the draft is [3 November 2023](#).

### Guidance on expenses associated with holding vacant land

The ATO has issued Taxation Ruling [TR 2023/3](#) which outlines the Commissioner's view of the application of section 26-102 of the Income Tax Assessment Act 1997 which deals with the non-deductibility of expenses associated with holding vacant land.

The guidance aims to help taxpayers understand how the vacant land provisions apply to their circumstances and to determine if they're excluded from the rules which limit deductions for expenses associated with vacant land.

October 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Guidance on when a superannuation income stream commences and ceases

The ATO has issued draft Taxation Ruling [TR 2013/5DC](#) explaining when a superannuation income stream commences and when it ceases, and consequently when a superannuation income stream is payable. These concepts are relevant to determining the income tax consequences for both the superannuation fund and the member in relation to superannuation income stream benefits paid. The ruling outlines the changes which were made to TR 2013/5 to reflect legislative amendments, clarify how the general principles in this Ruling apply in the context of successor fund transfers and remove practical compliance approaches that were related to historical periods which are no longer relevant.

### ATO internal communication protocols around tax objections

The ATO has issued guidance on communication protocols between ATO staff when considering an objection lodged by a taxpayer.

Practice Statement Law Administration [PS LA 2023/2](#) sets out the framework for appropriate communications between ATO officers reviewing an objection and the original decision makers. The statement covers the particular responsibilities of respective officers involved and stresses the importance of balancing the requirement of the objection officer being fully informed with the need to ensure their independence in coming to their objection decision.

### Draft practical compliance guideline on liability of a legal personal representative of a deceased person

The ATO has issued a draft practical compliance guideline which details the requirements that need to be satisfied by a legal personal representative prior to making distributions from an estate in order to mitigate the risk of being personally responsible for liabilities of the deceased person up to the date of their death. [PCG 2018/4EC](#) is a compendium of responses to the issues raised by external parties to draft [PCG 2017/D12](#).

The Guideline does not deal with outstanding tax-related liabilities that a legal personal representative may have in relation to the deceased estate, that is, for the period after the death of the deceased person.

### ATO warns business to settle tax and super obligations before debts are disclosed

The ATO has issued a warning to businesses to comply with their tax and super obligations to avoid having their debts and obligations disclosed to credit reporting agencies.

The ATO notes that businesses need to pay their tax debts or enter into an appropriate payment arrangement within 28 days of when a 'Notice of intent to disclose business tax debts' is issued in order to prevent disclosure. According to the ATO, it has issued 'Notices of intent to disclose business tax debts' to more than 22,000 businesses with a tax debt of at least \$100,000 that is overdue by more than 90 days, with more than 9,000 businesses expected to have their debts disclosed in October 2023 and more than 50,000 notices of intent are expected to be issued in the 2023-24 financial year.

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

October 2023

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### ATO client-to-agent linking features to be expanded to all ABN businesses

The ATO will be rolling out its Online services' client-to-agent linking feature to all businesses with an Australian Business Number (ABN), excluding sole traders, from 13 November 2023.

The linking feature has already been rolled out to government entities, businesses in the Top 500 privately-owned wealthy groups, and public and multinational businesses.

From 13 November, all businesses with an ABN, excluding sole traders, need to nominate a registered agent in Online services for business if:

- they engage a new agent to represent them; or
- they provide additional authorisation to their existing authorised agent (for example, authorising them to represent them for any additional accounts they may have).

For engaging a new agent, businesses will need to use the updated agent details feature in Online services for business to authorise an agent before they can link to their accounts.

However, if a business' existing agent arrangements remains the same, they are not required to do anything.

According to the ATO, the linking feature has an added step to help ensure that only an authorised tax agent, BAS agent or payroll service provider can link to a business' account and access their tax and super affairs.

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

### Refunds and non-authorised deposit-taking institutions

The ATO has announced that entities that are not an authorised deposit-taking institutions (ADIs) will no longer satisfy its 'financial institution' requirements for the purposes of a third-party refund from an Income Tax Account.

According to the ATO, the term 'financial institution' is defined under section 202A of the Income Tax Assessment Act 1936 to mean a bank or co-operative housing society.

The term 'bank' in this case is then defined as a body corporate that is an ADI for the purpose of the Banking Act 1959. The ATO explains that a non-ADI financial institution does not have a full banking license or is not supervised by a national regulatory authority and are generally privately funded and do not have the normal features of a deposit-taking institution.

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

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Class rulings issued:

- Class Ruling [CR 2023/50](#) Nuonic Pty Ltd – Prism software platform – vehicle activity measurement (kilometres and time) for fuel tax credit purposes. This Ruling applies to taxable fuel acquired on or after 1 January 2023 to 30 June 2024.
- Class Ruling [CR 2023/51](#) FAR Ltd – return of capital. This Ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling [CR 2023/52](#) Horizon Minerals Limited – distribution of shares in Richmond Vanadium Technology Limited. This ruling applies from 1 July 2022 to 30 June 2023.
- Class Ruling [CR 2023/53](#) National Australia Bank Limited – NAB Capital Notes 7. This ruling applies from 1 July 2023 to 30 June 2033.
- Class Ruling [CR 2023/54](#) EML Payment Solutions Limited – employer clients' use of living expenses card facility. This ruling applies from 1 April 2022 to 31 March 2027.
- Class Ruling [CR 2023/55](#) EML Payment Solutions Limited – employer clients' use of meals and entertainment card facility. This ruling applies from 1 April 2022 to 31 March 2027.
- Class Ruling [CR 2023/56](#) Abacus Property Group – de-stapling and re-stapling as Abacus Group and Abacus Storage King – employee share scheme. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling [CR 2023/57](#) Unity Bank Limited – Unity Capital Notes. This ruling applies from 1 July 2023 to 30 June 2031.

### Other rulings issued:

- Product Ruling [PR 2023/18](#) Morgan Stanley Option and Loan Facility.
- Product Ruling [PR 2023/19](#) Fringe benefits tax consequences for employers under an Origin electric vehicle subscription agreement.
- [Addendum to Product Ruling PR 2022/7](#) Bell Equity Lever – instalment receipts. The addendum amends PR 2022/7 to incorporate a new product disclosure statement.



# Monthly Tax Update

## Latest Australian Tax Cases

- **Div 7A, UPE** - The AAT has held that unpaid present entitlements (UPEs) of a corporate beneficiary to income or capital of a trust estate did not constitute loans to the trust by the company for the purposes of Division 7A of ITAA97. [Bendel & Anor v FC of T 2023 ATC; [2023] AATA 3074, 28 September 2023.]
- **GST** - The Federal Court has held that certain frozen food products were not GST-free because they were marketed as a prepared meal. [Simplot Australia Pty Ltd v FC of T 2023 ATC; [2023] FCA 1115; 22 September 2023.]
- **ABN & GST registration** - The AAT has upheld a decision by the Commissioner to cancel a taxpayer's ABN and GST registrations because he was not carrying on an enterprise. [Assad v FC of T 2023 ATC; [2023] AATA 2995, 15 September 2023.]
- **Tax residency** - The AAT has held that a taxpayer who worked in Papua New Guinea (PNG) was a resident of Australia but found that amended assessments issued by the Commissioner based on the asset betterment method were excessive due to evidence provided by the taxpayer that his \$3 million of accumulated assets was from non-income sources. [PQBZ v FC of T 2023 ATC; [2023] AATA 2984, 10 August 2023.]
- **Luxury car tax** - The operator of a "Classic Car Museum" has sought leave to appeal to the High Court against a Full Federal Court decision that they were liable for increasing luxury car tax adjustments. The Full Court ruled against the taxpayer on the basis that the cars displayed at the museum were held for the purposes of display and not solely as trading stock. [Automotive Invest Pty Ltd v FC of T 2023 ATC]
- **Fully franked dividends** - The AAT has held that a distribution of fully franked dividends was not made as part of a dividend stripping operation because, even though the taxpayers received the dividends free of tax, the original shareholders did not receive any capital sum as a substitute for taxable dividends paid and the requisite tax avoidance purpose was not present. [Michael John Hayes Trading Pty Ltd ATF MJH Trading Trust & Ors v FC of T 2023 ATC; [2023] AATA 3005, 20 September 2023.]

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