ANDERSEN

February 2024

Monthly Tax Update

In this edition of Andersen in Australia's Monthly Tax Update, 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

- Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill
- Treasury Laws Amendment (Foreign Investment) Bill 2024

The above Bills implement the changes announced by the Government in the recent Mid-Year Economic and Fiscal Outlook (MYEFO). The proposed amendments seek to triple the foreign investment fees that would apply where foreign residents acquire established residential dwellings and double the vacancy fees that apply where foreign investors leave their dwellings vacant rather than making them available for rent. The Bills also propose to clarify that these imposts, other foreign investment fees and similar state and territory property taxes, prevail in the event of any inconsistency with relevant double tax agreements (DTAs).

- Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill ("Fees Imposition Bill")

Schedule 1 of the Fees Imposition Bill will amend the Foreign Acquisitions and Takeovers Fees Imposition Act 2015 Act (the Act) to update the fee cap, which is the maximum fee that can be imposed by the Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (the Regulations). Schedule 1 to the Fees Imposition Bill will also amend the relevant indexation provisions that apply to the fee cap. The amendments will enable the tripling of fees that apply where foreign nationals acquire established residential dwellings and the doubling of vacancy fees that apply where foreign investors leave their dwellings vacant.

Schedule 2 to the Fees Imposition Bill will amend the Regulations to triple the fees in relation to the acquisition of established dwellings from the commencement of the Bill and double the vacancy fees for established and new residential dwellings acquired on or after 7.30 pm on 9 May 2017. Schedule 2 to the Fees Imposition Bill will also update the relevant indexation provisions to be consistent with the changes to the Act in sch 1 to the Fees Imposition Bill.

The Fees Imposition Bill will commence on either 1 April 2024 or the day after the Bill receives assent, whichever occurs later.

Monthly Tax Update

Legislation Update (Cont.)

- Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill (Cont.)
- Treasury Laws Amendment (Foreign Investment) Bill 2024 (Cont.)

  - Treasury Laws Amendment (Foreign Investment) Bill 2024 ("Foreign Investment Bill")

  The Foreign Investment Bill will amend the International Tax Agreements Act 1953 (the Agreements Act) to clarify any uncertainty associated with the interaction between certain taxes, such as foreign investment fees and similar state and territory property taxes, and the relevant Double Tax Agreements (DTAs). The amendments will ensure that such taxes prevail in the event of any inconsistency with the relevant provisions in the DTAs. The measure will apply retrospectively from 1 January 2018. This broadly aligns with statute of limitation periods under state and territory legislation.

  The Foreign Investment Bill will apply to taxes (other than income taxes and fringe benefits tax) payable on or after 1 January 2018 and taxes (other than income taxes and fringe benefits tax) payable in relation to tax periods (however described) that end on or after 1 January 2018.

- Treasury Laws Amendment (Cost of Living Tax Cuts) Bill 2024
- Treasury Laws Amendment (Cost of Living —Medicare Levy) Bill 2024

The Bills which propose to make changes to the Stage 3 individual income tax cuts and Medicare levy thresholds have been introduced in the House of Representatives.

  - Treasury Laws Amendment (Cost of Living Tax Cuts) Bill 2024

  Schedule 1 to the Bill proposes to amend the income tax thresholds and marginal tax rates for individuals from the 2024–25 income year. The proposed tax thresholds and rates for individual taxpayers from 2024–25 are as follows:

  Resident individual taxpayers

Income threshold ($)	Tax rate (%)
0–18,200	0
18,201–45,000	16
45,001–135,000	30
135,001–190,000	37
>190,000	45

Monthly Tax Update

Legislation Update (Cont.)

- Treasury Laws Amendment (Cost of Living Tax Cuts) Bill 2024 (Cont.)
- Treasury Laws Amendment (Cost of Living —Medicare Levy) Bill 2024 (Cont.)

  - Treasury Laws Amendment (Cost of Living Tax Cuts) Bill 2024 (Cont.)

Non-resident individual taxpayers

Income threshold ($)	Tax rate (%)
0–135,000	30
135,001–190,000	37
>190,000	45

Working holiday visa holders (Backpackers)

Income threshold ($)	Tax rate (%)
0–45,000	15
45,001–135,000	30
135,001–190,000	37
>190,000	45

- Treasury Laws Amendment (Cost of Living —Medicare Levy) Bill 2024

Schedule 1 to the Bill seeks to increase the following thresholds in line with movements in the Consumer Price Index (CPI) from the 2023–24 income year:

- the Medicare levy low-income thresholds for individuals and families (along with the dependent child/student component of the family threshold)
- the Medicare levy low-income thresholds for individuals and families eligible for the Seniors and Pensioners Tax Offset (SAPTO) (along with the dependent child/student component of the family threshold), and
- the surcharge low-income threshold.

This measure will commence the day after assent.

Please also refer here for the joint media release by the Prime Minister, Treasurer and Minister for Finance on 25 January 2023 regarding the proposed new Stage 3 tax cuts.

Monthly Tax Update

Legislation Update (Cont.)

Administrative Review Tribunal Bills referred to Senate committee

The Bills propose amendments to establish the Administrative Review Tribunal as a replacement for the Administrative Appeals Tribuna. The Bills have been referred to the Senate Legal and Constitutional Affairs Legislation Committee for review.

The Senate Committee is due to report on the following Bills by 24 July 2024:

- Administrative Review Tribunal Bill 2023 (principal Bill)
- Administrative Review Tribunal (Consequential and Transitional Provisions No 1) Bill 2023 (Consequential Bill 1)
- Administrative Review Tribunal (Consequential and Transitional Provisions No 2) Bill 2024 (Consequential Bill 2)

The principal Bill will establish the new federal administrative review body and set out its operating framework. The Consequential Bill 1 will repeal the Administrative Appeals Tribunal Act 1975 (AAT Act) and make other consequential amendments to 138 Commonwealth Acts to facilitate the transition. The Consequential Bill 2 contains further consequential amendments to the remaining Commonwealth Acts that interact with the AAT Act, including amendments to Acts that require consultation with states and territories under cooperative schemes or intergovernmental agreements.

Other Legislation Update

Exposure draft legislation on the tax treatment of ‘exploration’ and ‘mining, quarrying and prospecting rights’

Exposure draft legislation to clarify the meaning of certain terms relating to mining and exploration used in the income tax and the Petroleum Resource Rent Tax (PRRT) legislation has been released.

Moreover, the draft bill also proposes amendments to:

- tighten the depreciation rules for mining, quarrying and prospecting rights (MQPRs). The amendments will clarify that MQPRs cannot be depreciated for income tax purposes until they are used, not merely held,
- limit the circumstances in which the issue of new rights over areas covered by existing rights lead to tax adjustments,
- clarify the meaning of “exploration for petroleum” in the Petroleum Resource Rent Tax Assessment Act 1987 by excluding activities conducted to determine how to recover petroleum, or whether recovery is viable or feasible.

The purpose of these amendments is to ensure the law operates as intended following the decision in *FC of T v Shell Energy Holdings Australia Ltd* 2022 ATC; [2022] FCAFC 2.

Other Legislation Update (Cont.)

Exposure draft legislation on the tax treatment of 'exploration' and 'mining, quarrying and prospecting rights' (Cont.)

The draft bill also proposes amendments to the anti-avoidance rules in the Petroleum Resource Rent Tax Assessment Act 1987 to strengthen the rules in relation to the offshore resource sector and ensure consistency with ITAA 1936.

These changes were included as 2023 Budget measures.

Consultation on the draft legislation concluded on 9 February 2024.

For further information, please refer here.

Miscellaneous amendments to Treasury portfolio laws

The government has released exposure draft legislation (draft legislation and draft regulations) and supporting explanatory materials (explanatory memorandum and explanatory statement) to:

- correct technical or drafting defects,
- remove anomalies, and
- address unintended outcomes.

The miscellaneous amendments ensure that the law operates as intended and rather than implementing a change in Government policy. The draft legislation supports the regulatory stewardship of Treasury portfolio legislation. The Government pursues regular improvement and maintenance opportunities to ensure the laws remain current and fit-for-purpose.

The Government welcomes comments or feedback from stakeholders on the draft legislation and explanatory materials. Interested parties are invited to make their submissions on the draft legislation and explanatory materials by 12 February 2024.

For further information, please refer here.

Other Legislation Update (Cont.)

Taxation Administration on meaning of end benefits for Div 293 purposes

An instrument has been issued to ensure family law superannuation payments are not "end benefits" for tax purposes and therefore do not trigger an individual's liability to pay Div 293 tax that has been deferred to a debt account.

Division 293 of ITAA 1997 imposes an additional 15% tax on certain superannuation contributions for individuals whose adjusted taxable income exceeds $250,000. The measure ensures that the tax concessions received by such individuals are more closely aligned with the concessions received by average income earners.

Special arrangements apply to contributions in respect of a defined benefit interest. The Div 293 tax on these contributions is deferred to a debt account and the due date for payment of the debt is delayed until the payment of the first superannuation benefit (end benefit) from the relevant interest.

Certain benefits are excluded from being end benefits, including benefits specified by legislative instrument in accordance with s 133-130(2) of sch 1 of the Taxation Administration Act 1953.

Taxation Administration (Meaning of End Benefit) Instrument 2024 specifies that a family law superannuation payment is not an end benefit. Commencing on 1 February 2024, the instrument revises Taxation Administration (Meaning of End Benefit) Instrument 2013 before it sunsets.

Withholding variation for occasional payroll donations to DGRs

A legislative instrument has been made to vary the amount a payer is required to withhold under the pay as you go (PAYG) system for payees who make payroll donations to a deductible gift recipient under an occasional giving arrangement.

Taxation Administration (Withholding Variation for Occasional Payroll Donations to Deductible Gift Recipients) Legislative Instrument 2024 varies 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 to a deductible gift recipient under an occasional giving arrangement, and
- the payee of the withholding payment has not advised the payer that they do not want a variation of 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 of withholding is varied to nil.

The instrument commences on 6 February 2024. It replaces Taxation Administration Act 1953 – Pay as you go withholding – Occasional payroll donations to deductible gift recipients No. 4 (F2014L00012).

Monthly Tax Update

OECD update

The Global Minimum Tax and the taxation of MNE profit

A new working paper published by the Organisation for Economic Co-operation and Development (OECD) on 9 January 2024 assesses the impact of the global minimum tax (GMT) on the taxation of multinational enterprises (MNEs), based on a comprehensive dataset capturing the global activities of large MNEs.

The GMT introduces significant changes to the international tax architecture and thereby to the taxation of large MNEs. This paper assesses the impact of the GMT using new and unique data on MNEs worldwide activity and builds on comprehensive estimates of global low-taxed profit. The global minimum tax is estimated to reduce global low-taxed profit by about 80% , from 36% of all profit globally to about 7%. This reduction stems from both the reduction in profit shifting and the application of top-up taxes.

The GMT is estimated to raise additional corporate income tax (CIT) revenues of USD 155-192 billion globally each year or between 6.5% and 8.1% of global CIT revenues. It is also estimated to reduce tax rate differentials across jurisdictions with potential impacts on the allocation of investment and offshore MNE activity.

The paper has four key findings:

- First, the GMT substantially reduces the incentives to shift profits.
- Second, the GMT is estimated to substantially reduce low-taxed profit worldwide through reduced profit shifting and top-up taxation.
- Third, the GMT is estimated to increase CIT revenues.
- Finally, the GMT is estimated to reduce tax rate differentials across jurisdictions with potential impacts on the allocation of investment and offshore MNE activity.

Please refer here for a summary of the working paper.

Monthly Tax Update

Other updates

Guidance updated for amended objects clause in Tax Agent Services Act

The Tax Practitioners Board (TPB) has updated the following guidance to reflect changes made to the objects clause in the Tax Agent Services Act 2009:

- Information Sheet TPB(I) 10/2011 Required knowledge of the Tax Agent Services Act 2009 including the Code of Professional Conduct
- Explanatory Paper TPB(EP) 01/2010 Code of Professional Conduct
- Explanatory Paper TPB(EP) 02/2010 Fit and proper person
- Explanatory Paper TPB(EP) 03/2010 Professional indemnity insurance requirements for registered tax and BAS agents
- Proposed Guidance TPB(PG) 06/2022 Course in Australian taxation law that is approved by the Board for tax agents with a tax (financial) advice services condition
- Proposed Guidance TPB(PG) 07/2022 Course in commercial law that is approved by the Board for tax agents with a tax (financial) advice services condition

Amendments made by Treasury Laws Amendment (2023 Measures No 1) Act 2023 modernised and updated the objects clause in the Tax Agent Services Act to recognise its role in supporting public trust and confidence in the integrity of the tax profession and tax system.

For further information, please refer here.

Monthly Tax Update

ATO Rulings and Activity

ATO finalized compliance guidance on migration of intangibles

The ATO has released Practical Compliance Guideline PCG 2024/1 which deals with intangibles migration arrangements.

The guideline, which finalises previously released draft guidelines PCG 2021/D4 and PCG 2023/D2, outlines how the ATO will allocate its compliance resources to review certain cross-border related party "intangibles migration arrangements". The ATO notes in the guideline that they will be reviewing arrangements with a view to applying both the transfer pricing rules and the multinational anti-avoidance rules (i.e. diverted profits tax).

Intangibles migration arrangements generally involve the restructure or transfer of rights in relation to intangible assets (e.g. through a licensing arrangement) to an offshore low-tax jurisdiction while another entity continues to benefit from the use and exploitation of the intangible asset. They also include arrangements related to Australian development, enhancement, maintenance, protection and exploitation (DEMPE) activities in connection with intangible assets held offshore.

Particularly, the guideline considers the potential application of the general anti-avoidance rules or transfer pricing rules to certain cross-border related party intangibles migration arrangements. The guideline outlines the ATO views on the potential tax risks associated with schemes involving the migration of intangible assets and mischaracterisation and non-recognition of Australian activities connected with intangible assets.

The guideline uses the ATO risk assessment framework to assess a taxpayer's compliance risk. Arrangements in the Green Zone will be considered low risk and the ATO would generally not apply resources to further review such arrangements while arrangements in the Red Zone will be in the high risk category which will result in the ATO prioritising resources to review these arrangements. Amber and blue zone arrangements would be considered medium risk meaning the ATO may engage with the taxpayer to more fully understand a particular arrangement.

A taxpayer's risk rating for a particular arrangement would be based on the absence or presence of various risk factors in an arrangement. The risk factors are as follows:

- the presence or absence of a restructure or change,
- where does the DEMPE occur,
- allocation of risk associated with intangible assets,
- location of resources and staff,
- profit allocation, and
- tax outcomes.

The ATO would generally consider that an arrangement would be high risk where ownership of an intangible asset has been transferred to an offshore related party in a low-tax jurisdiction such that any income from the use and exploitation of the asset is derived in that jurisdiction but the Australian entity retains the right or ability to engage in activities which would constitute DEMPE of the asset (see Example 1 in PCG 2024/1). By contrast, an arm's length cost contribution agreement whereby each party is benefitting from the use, exploitation and development of the asset in accordance with their contribution would more than likely be considered low risk (see Example 14 in PCG 2024/1).

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO finalized compliance guidance on migration of intangibles (Cont.)

The scope of the finalised guideline does not extend to the ATO's compliance approach to other issues such as characterisation of payments as royalties or the proposed multinational tax integrity measure to deny deductions for payments related to intangible assets connected with low corporate tax jurisdictions. The guideline also does not cover risk levels associated with pricing or valuation outcomes for related party dealings that arise in connection with these arrangements.

This guideline applies from 17 January 2024 to existing and new arrangements. It was previously issued as draft PCG 2023/D2 and a compendium has been issued on the feedback received on the draft guideline.

Software distribution Agreements

The ATO has released draft Taxation Ruling TR 2024/D1 which considers whether payments in respect of software and intellectual property rights are royalties in accordance with the income tax law and double tax agreements (DTAs).

This ruling provides guidance on when cross-border payments made under a software arrangement will be treated as royalties and therefore subject to royalty withholding tax.

Taxation Ruling TR 2024/D1 replaces the previous draft TR 2021/D4 (which in turn had replaced an older ruling TR 93/12). It applies to cross-border payments made by Australian residents or non-residents connected to a permanent establishment in Australia. The draft ruling focuses on payments for the use of, or right to use, copyright or other like property or right. Such payments may also be for the use of or right to use other intellectual property (IP) rights that otherwise fall within the definition of "royalty".

Royalties are defined both in Australia's double tax treaties and under s 6(1) of ITAA 1936. TR 2024/D1 confirms that if a treaty applies, the treaty definition will prevail over the domestic tax law definition to treat a payment as royalty. As the domestic definition is a broader one, if a payment comes within the treaty definition, it will also be a royalty under the domestic definition. As such, royalty withholding tax will apply to such payments at the rate available under the treaty. Most of Australia's treaties contain a standard definition of royalty, except for treaties with US, Mexico and Singapore.

The ruling states that the character of payments under a software arrangement for, or that results in, the use of, or right to use, software in Australia, depends upon the facts and circumstances of the particular case, including the terms of any agreement between the parties and the conduct of the parties in relation to the software arrangement. The ruling defines software arrangements as "an agreement, arrangement or scheme under which a distributor makes payment or payments directly or indirectly to the owner or licensee (as the case may be) of the copyright (or other IP) for the right to be in a position to earn income relating to the use of, or right to use, software". The Commissioner's views on the definition of royalties in IT 2660 are also to be considered.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Royalties and software and intellectual property rights (Cont)

According to TR 2024/D1, an amount is characterised as a royalty where it is paid as consideration for the:

- grant of a right to use IP (defined in para (a) of the standard tax treaty definition), regardless of whether the right is exercised
- use of an IP right
- supply of know how in relation to the IP right (para (b) of the standard tax treaty definition)
- supply of assistance furnished as a means of enabling the application or enjoyment of the supply (para (c) of the standard tax treaty definition)
- the sale by a distributor of hardware with embedded software, where the distributor is granted or uses rights in the IP of the software.

The following payments are **not** royalties:

- consideration that is wholly for the grant of a right to distribute copies of a computer program, without the use of, or right to use, the copyright or another IP right
- consideration for the transfer of all rights relating to the copyright in software
- payments from a distributor that are consideration wholly for the acquisition of hardware with embedded software, provided that the distributor does not use, and is not granted the right to use, any copyright or another IP right in the embedded software
- payments from a distributor that are consideration wholly for the acquisition of physical carrying media on which software is stored, provided that the distributor does not use, and is not granted the right to use, any copyright or another IP right in the embedded software
- consideration for the provision of services that are unrelated to any IP right referred to in para (a) of the standard tax treaty definition or any knowledge or information mentioned in para (b) of the standard tax treaty definition.

Of particular concern is the Commissioner's approach to dealing with an undissected amounts. TR 2024/D1 provides that where an undissected amount is paid as consideration for matters all of which are sufficiently connected with the things mentioned in the definition of royalty, the whole amount of the payment will be taken to be a royalty in the first instance.

When the Ruling is finalised and issued, it is proposed to apply both before and after its date of issue. The proposed date of effect will not prevent TR 93/12 from applying prior to its withdrawal to the extent that it has been relied upon appropriately. TR 93/12 Income tax: computer software had been withdrawn on 25 June 2021 when the ATO issued TR 2024/D1.

Comments on the draft ruling are to be provided by 1 March 2024.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO guidance on Electric vehicle home charging expenses

The ATO has finalised its guidance on calculating the cost of charging an electric vehicle (EV) at an employee's or individual's home.

The finalised Practical Compliance Guideline PCG 2024/2 provides a cents per kilometre(KM) rate of $0.42 (the EV home charging rate) which can be used to calculate electricity costs of charging an electric vehicle at residential premises.
The ATO prescribed rate is multiplied by the total number of KMs travelled by the electric vehicle in the relevant income or FBT year. The ATO methodology to calculate the cost of electricity when an electric vehicle is charged at an employee's or individual's residence is developed to address the compliance challenge for employers and individuals, especially where total electricity consumption of a household cannot be separately identified and valued.

The Guideline applies to zero emissions vehicles that use one or more electric motors to drive and are fuelled by either an off-vehicle electrical power source, a battery, an electric generator or a hydrogen fuel cell. The Guideline does not apply to an electric vehicle that is a plug-in hybrid electric vehicle which has an internal combustion engine because this type of vehicle operates on a combination of petrol and electricity. The Guideline also does not apply to electric motorcycles or scooters.

It is the employer's or individual's choice to either use the methodology outlined in the Guideline or determine the cost of the electricity by determining its actual cost. The choice is per vehicle and applies for the whole income or FBT year. However, the methodology can be changed by the employer or individual from year to year.

Employers may rely on this Guideline to calculate electricity costs of charging an electric vehicle at the employee's home if they:

- provide the electric vehicle to an employee or associate for private use resulting in the provision of a car fringe benefit, residual fringe benefit or pays for expenses associated with the car resulting in a car expense payment benefit
- provide the electric vehicle to an employee or associate who charges the electric vehicle using electricity at residential premises, where the electricity cost directly attributable to charging the electric vehicle cannot be practically segregated from the cost of running other electrical appliances in the home, and
- are required to calculate the taxable value for one or more of the following as part of their FBT obligations:
  - car fringe benefit
  - residual fringe benefit
  - car expense payment benefit - where the electricity charging cost incurred by the employee is reimbursed by the employer, or
  - the grossed-up taxable value for reporting an employee's reportable fringe benefit amount - which continues to be reportable, even if the relevant car benefit is exempt.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO guidance on Electric vehicle home charging expenses (Cont)

Individual taxpayers may also rely upon the Guideline if they use a zero emissions electric vehicle in gaining or producing their assessable income. Relevant records must be kept for the income year to substantiate business KMs travelled and show that electricity costs have been incurred when charging the electric vehicle at their home.

The Guideline will apply:

- for FBT purposes - from 1 April 2022, when calculating the taxable value of benefits covered by the Guideline.
- for income tax purposes - from 1 July 2022, when calculating the relevant car or motor vehicle expenses.

PCG 2024/2 was previously released as draft PCG 2023/D1.

For more details, please refer to the ATO website.

Eligibility of super funds and investor-directed portfolio services investment platforms to claim reduced input tax credits on adviser fees

The ATO has updated its guidance on the eligibility of superannuation funds and investor-directed portfolio services investment platforms to claim reduced input taxed credits (RITCs) on adviser fees.

Following industry feedback, the ATO extended the period in which the concessional compliance approach applies. In particular, compliance resources will not be devoted to review RITC claims for adviser services fees paid under prescribed arrangements for tax periods that end before 1 July 2024 instead of 1 April 2024.

For further information, please refer here.

ATO guidance on depreciation of composite items

The ATO has finalised guidance for determining if a composite item is a single depreciating asset or more than one depreciating asset for the purposes of the capital allowances provisions in Div 40 of ITAA 1997. A "composite item" is an item that is made up of a number of components that are each capable of separate existence.

Taxation Ruling TR 2024/1 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, 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.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO guidance on depreciation of composite items (Cont.)

Jointly-held tangible assets

For jointly-held tangible assets, where a composite item is the underlying depreciating asset, the amount that a taxpayer can deduct for their share of the decline in value is based on the cost of:

- the component (or components) held in the composite item, or
- their interest in the otherwise undivided composite item.

Intangible depreciating assets

The ruling also provides guidance on calculating depreciation for intangible assets that consist of a number of rights. The individual rights cannot themselves be depreciating assets unless they are capable of separate existence and listed in s 40-30(2) of ITAA 1997. Whether or not an intangible asset is a composite item depends on its legal character and underlying individual rights.

This ruling applies to income years commencing both before and after its date of issue, to the extent that it does not conflict with terms of settlement of a dispute agreed to before the date of issue of this ruling. It was previously issued as draft Taxation Ruling TR 2023/D2, which in turn had replaced a previous draft TR 2017/D1. A compendium has been issued on the feedback received on the draft ruling.

Practice statement on exercising s 109RB discretion updated

The ATO has updated its guidance on the exercise of the Commissioner's discretion under section 109RB of Income Tax Assessment Act 1936 (ITAA 1936) which allows the Commissioner to disregard a deemed dividend which would otherwise be assessable to the taxpayer or to permit a deemed dividend to be franked.

Section 109RB of Division 7A of the ITAA 1936 provides relief for taxpayers who trigger the deemed dividend provisions as a result of an honest mistake or inadvertent omission. Where the deemed dividend has been triggered as a result of an honest mistake or omission, s 109RB allows the Commissioner to exercise a discretion to either disregard the deemed dividend, or allow it to be franked.

Practice Statement PS LA 2011/29 has been updated to reflect the current email addresses for Objections and Review (O&R) and SMB Technical Leadership.

PS LA 2011/29 has also been updated to reflect business line name changes from Review and Dispute Resolution (RDR) to Objections and Review (O&R) and Integrated Compliance to Fraud and Criminal Behaviours.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

ATO updated its practice statements on unenacted legislative measures

The ATO has updated its internal guidance on the administrative treatment of taxpayers affected by changes to tax law that have not yet been enacted.

The following practice statements have been amended to update contact details and reflect the ATO's latest formatting and style:

- Law Administration Practice Statement PS LA 2004/6 Giving advice on proposed changes to the tax law before royal assent or registration on the Federal Register of Legislation
- Law Administration Practice Statement PS LA 2007/11 Administrative treatment of taxpayers affected by announced but unenacted legislative measures which will apply retrospectively when enacted

The updates to PS LA 2007/11 also clarify policies on remission of interest by referring specifically to interest that has accrued after the enactment of a new legislative measure.

The practice statements are internal ATO documents for ATO staff on action that should be taken with respect to enquiries received and taxpayers affected by certain announced but not yet enacted legislative measures.

Monthly Tax Update

ATO Rulings and Activity (Cont.)

Class rulings issued:

- Class Ruling CR 2024/1 AFL Players' Association Limited – Education and Training Grant Program. This ruling applies to amounts received under the Education and Training Grant Program by members of the Australian Football League Players' Association from 1 November 2022 to 31 December 2027.
- Class Ruling CR 2024/2 Geotab Australia Pty Ltd – electronic car logbook and odometer record-keeping system. This ruling applies to employers who use the Geotab Drive System from 1 April 2023 to 31 March 2028.
- Class Ruling CR 2024/3 Westpac Banking Corporation — Westpac Capital Notes 10. This ruling sets out the income tax consequences for specified entities who subscribed for and acquired Westpac Capital Notes 10 issued by Westpac Banking Corporation. It applies from 1 July 2023 to 30 June 2024.
- Class Ruling CR 2024/4 Allkem Limited – scrip for scrip roll-over. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling CR 2024/5 Shriro Holdings Limited – return of capital. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling CR 2024/6 Healthia Limited – scheme of arrangement. This ruling applies from 1 July 2023 to 30 June 2024.

Other rulings issued:

- Addendum to Product Ruling PR 2023/9 FTC Automator platform – use by clients of KPMG and Directed Australia to calculate fuel tax credits. This addendum changes the title of the product ruling from "KPMG – FTC Automator platform – fuel tax credits" to "FTC Automator platform – use by clients of KPMG and Directed Australia to calculate fuel tax credits". This addendum applies from 1 January 2023.

ANDERSEN®

February 2024

Monthly Tax Update

Latest Australian Tax Cases

- Withholding tax - The taxpayer has appealed to the Full Federal Court against the decision of Moshinsky J in PepsiCo Inc & Anor v FC of T 2023 ATC; [2023] FCA 1490). In that case, Moshinsky J found that royalty withholding tax was payable on payments made under a soft drink distribution agreement between Schweppes Australia and PepsiCo. His honour also noted that the diverted profits tax provisions would have applied to the "royalty-free" exclusive bottling agreements between Schweppes Australia and PepsiCo in the event that royalty withholding tax was not payable.

- Deduction - The AAT has held that a taxpayer was not entitled to deductions for various work-related expenses and donations, finding the taxpayer failed to meet the substantiation requirements. [Copley v FC of T [2024] AATA 8, January 2024]

- A taxpayer subject to a tax liability of $18 million under a deed of settlement has failed in his application to have a departure prohibition order (DPO) set aside, with the NSW Supreme Court finding that the Commissioner had both the requisite belief that it was desirable to prohibit the taxpayer (who had contravened freezing orders not to diminish the value of assets subject to tax recovery proceedings) from departing Australia and reasonable grounds for holding that belief. [Gazal v DFC of T 2024 ATC; [2024] NSWSC 1, 8 January 2024.]

- The AAT has refused to set aside default assessments that included approximately $8.5 million of unexplained bank deposits in the assessable income of an individual (the administrator of a financial advisory business conducted by her husband) and disallowed deductions claimed for interest, albeit it revoked one assessment on the basis that fraud or evasion had not been established (hence it had been issued out of time) and reduced the penalties and shortfall interest charge (SIC) imposed. [WYVW v FC of T 2023 ATC; [2023] AATA 4242; 21 December 2023.]

If you would like more information or would like to discuss this tax update, please contact:

Cameron Allen
Office Managing Director
Tel: +61 (0) 3 9939 4488
Tel: +61 (0) 2 8226 8756
Email: cameron.allen@au.Andersen.com
MELBOURNE | SYDNEY

www.au.Andersen.com

This and other Andersen Australia Publications are available on www.au.Andersen.com

This document is of a general nature and is not intended to be relied upon as, nor be a substitute for, specific professional advice. We accept no responsibility for any loss suffered as a result of reliance placed on this document by any party. Please contact your Andersen adviser if you wish to discuss how the topics covered in this document will affect your specific circumstances.

Liability limited by a scheme approved under Professional Standards Legislation.

© ANDERSEN AUSTRALIA PTY LTD, February 2024. All rights reserved.