January 2024

Monthly Tax Update

In this first edition of Andersen in Australia's Monthly Tax Update for 2024, we provide recent legislative updates and outline the latest developments in the areas of corporate tax, individual tax, indirect tax and international tax. We also examine the ATO's recent activities, publications, rulings and other guidelines and discuss the latest Australian tax cases.

Legislation Update

Taxation Administration (Meaning of End Benefit) Instrument 2023

The government has issued a draft legislative instrument to remake the Taxation Administration (Meaning of End Benefit) Instrument 2013 before it sunset on 1 April 2024.

The 2013 instrument will ensure that family law superannuation payments are not end benefits under s 133-130 in Sch 1 to the *Taxation Administration Act 1953* and therefore do not trigger an individual's liability to pay Div 293 tax deferred to a debt account. The draft instrument will operate identically to the existing 2013 instrument and make no changes to current policy settings.

Broadly, family law superannuation payments arise in the context of property settlements following the end of relationships. In this situation, individuals have not in substance received a benefit from their superannuation fund, and as such it would not be appropriate to treat these payments as an end benefit.

The consultation period for the draft instrument ended on 22 December 2023.

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OECD update

OECD 2022 peer review reports on the exchange of information on tax rulings

The OECD has released the latest peer review assessments for 131 jurisdictions in relation to the compulsory exchange of information on tax rulings (BEPS Action 5 minimum standard).

According to the OECD release, this is the 7th annual peer review of the implementation of the BEPS Action 5 minimum standard. The BEPS Action 5 minimum standard aims to provide tax administrations with the necessary information concerning their taxpayers to efficiently tackle tax avoidance and other BEPS risks. The reports revealed that over 54,000 exchanges of information have taken place in respect of the over 24,000 tax rulings that have been identified.

The new peer review results show that 100 jurisdictions are fully in line with the BEPS Action 5 minimum standard. The remaining 31 jurisdictions received a total of 58 recommendations to improve their legal or operational framework to facilitate identifying the relevant tax rulings and information exchange. The feedback given by OECD under this peer review process and in earlier years has allowed several jurisdictions to revise their processes and improve the clarity and quality of the information exchanged.

The next annual peer review for the 2023 year will focus on actions taken by jurisdictions to respond to remaining recommendations.

For more information, please refer to the OECD website.

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OECD update (Cont.)

OECD: further guidance for BEPS Two-Pillar solution

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) has released further administrative guidance to clarify specific aspects of the GloBE Rules to help multinational enterprise (MNE) groups make the transition. The Global anti-Base Erosion (GloBE) rules ensure these groups will be subject to a 15% effective minimum tax rate.

This third set of Agreed Administrative Guidance considers the following:

- Application of the Transitional Country-by-Country Reporting Safe Harbour;
- Guidance on allocating taxes in a Blended CFC tax regime;
- Definition of revenues to determine whether an MNE group comes within the scope of the GloBE rules;
- Transitional relief for groups that have short reporting fiscal years with respect to filing the GloBE Information Return and domestic notifications;
- Clarification on when purchase pricing accounting adjustments do and do not need to be excluded from a MNE Group's Qualified CbC Report; and
- Simplified Calculation of the Safe Harbour for Non-Material Constituent Entities ("NMCEs") which provides a safe harbour similar to the Transitional CbCR Safe Harbour..

The administrative guidance is intended to clarify how the GloBE Rules operate to assist tax administrations with various procedures and implementation and also provides interpretative guidance to provide certainty to affected MNE groups. The guidance released will be incorporated into a revised version of the detailed commentary first issued in March 2022.

The GloBE rules are part of Pillar Two of the OECD's Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.

For more information, please refer to the OECD website.

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Other updates

TPB issued draft guidance for new code items

Following the changes made to the Tax Agent Services Act 2009 (TASA), the Tax Practitioners Board (TPB) has released two draft guidance documents related to the operation of two new items in the Code of Professional Conduct for consultation.

The two draft guidance products are:

- TPB(I) D51/2023: Code of Professional Conduct – Employing or using a disqualified entity in the provision of tax agent services without approval; and
- TPB(I) D52/2023: Code of Professional Conduct – Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity.

According to the TPB, the draft guidance relates to new code items 15 and 16, which prohibit tax practitioners from employing or using a 'disqualified entity' without the TPB's approval or entering into certain arrangements with a 'disqualified entity'. The two code items are said to have arisen from concerns about insufficient internal governance practices leading to tax practitioners employing or using people who are not suitable to provide tax services on their behalf because they are disqualified.

The guidance outlines the TPB's view on these obligations, and sets out the steps a registered agent must take to ensure they have made reasonable enquiries to determine whether the entity they are employing or dealing with is not a disqualified entity. This includes checking the TPB public register, proof of identity checks and ensuring the agreement with the entity requires them to notify the agent if a disqualifying event were to occur.

Though the new code items commence on 1 January 2024, the TPB says that there are a number of transitional provisions that apply over the next 12 months (from 1 January 2024 to 31 December 2024), allowing a reasonable time for tax practitioners to comply with the new requirements.

The new obligations were added to the Code through amendments in *Treasury Laws Amendment (2023 Measures No 1) Act 2023*.

Consultation on both draft guidance products will be closed on 16 February 2024.

For more information, please refer here.

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Other updates (Cont.)

TPB updated information sheet on the obligation for tax agents with a tax (financial) advice services condition

The Tax Practitioners Board (TPB) has updated its information sheet (TPB(I)) on the obligation for tax agents with a tax (financial) advice services condition to act lawfully in the best interests of their client.

The TPB released this document as a draft Information Sheet in the form of an Exposure draft TPB(I) D32/2016: Code of Professional Conduct – Acting lawfully in the best interests of clients for tax (financial) advisers on 25 May 2016. The closing date of the submissions was 11 July 2016. The TPB considered the comments and submissions received and published this TPB(I) on 13 October 2016.

On 7 December 2023, the TPB updated this TPB(I) to replace references to a tax (financial) adviser to a tax agent with a tax (financial) advice services condition.

For further information, please refer here.

Higher foreign investment fees for housing

In a media release on 10 December 2023, the Australian government has announced that the foreign investment framework will be adjusted by introducing higher fees for the purchase of established homes by foreign investors, increasing penalties for foreign-owned vacant properties and strengthening compliance activity.

The changes announced include

- a tripling of foreign investment fees for the purchase of established homes by foreign investors
- a doubling of vacancy fees for all foreign-owned dwellings purchased since 9 May 2017 (which means a 6-fold increase in fees for future purchases of established dwellings), and
- an enhanced compliance regime to ensure foreign investors comply with the rules, including selling their residence when required.

The government intends to introduce legislation next year to implement the new fees. The aim of these changes is to improve housing affordability and supply.

The government will also ensure application fees for foreign investment in build-to-rent projects are at the lowest commercial level, irrespective of the kind of land involved. Build-to-rent investors can be subject to higher fees under current arrangements if their projects involve particular kinds of land, such as residential land.

The application of the reduced commercial foreign investment fees to all future build-to-rent projects will apply after 14 December 2023.

For more information, please refer here.

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Other updates (Cont.)

Mid-Year Economic and Fiscal Outlook for 2023–24

The Treasurer released the 2023–24 Mid-Year Economic and Fiscal Outlook (MYEFO) on 13 December 2023.

The list below summarises some significant measures in the MYEFO relating to tax and superannuation that were not previously announced.

- Denying deductions for ATO interest charges, specifically the general interest charge and shortfall interest charge, where incurred in income years starting on or after 1 July 2025. The Commissioner will continue to have the ability to consider individual circumstances and remit these charges where appropriate.
- The government will increase the foreign resident capital gains withholding tax rate from 12.5% to 15%, and reduce the withholding threshold from $750,000 to $0. These changes will apply to real property disposals under contracts entered into from 1 January 2025.
- The government will increase the amount of the Commonwealth penalty unit by 5.4% from $313 to $330. This will commence 4 weeks after the passage of legislation. The increase will apply to offences committed after the relevant legislative amendments that come into force.
- Denying deductions for payments relating to intangibles held in low or no-tax jurisdictions. The amendments will apply to payments made from 1 July 2023.
- The start date for the 2022–23 October Budget measure relating to public country-by-country reporting will be deferred from 1 July 2023 to 1 July 2024 (*Multinational Tax Integrity Package - improved tax transparency*). Further consultation will be undertaken on specific parameters, including the appropriate level of disaggregated reporting.
- The government will enable victims and survivors of child sexual abuse to seek access, via court order, to additional personal or salary sacrifice superannuation contributions made by the offender after the first offence occurred where a related court order for compensation remains unpaid after 12 months. Applications to identify any potential eligible superannuation would be facilitated by the ATO.

  Payments would not be subject to tax or applied to any existing Commonwealth debt. The measure will only apply to identifiable additional superannuation contributions starting from 2002–03, and will not apply to mandatory employer contributions or contributions to a defined benefit interest. Precedence will be given to the resolution of family law and bankruptcy proceedings.

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Other updates (Cont.)

Mid-Year Economic and Fiscal Outlook for 2023–24 (Cont.)

- Investors proposing to acquire residential or agricultural land will be subject to the lower commercial foreign investment application fee for foreign investments in build-to-rent projects. Once implemented, investors will be able to make investments of up to $50 million for build-to-rent projects on residential land for a fee of $14,100 (subject to indexation) on the commercial fee schedule.
- The government will make the following changes to foreign investment fees:

- tripling foreign investment fees for foreign investors who apply to purchase established dwellings from the day after assent of enabling legislation;
- doubling vacancy fees for foreign investors who have purchased residential dwellings (new and established) since 9 May 2017, commencing from the day after assent of enabling legislation;
- providing $3.5 million to enhance the ATO's compliance regime to ensure foreign investors comply with fee, notification, and other regulatory requirements such as selling their residence when required.

- The definition of a "fuel-efficient vehicle" will be tightened for luxury car tax (LCT) purposes by reducing the maximum fuel consumption from 7 litres per 100km to 3.5 litres per 100km. The indexation rate of the LCT value threshold for all other luxury vehicles will also be updated from the headline CPI to the motor vehicle purchase sub-group of the CPI, aligning it with the indexation of the LCT value threshold for fuel-efficient vehicles. The changes will apply from 1 July 2025.

- Access to refunds of indirect tax (including GST, fuel and alcohol taxes) under the Indirect Tax Concession scheme has been extended and upgraded for the diplomatic and consular representatives of Zimbabwe and Lebanon.

For more information, please refer here.

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ATO Rulings and Activity

Taxpayer alerts issued on R&D claims

The ATO has issued 2 taxpayer alerts about arrangements of concern in relation to research and development (R&D) tax incentive claims.

The alerts are about expenditures incurred by associated entities and activities conducted overseas for foreign-related entities, and the ATO is concerned these arrangements are being used to:

- claim the R&D tax offset in situations where it would not otherwise be available, either at all or in the income year claimed by the R&D entity; and
- artificially increase the amount of the R&D tax offset claimed.

- Taxpayer Alert TA 2023/4 - R&D activities delivered by associated entities

  TA 2023/4 provides that the ATO is currently reviewing claims made by R&D entities under the R&D tax incentive for expenditure incurred under an agreement with an associate (the Service Provider).

  The ATO is concerned with arrangements that:

  - incorrectly report the R&D entities as having incurred or paid (or both) the relevant expenditure under an agreement with the Service Provider, or
  - have the effect of obtaining for the R&D entity a tax offset for expenditure on R&D activities purportedly conducted for the R&D entity's own benefit but are instead in substance being conducted for (or to a significant extent, for) the associated entity.

  The Service Provider is typically an entity that has historically conducted the group's research activities. However, the Service Provider is not itself an entity that would be entitled to claim an offset were it to conduct the activities for its own benefit, or if entitled, only entitled to a lesser benefit under the R&D tax incentive. TA 2023/4 further outlines the structure and conduct common to arrangements of concern.

  The ATO considers entitlement to the R&D tax incentive may in whole or part be affected by arrangements of concern. The general anti-avoidance provisions in Part IVA of ITAA 1936 may also apply to cancel that offset if the arrangement was entered into or carried out to obtain a tax offset, even where an arrangement is effective under the substantive provisions.

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ATO Rulings and Activity (Cont.)

Taxpayer alerts issued on R&D claims (Cont.)

- Taxpayer Alert TA 2023/5 - R&D activities conducted overseas for foreign-related entities

  TA 2023/5 provides that the ATO is currently reviewing arrangements where Australian-resident R&D entities claim a tax offset under the R&D tax incentive rules for expenditure incurred on R&D activities conducted overseas. The ATO has seen instances where an R&D entity has purported that the R&D activities were conducted for the R&D entity's benefit, where those activities were instead being conducted for (or to a significant extent, for) a foreign entity that is connected with or is an affiliate of, the R&D entity.

  The ATO is concerned that R&D entities may be incorrectly claiming the R&D tax offset irrespective of whether:

  - the R&D entity has an overseas finding covering the R&D activities being conducted, or
  - under the contractual arrangements between the R&D entity and the foreign-related entity, the R&D entity purportedly has an interest in any developed intellectual property, know-how or other results from the R&D entity's expenditure on the R&D activities.

  Where an arrangement is covered by TA 2023/5, the ATO is concerned that R&D entities do not qualify for an R&D tax offset for expenditure incurred by them on R&D activities conducted overseas as the R&D activities were not conducted for the R&D entity, or were conducted significant extent for a foreign related entity that does not

satisfy the statutory conditions for eligible R&D activities. Alternatively, where the R&D entity is an Australian resident and the R&D activities are conducted for that R&D entity's benefit, the R&D entity might not qualify for an R&D tax offset as the expenditure incurred by them might not be "at risk" for the at-risk integrity rule in the R&D provisions. Where the conditions for entitlement to an R&D tax offset are satisfied, the general anti-avoidance provisions in Pt IVA of ITAA 1936 may still apply to cancel that tax offset.

The ATO is currently reviewing the arrangements identified in TA 2023/4 and TA 2023/5, and will continue to closely scrutinise these arrangements. Further website guidance on specific technical matters in the alerts will be published in due course.

Entities that have entered, or are contemplating entering, into arrangements of concern should engage with the ATO or by applying for a private ruling. Affected entities are also encouraged to seek independent professional advice and make a voluntary disclosure to reduce penalties that may apply.

Penalties may apply to participants in, and promoters of, the types of arrangements described in the alerts. This includes promoter penalties under Div 290 of Sch 1 to the Taxation Administration Act 1953. Registered tax agents involved in the promotion of such arrangements may also be referred to the Tax Practitioners Board to consider whether there has been a breach of the Tax Agent Services Act 2009.

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ATO Rulings and Activity (Cont.)

Draft guidance on deducting financial advice fees for individuals

The ATO has issued a draft Taxation Determination (TD 2023/D4) on the requirements that need to be satisfied for an individual who is not carrying on a business to be eligible to claim a deduction for financial advice fees under s 8-1 or 25-5 of ITAA 1997.

Broadly, an individual may be entitled to a deduction for fees paid to a financial adviser if they satisfy the requirements under the provision for general deductions under s 8-1 or specific deductions for tax-related expenses under s 25-5. Apportionment of the deduction may be necessary in some circumstances under s 8-1 or 25-5 where the full amount of the fees paid are not deductible.

TD 2023/D4 considers the application of these provisions in the context of financial advice fees incurred by an individual not carrying on a business. TD 2023/D4 replaces TD 95/60 (withdrawn on 12 December 2023), which outlined the Commissioner's view on the deductibility of fees paid by a taxpayer to an investment adviser for drawing up an investment plan, and for the ongoing management of the investments. It contains new guidance on the deductibility of financial advice fees as tax-related expenses under s 25-5.

TD 95/60 has been replaced as a result of regulatory reforms to the financial services industry in recent years. TD 2023/D4 does not represent a change in the Commissioner's view on the deductibility of financial advice fees as outlined in TD 95/60.

Draft TD 2023/D4 is proposed to apply to years of income commencing both before and after its date of issue when finalised.

Comments on the draft determination will be closed on 2 February 2024.

ATO seeking consultation on new franking credit integrity rule guidance

The ATO has released a consultation paper on priority areas for future ATO public advice and guidance related to the new integrity measure addressing franked distributions funded by capital raisings.

Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 passed parliament on 16 November 2023 and received Royal Assent on 27 November 2023.

The legislation prevents certain distributions that are funded by capital raisings from being frankable, among other measures.

The ATO says it is seeking feedback on whether there are issues where ATO public advice and guidance is needed to help entities understand whether the new law addressing franked distributions funded by capital raising applies to their circumstances.

Submissions close on 16 February 2024.

For more information, please refer to the ATO website.

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ATO Rulings and Activity (Cont.)

Legislative instruments on reporting exemptions for certain electronic distribution platform operators

The ATO has finalised two legislative instruments on reporting exemptions for certain electronic distribution platform (EDP) operators. EDP operators are otherwise required to report to the ATO certain taxable payments made to them, under the sharing economy reporting regime. Payments related to the supply of taxi travel and short-term accommodation are required to be reported from 1 July 2023.

The exemptions are detailed below.

- Transitional reporting exemptions
  Taxation Administration (Transitional Exemptions for Reporting by Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023

  For the first year of reporting, EDP operators may choose either a reporting exemption or an extension of the time by which their reports must be lodged, based on their relative circumstances.

  Section 5 of the *Taxation Administration (Transitional Exemptions for Reporting by Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023* exempts the EDP operator from having to prepare and give a report about reportable transactions for a reporting period ending on or before 30 June 2024 if:

  - the transactions involved a supply of relevant accommodation or taxi travel;
  - the operator was either operating the platform or had completed building the systems required to operate the platform on or before 30 June 2023 and commenced operating the platform on or before 31 December 2023;

- the total value of all reportable transactions (including GST where applicable) made through the platform was less than:
  (i) $1,000,000 in the 12 month period ending on the last day of the reporting period, where the operator was operating the platform for that entire period; or
  (ii) the prorated amount, where the operator commenced operating the platform in the 12 month period ending on the last day of the reporting period; and
- the operator has notified the Commissioner in writing that they would be applying this exemption on or before the later of:
  (i) the day they would otherwise be required to give a report under paragraph 396-55(b) in Schedule 1 to the Act; or
  (ii) where the operator asks the Commissioner for an extension of time and the Commissioner agrees, a day notified by the Commissioner in writing.

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ATO Rulings and Activity (Cont.)

Legislative instruments on reporting exemptions for certain electronic distribution platform operators (Cont.)

- Taxation Administration (Transitional Exemptions for Reporting by Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023 (Cont.)

  Section 6 of the determination extends the due date for the reporting periods ending on 31 December 2023 and 30 June 2024. Normally an EDP operator must provide a report within 31 days of the end of the reporting period. Where the operator chooses not to rely on the exemption in s 5, it must give the report:

  - for the reporting period ending on 31 December 2023, on or before 29 February 2024, and
  - for the reporting period ending 30 June 2024, on or before 2 September 2024.

  The determination is made under s 396-55(b)(ii) and s 396-70(4) of Sch 1 to the *Taxation Administration Act 1953* (TAA 1953) and provides transitional support to operators of EDPs preparing to comply with reporting obligations under this regime in its first year of operation.

- Reporting exemptions for certain transactions
  Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023

  EDP operators can exclude specified classes of transactions in their reporting.

  Section 5 of *the Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023* exempts the EDP operator from having to report a transaction involving a supply of relevant accommodation or taxi travel made through that EDP if:

  - the supply was made through the first platform and at least one other electronic distribution platform;
  - the operator of the first platform did not itself provide any consideration for the supply directly to the supplier;

- the operator of another EDP provides all or part of the consideration given by the recipient of the supply to the supplier, and
- the operator has notified the Commissioner in writing that they would be applying this exemption on or before the later of
  (i) the day they would otherwise be required to give a report under paragraph 396-55(b) in Schedule 1 to the Act; or
  (ii) where the operator asks the Commissioner for an extension of time and the Commissioner agrees, a day notified by the Commissioner in writing.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Legislative instruments on reporting exemptions for certain electronic distribution platform operators (Cont.)

- Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators – Relevant Accommodation and Taxi Travel) Determination 2023 (Cont.)

Section 6 of the determination exempts the EDP operator from having to report transactions involving a supply of relevant accommodation or taxi travel if:

- the supplier is either a listed entity, or a wholly-owned subsidiary of a listed entity;
- the transaction involves the provision of consideration relating to a substantial property, or
- the following conditions are met:
  - the supplier has provided the operator with one or more addresses, and none of those addresses are within the indirect tax zone (generally, Australia);
  - for a reportable transaction involving a supply of taxi travel, the taxi travel did not occur within the indirect tax zone;
  - the consideration provided to the supplier was not paid to an account held with a financial institution in the indirect tax zone, and
  - there is no other information available to the operator that indicates that the supplier is a resident of Australia.

This determination is made under s 396-70(4) of Sch 1 to TAA 1953.

Both determinations have a retrospective commencement date of 1 July 2023.

ATO clarifies its guidance on pink diamonds held in SMSFs

The ATO has confirmed that natural diamonds (including pink diamonds) are not considered collectable or personal use assets under the superannuation legislation if held in loose form.

Diamonds held in loose form do not have specific storage and insurance requirements under the superannuation legislation. Diamonds mounted, integrated into or used as an item for adornment still have specific storage and insurance requirements.

The ATO still recommends trustees hold adequate insurance and consider appropriate storage arrangements for diamonds held in loose form, as these are sound practices when protecting a fund's assets.

For more information, please refer to the ATO website.

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ATO Rulings and Activity (Cont.)

ATO guidance on claiming reduced input tax credits on adviser fees

The ATO has issued guidance on the eligibility of superannuation funds and investor-directed portfolio services investment platforms (collectively referred to as "Funds") to claim reduced input taxed credits on adviser fees.

The guidance describes recent arrangements where the Commissioner considers there to be no entitlement to reduced input tax credits on adviser service fees. The Commissioner has reviewed some examples of current arrangements following changes to the regulatory environment and increased scrutiny of adviser fee arrangements. The Commissioner's view is on the basis that such Funds are not the recipient of a supply for which the fees are considered, consistent with the existing guidance in GST Ruling GSTR 2006/9.

Arrangements that the ATO has recently considered have the following features:

- An individual (or other entity) engages an adviser to provide them with personal financial advice, under an agreement between the member and the adviser. The advice relates to the individual's interest (or prospective interest) in the Fund.
- The individual completes a request that authorises the Fund to pay the adviser services fees to the adviser, by deducting the amount from the individual's interest or the assets held for them in the Fund. The fees may be for initial or one-off financial advice or ongoing adviser services provided to the individual in respect of their interest in the Fund.
- If the Fund does not pay the fees (whether at its discretion, because the conditions for payment are not met, or there are insufficient funds or assets held for the individual), the individual remains liable to pay the adviser.
- While the adviser may also provide other services to the investor such as providing instructions to the Fund on the individual's behalf or accessing information and reporting on the individual's investment in the Fund, the adviser is not involved in executing any of the underlying transactions.
- The adviser may be required to be registered with the Fund and agree to certain terms and conditions, including self-assessment about the subject matter of the advice, to receive payment from the Fund.

Funds are encouraged to review their contractual arrangements to ensure they are entitled to any reduced input tax credits claimed in their specific circumstances.

The guidance also outlines a prospective compliance approach by *Law Administration Practice Statement* PS LA 2011/27, given past binding private advice may have contributed to historically incorrect claims within the industry. Where the compliance approach applies, the ATO will not devote compliance resources to review reduced input tax credit claims for adviser fees paid under arrangements of the kind described for tax periods that end before 1 April 2024.

For more details, please refer to the ATO guidance here.

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ATO Rulings and Activity (Cont.)

Class rulings issued:

- Class Ruling CR 2023/68 Thorn Group Limited - return of capital. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling CR 2023/69 Newcrest Mining Limited – employee share scheme – shares disposed of under scheme of arrangement. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling CR 2023/70 B&C Hospitality Holdings Pty Ltd – employee share scheme – reducing the minimum holding period. This ruling applies from 1 July 2021 to 30 June 2024.
- Class Ruling CR 2023/71 SILK Laser Australia Limited – scheme of arrangement and special dividend. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling CR 2023/72 St Barbara Limited – the return of capital by in-specie distribution of ordinary shares in Genesis Minerals Limited. This ruling applies from 1 July 2023 to 30 June 2024.

Other rulings issued:

- Product Ruling PR 2023/26 Luxury Escapes Business Traveller Program. This ruling applies from 13 December 2023.
- Product Ruling PR 2022/11W Allianz Guaranteed Income for Life has been withdrawn with effect from 14 December 2023.

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Latest Australian Tax Cases

- Input tax credits - The AAT has held that Div 165 of the GST Act did not apply to deny a taxpayer's entitlement to input tax credits in relation to acquisitions of scrap gold. The matter had been remitted to the AAT for redetermination by a decision of the Full Federal Court reported at 2020 ATC; [2020] FCAFC 190 [*HNMF v FC of T 2023 ATC*; [2023] AATA 4067, 30 November 2023.]

- R&D - The AAT has agreed with Industry Innovation and Science Australia that activities undertaken by a sports apparel and footwear company relating to the development of a customised basketball shoe were not eligible R&D activities under the *Industry Research and Development Act 1986*. [*Active Sports Management Pty Ltd v Industry Innovation and Science Australia 2023 ATC*; [2023] AATA 4078, 6 December 2023.]

- Wrongful dismissal settlement amount was an ETP - The Federal Court dismissed the Taxpayer's appeal and held that the amount of $505,500 which the Taxpayer received in settlement of a claim against his former employer for deceptive conduct and wrongful dismissal was an Employment Termination Payment (ETP). The payment was not a genuine redundancy payment or a tax-exempt capital amount as claimed by the Taxpayer. [Stark v FCT [2023] FCA 1523]

- Taxpayer was genuinely redundant - The AAT concluded that an army colonel was dismissed from the Regular Army because his "position" was "genuinely redundant" in terms of s 83-175 of the ITAA 1997. In the AAT's view, the taxpayer's position as an ärmy colonel was redundant rather than his role in his current posting. This was because for reasons of workplace planning it was decided that the taxpayer's position as a colonel was in excess to the Army's requirements. The AAT was also satisfied that the taxpayer's compulsory transfer to the Reserves simply gave effect to the dismissal. Therefore, the payment received by the taxpayer attracted concessional income tax treatment under s 83-170. [Fidge and FCT [2023] AATA 4245, AAT, Olding SM, 22 December 2023]

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