

April 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

Following our last update, the following Bills have received assent and are now law.

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

Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023 has received assent as Act No 23 of 2024. The legislation contains the 2022–23 October Budget measures to implement thin capitalisation reforms and introduce a new public tax disclosure requirement on multinational groups.

- Schedule 1 to the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Act 2024 amends the Corporations Act 2001 to add new rules on the disclosure of information about subsidiaries by Australian public companies in their annual financial reports. The requirements will apply to annual reports for financial years that commence on or after 1 July 2023.
- Schedule 2 to the Act outlines the changes to the thin capitalisation rules in Div 820 of ITAA 1997 which are generally applicable to income years commencing on or after 1 July 2023. The amendments:
 - replace the existing asset-based tests (safe harbour test and worldwide gearing test) with new earnings-based tests (a fixed ratio test and a group ratio test) for a new single “general class” of investors. This new class is a consolidation of previous existing classes of inward and outward investors. Authorised deposit-taking institutions are not affected by the amendments and continue to be subject to the existing thin capitalisation rules. Broadly, the fixed ratio test will effectively cap an entity's debt deductions at 30% of its Tax EBITDA,
 - replace the arm's length debt test with a third party debt test which effectively only recognises debt deductions arising from external third party debt, and
 - introduce new debt deduction creation rules which disallow deductions if considered to be incurred in relation to debt creation schemes.

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Legislation Update (Cont.)

Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2024

The Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2024 which increases fees payable in the foreign investment framework and clarifies the operation of Australia's double tax treaties in relation to such fees and state property taxes has received assent as Act No 17 of 2024.

Schedule 1 to the Foreign Acquisitions and Takeovers Fees Imposition Amendment Act 2024 contains amendments to the Foreign Acquisitions and Takeovers Fees Imposition Act 2015 to update the maximum fee that can be imposed by the Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (the Regulations). The schedule also amends the indexation provisions that apply to the fee cap to ensure a consistent and coherent indexation process for the fee cap and all fee amounts in the foreign investment framework. The amendments will enable the tripling of fees for acquiring established residential dwellings and the doubling of vacancy fees for vacant residential dwellings held by foreign residents.

Schedule 2 to the Act amends 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. The schedule also amends the relevant fee indexation provisions for consistency with changes to the fee cap indexation provisions in sch 1.

The amendments in the Act commence on the day after assent. The measures introduced in the Bill were first announced in the 2023–24 Mid-Year Economic and Fiscal Outlook.

Treasury Laws Amendment (Foreign Investment) Bill 2024

The Treasury Laws Amendment (Foreign Investment) Bill 2024 received assent as Act No 18 of 2024.

The Treasury Laws Amendment (Foreign Investment) Bill 2024 amends 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 some state and territory property taxes) and double tax agreements implemented domestically by the Agreements Act. The amendment ensures that such taxes prevail in the event of any inconsistency with the Agreements Act. The measure will apply retrospectively for 6 years, broadly aligning with statute of limitation periods under state and territory legislation.

The amendments 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.

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Legislation Update (Cont.)

Paid Parental Leave Amendment (More Support for Working Families) Bill 2023

The Paid Parental Leave Amendment (More Support for Working Families) Bill 2023 received assent as Act No 47 of 2024.

The Paid Parental Leave Amendment (More Support for Working Families) Bill 2023 (the Bill) increases the amount of paid parental leave (PPL) by adding 2 weeks each year from 1 July 2024, until the overall length of the scheme is increased to 26 weeks by July 2026.

The Bill also introduces concurrent leave. This means that from July 2026 both parents can take 4 weeks of reserved leave at the same time, thereby increasing flexibility for families to share caring responsibilities. The reserved leave period will increase by one week each year from 1 July 2025 to reach 4 weeks by 1 July 2026. Currently, the PPL scheme provides 20 weeks of PPL per child, with 100 flexible PPL days and 2 weeks reserved for each parent.

Other Legislation Update

First Home Super Saver scheme amendments to commence in September 2024

Technical changes to the First Home Super Saver (FHSS) Scheme contained in the [Treasury Laws Amendment \(2023 Measures No 3\) Act 2023](#) (the Act) will commence on 15 September 2024.

[Treasury Laws Amendment \(2023 Measures No 3\) Commencement Proclamation 2024](#) provides that sch 4 of the Act will commence on 15 September 2024. Schedule 4 of the Act contains technical changes announced in the 2021–22 Federal Budget to improve the flexibility of the FHSS Scheme including:

- increasing the discretion of the Commissioner to amend and revoke FHSS Scheme applications
- allowing individuals to withdraw or amend their FHSS Scheme applications before receiving a FHSS Scheme amount, and allowing those who withdraw to re-apply for FHSS Scheme releases in the future
- allowing the Commissioner to return any FHSS Scheme amounts to superannuation funds, provided the amount has not yet been released to the individual, and
- clarifying that FHSS Scheme amounts returned by the Commissioner to superannuation funds are treated as non-assessable non-exempt income and do not count towards individuals' contribution caps.

The changes generally apply retrospectively to FHSS Scheme applications made from 1 July 2018. Transitional provisions ensure that variations or revocations of certain FHSS Scheme applications that occurred before the commencement of the amendments on 15 September 2024 continue to be in force. Special transitional provisions extend the flexibility provided by the amendments to FHSS Scheme users who have had a FHSS determination made in relation to them prior to the commencement of the amendments on 15 September 2024 and who have since started holding a relevant interest in real property or land.

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Other Legislation Update (Cont.)

Exposure draft on Medicare levy lump sum exemption

Treasury has released [exposure draft legislation](#) on a 2023–24 Budget measure to exempt eligible lump sum payments in arrears from the Medicare levy from 1 July 2024.

The [draft Bill](#) proposes amendments to the Medicare Levy Act 1986 to exclude eligible lump sum payments in arrears when working out a resident taxpayer's liability for Medicare levy. The changes are to ensure low-income taxpayers do not pay higher amounts of Medicare levy as a result of receiving an eligible lump sum payment, such as compensation for underpaid wages.

To qualify for the exemption from Medicare levy, a lump sum payment in arrears must be:

- salary or wages that accrued during a period of more than 12 months before they were paid;
- salary or wages paid to a person after re-instatement to duty following a period of suspension, to the extent that the payment accrued during the suspension period;
- a superannuation income stream, annuity, compensation or sickness and accident payment covered by s 12-80 or 12-120 in Sch 1 to the Taxation Administration Act 1953;
- a Commonwealth education or training payment;
- an exempt pension, benefit, allowance or settlement payment covered by Div 52, 53 or 55 of ITAA 1997, or
- payments under a law of a foreign country of exempt pensions, benefits, allowances and settlement amounts.

The total arrears amount must be 10% or more of the individual's normal taxable income after deduction of the total arrears amount for Medicare levy relief to apply. The individual must also have been eligible for a reduction in Medicare levy in the 2 most recent income years, or the income year in which the lump sum accrues.

The amendments are proposed to apply to assessments for 2024-25 and later income years in relation to eligible lump sums accrued before, at or after commencement of the amendments.

Comments on this consultation will close on 23 April 2024.

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Other Legislation Update (Cont.)

Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023 (the Bill)

The Bill which proposes to implement a range of income tax measures (including a temporary increase of the small business instant asset write-off threshold and the small business energy incentive) has been passed by the Senate. The Bill also contains measures that amend the non-arm's length expenses rules for superannuation funds. The Bill was amended by The Senate and has now been sent back to the House of Representatives.

- Temporary increase to instant asset write-off threshold

Schedule 1 to the Bill amends the Income Tax (Transitional Provisions) Act 1997 (ITTPA 1997) to increase the \$1,000 instant asset write-off threshold in Div 328 of ITAA 1997 to \$30,000 from 1 July 2023 to 30 June 2024 (this threshold was initially \$20,000 in the Bill but increased under amendments proposed in the Senate).

Div 328 contains the simplified depreciation regime available to small business entities (with aggregated annual turnover of less than \$10 million). The Senate amendments also propose to extend the eligibility for the instant asset write-off to entities with aggregated annual turnover between \$10 million and \$50 million.

The \$30,000 threshold will apply to the cost of eligible depreciating assets, second element costs and general small business pool balances. The amendments also extend the suspension of the 5 year "lock-out" rule to 30 June 2024.

- Small business energy incentive

A 20% bonus deduction will be available for eligible expenditure that supports electrification or more efficient energy use, incurred from 1 July 2023 until 30 June 2024. The incentive applies to eligible expenditure on the cost of assets or improvements of up to \$100,000, with the maximum bonus deduction being \$20,000. It is available to businesses with an aggregated annual turnover of less than \$50 million. Schedule 2 to the Bill gives effect to this measure via amendments to ITTPA 1997.

- DGR and other changes

Schedule 3 to the Bill contains amendments to enable certain "community charities" to achieve deductible gift recipient (DGR) status by application to the ATO for endorsement. This new class of entities will be specified in the tax law provisions and future specification will be possible by name via ministerial declaration.

Schedule 4 adds Justice Reform Initiative Limited and Transparency International Australia as DGRs and extends the listings of Victorian Pride Centre Ltd and the Australian Sports Foundation Charitable Fund.

Schedule 5 amends the ITAA 1997 to extend the tax exempt status of the Global Infrastructure Hub Ltd for a further year to 30 June 2024.

- Accounting standards and general insurance contracts

Schedule 6 to the Bill proposes amendments to align the new accounting standard (AASB 17) with the tax rules. The changes are intended to reduce the tax compliance burden of the general insurance industry. The amendments will allow general insurers to continue using audited financial reporting information as the basis of their tax returns and will apply to income years starting on or after 1 January 2023.

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Other Legislation Update (Cont.)

Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023 (Cont.)

- Super fund non-arm's length expense rules

Schedule 7 to the Bill contains the amendments relating to the non-arm's length income (NALI) provisions as they apply to expenditure incurred by superannuation funds (described as the non-arm's length expense rules). These provisions had been originally introduced by the Treasury Laws Amendment (2018 Superannuation Measures No 1) Act 2019.

The amendments in Sch 7 to the non-arm's length expense rules will:

- exempt large APRA-regulated funds and exempt public sector superannuation funds from these rules (the rules will apply to self-managed superannuation funds (SMSFs) and small APRA-regulated funds),
- limit the income of SMSFs and small APRA-regulated funds that are taxable as NALI from a general expense breach to twice the difference between the amount actually charged and the arm's length expense amount that would have been charged for a general expense (capped at taxable income of the fund less contributions and related deductions).
- distinguish between specific and general expenses for the purposes of the rules, and
- exempt expenses that were incurred or might have been expected to be incurred before the 2018–19 income year.

The amendments will apply to income derived in the 2018–19 income year or a later income year, and to expenses incurred or expected to have been incurred in the 2018–19 or later income years. The retrospective application of the amendments addresses concerns of potential adverse consequences which were raised during consultation on the draft legislation. It ensures the non-arm's length expense rules will never have applied to large APRA-regulated funds or exempt public sector superannuation funds and the consequences of a general non-arm's length expense breach for SMSFs and small APRA-regulated funds are limited to the approach set out in Sch 7 to this amending Bill.

- Expand AFCA powers to hear superannuation related complaints

Amendments in Schedule 8 to the Bill amend the Corporations Act 2001 to ensure that a complaint relating to superannuation may be heard by the Australian Financial Complaints Authority (AFCA) even if the complaint does not meet the definition of a "superannuation complaint" under the legislation. This is to reverse the effect of the Full Federal Court decision in *MetLife v Australian Financial Complaints Authority* [2022] FCAFC 173 which led to AFCA being unable to consider complaints about insurance policies held inside superannuation. This amendment is proposed to apply retrospectively to ensure an individual is not disadvantaged by the *MetLife* decision.

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Other Legislation Update (Cont.)

Exposure draft on build-to-rent tax concessions

In the 2023-24 Budget the government announced that it would encourage investment and construction in the build-to-rent (BTR) sector.

For eligible new build-to-rent projects where construction commences after 7:30 pm AEST on 9 May 2023 the government will:

- increase the rate for the capital works tax deduction from 2.5% to 4% per year
- reduce the final withholding tax rate on eligible fund payments from managed investment trust investments from 30% to 15%.

The government also committed to consulting on implementation details, including:

1. whether a minimum proportion of dwellings should be offered as affordable tenancies
2. the length of time dwellings must be retained under single ownership before being able to be sold (the announcement indicated a 10-year period).

Following initial consultations with industry, Treasury is currently seeking feedback from interested parties on the draft legislation and explanatory materials for these changes as well as on the specific implementation details identified by the government. A policy fact sheet is available to assist in the consultation phase.

The exposure draft legislation requires a minimum proportion of dwellings to be made available as affordable tenancies. Views are sought on the impact of including this requirement.

- States and territories offering build-to-rent concessions take different approaches with respect to whether a proportion of dwellings must also be offered on an affordable basis. Separately, planning and zoning requirements provide those jurisdictions with some ability to impose requirements with respect to affordable dwelling availability.
- Definitions of what may constitute an affordable tenancy differ across jurisdictions and work is underway to consider a consistent approach to affordable housing.

The exposure draft legislation includes a minimum period of 15 years during which dwellings must be retained under single ownership. Views are sought on whether this period strikes the right balance between investment needs and meeting public demand for long term tenancy availability, together with any analysis of the impact of reducing or extending this period. It is noted that some states and territories apply a 15-year period in relation to certain build-to-rent concessions.

Comments on this consultation will close on 22 April 2024.

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Other Legislation Update (Cont.)

FBT determinations finalised for adequate alternative records

Legislative instruments have been made to provide employers with an alternative to obtaining employee declarations for certain fringe benefits. The documentation and record keeping concessions apply to FBT years ending 31 March 2025 and onwards.

Broadly, alternative records are required to be written in English and contain the relevant information specified in the applicable instrument.

- Temporary accommodation relating to relocation

Fringe Benefits Tax Assessment (Adequate Alternative Records – Temporary Accommodation Relating to Relocation) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in respect of certain expense payment fringe benefits, housing fringe benefits or residual fringe benefits relating to temporary accommodation.

Broadly, alternative records are required to contain specified information about the employee and the nature of the temporary accommodation provided.

- Private use of vehicles other than cars

Fringe Benefits Tax Assessment (Adequate Alternative Records – Private Use of Vehicles Other Than Cars) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in respect of a residual fringe benefit in relation to the private use of a motor vehicle other than a car.

Broadly, alternative records are required to contain specified information about the vehicle and kilometres travelled.

- Fly-in fly-out and drive-in drive-out employees

Fringe Benefits Tax Assessment (Adequate Alternative Records – Fly-in Fly-out and Drive-in Drive-out Employees) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in respect of living-away-from-home allowance fringe benefits, exempt accommodation expense payment benefits or exempt residual benefits consisting of the use of a unit of accommodation relating to fly-in fly-out and/or drive-in drive-out arrangements.

Broadly, alternative records are required to contain specified information about the employee and the fly-in fly-out and/or drive-in drive-out arrangement.

- Car travel to employment interview or selection test

Fringe Benefits Tax Assessment (Adequate Alternative Records – Car Travel to Employment Interview or Selection Test) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits relating to employment interview or selection tests in relation to the employee's employment.

Broadly, alternative records are required to contain specified information about the employee and travel details.

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Other Legislation Update (Cont.)

FBT determinations finalised for adequate alternative records (Cont.)

- Car travel to certain work-related activities

Fringe Benefits Tax Assessment (Adequate Alternative Records – Car Travel to Certain Work-Related Activities) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits relating to certain work-related activities.

Broadly, alternative records are required to contain specified information about the employee and travel details.

- Relocation transport reimbursed on cents per kilometre basis

Fringe Benefits Tax Assessment (Adequate Alternative Records – Relocation Transport) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits relating to reimbursement of eligible relocation transport expenses calculated on a cents per kilometre basis.

Broadly, alternative records are required to contain specified information about the recipient of the benefit and travel details.

- "Otherwise deductible" benefits

Fringe Benefits Tax Assessment (Adequate Alternative Records – Otherwise Deductible Benefits) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits, property fringe benefits or residual fringe benefits, where the employer seeks to reduce the taxable value of the fringe benefit under the "otherwise deductible" rule in ss 24, 44 or 52 of the FBTA.

Broadly, alternative records are required to contain specified information about the employee receiving the benefit, the dates the benefit was provided and the nature of the benefit provided.

- Overseas employment holiday transport reimbursed on cents per kilometre basis

Fringe Benefits Tax Assessment (Adequate Alternative Records – Overseas Employment Holiday Transport) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits relating to eligible overseas employment holiday transport reimbursed on a cents per kilometre basis.

Broadly, alternative records are required to contain specified information about the employee who received the benefit, the number of family members who travelled in the car and other travel details.

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Other Legislation Update (Cont.)

FBT determinations finalised for adequate alternative records (Cont.)

■ Travel diaries

Fringe Benefits Tax Assessment (Adequate Alternative Records – Travel Diaries) Determination 2024 specifies records the Commissioner will accept as an alternative to a "travel diary" (as defined in s 136(1) of the FBTA) required under the following provisions:

- s 24(1)(d) of the FBTA for an expense fringe benefit that is an extended travel expense payment benefit
- s 44(1)(d) of the FBTA for a property fringe benefit that is an extended travel property benefit
- s 52(1)(d) of the FBTA for a fringe benefit that is an extended travel residual benefit.

The determination does not apply for international aircrew expense payment benefits, property benefits or residual benefits.

Broadly, alternative records are required to contain specified information about the employee who received the benefit, duration of travel and activities undertaken in the course of producing their assessable income while travelling.

■ Living-away-from-home benefits

Fringe Benefits Tax Assessment (Adequate Alternative Records – Living-Away-From-Home – Maintaining an Australian Home) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in certain circumstances where an employee is required to live away from where they usually reside in Australia and maintain a home in Australia.

Broadly, alternative records are required to contain specified information about the employee who received the benefit, their usual place of residence in Australia and details about the circumstances in which they were required to live away from their usual place of residence.

■ Remote area holiday transport on cents per kilometre basis

Fringe Benefits Tax Assessment (Adequate Alternative Records – Remote Area Holiday Transport) Determination 2024 specifies records the Commissioner will accept as an alternative to an employee declaration in respect of expense payment fringe benefits relating to remote area holiday transport reimbursed on a cents per kilometre basis.

Broadly, alternative records are required to contain specified information about the recipient of the benefit and travel details.

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

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OECD update

OECD peer review report on preventing tax treaty shopping

The OECD has released the [Sixth Peer Review Report](#) (the Report) on Treaty Shopping. The Report assesses the implementation of the base erosion and profit shifting (BEPS) Action 6 minimum standard on treaty shopping.

The report includes data on tax treaties concluded by jurisdictions that were members of the Inclusive Framework on BEPS on 31 May 2023. Most agreements concluded between the members of the Inclusive Framework were either already in compliance with the Action 6 minimum standard or will shortly come into compliance. Under BEPS Action 6, members of the OECD/G20 Inclusive Framework have committed to strengthen their tax treaties by implementing anti-abuse measures.

A [revised peer review document](#) has also been released on 20 March 2024 outlining the methodology for carrying out the peer review process going forward. The consolidated document includes the Terms of Reference which set out the criteria for assessing the implementation of the Action 6 minimum standard, and the Methodology which sets out the procedural mechanism by which the review will be conducted. In light of the successful implementation of the Action 6 minimum standard to date, the revised methodology now provides ongoing targeted assistance to those members of the Inclusive Framework that still need to implement the Action 6 minimum standard with a comprehensive peer review process to be carried out once every five years.

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

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Other updates

Draft legislation on Pillar Two global minimum corporate tax rate

To give effect to Australia's response to the Organisation for Economic Cooperation and Development (OECD)/G20 Two-Pillar Solution to address the tax challenges arising from digitalisation of the economy, Treasury has released exposure draft materials for comment that seeks to implement a 15% global minimum tax and domestic minimum tax.

The key documents released for consultation include:

- **Primary exposure draft legislation** - consisting of 3 draft Bills to impose tax payable under the global and domestic minimum taxes, establish the liability and framework for the global and domestic taxes, and make necessary consequential amendments.
- **Consultation paper** - seeking feedback on interactions between the primary exposure draft legislation and provisions in Australia's existing income tax law, including the hybrid mismatch rules, controlled foreign company rules and foreign income tax offsets.
- **Subordinate exposure draft legislation** - consisting of rules to implement the domestic framework for a multinational top-up tax as part of the OECD Two Pillar Solution.

The core rules are proposed to commence from 1 January 2024. The retrospective commencement aligns the start date with that stipulated by the OECD's Two Pillar Solution as part of the coordinated international approach.

The exposure draft materials build on the recently enacted measures to limit the debt deductions of multinational entities in **Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023**. The Bill received assent on 8 April 2024 and it is now law. Please refer above for more details of the legislation.

Submissions on the primary exposure draft legislation and consultation paper are due by 16 April 2024. Feedback on the subordinate exposure draft legislation can be submitted until 16 May 2024.

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

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ATO Rulings and Activity

Draft taxation determination on hybrid mismatch rules

The ATO has issued a draft taxation determination ([TD 2024/D1](#)) setting out the Commissioner's preliminary view on the application of certain aspects of Div 832 of ITAA 1997 (e.g. the "liable entity" and "hybrid payer" definitions).

Division 832 prevents entities from obtaining tax benefits in Australia in the form of tax deductions or non-inclusion of amounts in assessable income by exploiting differences between the tax treatment of entities and instruments across different countries.

Broadly, a hybrid mismatch will arise if:

- an entity enters into a scheme that gives rise to a payment, and
- the payment gives rise to a deduction/non-inclusion mismatch, or a deduction/deduction mismatch.

TD 2024/D1 sets out the Commissioner's preliminary view on the following two separate but related issues in relation to the hybrid mismatch rules, as to whether:

- hypothetical income or profits within the tax base of a country can be used to identify a "liable entity" or entities in the country for the purpose of s 832-325, and
- a "non-including country" for the purpose of s 832-320(3) of the "hybrid payer" definition can be a jurisdiction other than the country where the payee of the relevant payment is located or resides.

It is the Commissioner's view that the identification of a "liable entity" or entities in a country in respect of income or profits for the purpose of s 832-325 can be based wholly on hypothetical income or profits within the tax base of the country. This will be necessary where, for example:

- an entity has not actually derived any income or profits in a particular period, or
- an entity has derived income or profits in a particular period, but no part of those income or profits are within the tax base of the country.

For the purpose of s 832-320(3), a non-including country can be a jurisdiction other than the country where the payee of the relevant payment is located or resides. Therefore, the laws of a jurisdiction other than the country where the payee is located or resides may fall for consideration in determining whether there is a hybrid payer within the meaning given by s 832-320. For example, the rules may apply to payments made by Australian entities to offshore subsidiaries which are part of a multi-tiered structure encompassing multiple jurisdictions.

When the final determination is issued, it is proposed to apply both before and after its date of issue.

The last day for comment on the draft taxation determination is 19 April 2024.

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ATO Rulings and Activity (Cont.)

ATO encourages not-for-profits to prepare for new return

In a media release, the ATO reminded that from 1 July 2024, non-charitable not-for-profits (NFPs) with an active Australian Business Number (ABN) will be required to lodge a new annual NFP self-review return to the ATO to confirm their income tax exemption status.

This applies to around 150,000 NFPs who currently self-assess as income tax exempt.

The new reporting requirement was introduced in the 2021–22 Federal Budget to enhance transparency and integrity in the tax, super and registry system by ensuring only eligible non-charitable NFPs access that income tax exemption. According to ATO Assistant Commissioner, Jennifer Moltisanti, the ATO is supporting these NFPs to help them get ready now before the changes come into effect.

Non-charitable NFPs who have an active ABN can get ready now by:

- conducting an early review of their eligibility by using the [ATO's guide](#);
- **checking all their details are up to date**, including authorised associates, contacts and their addresses are current;
- reviewing their purpose and governing documents to understand the type of NFP they are; and
- setting up myGovID and linking it to the organisation's ABN using Relationship Authorisation Manager.

When it comes time to lodge, NFPs can use Online services for business which lets organisations manage their reporting at a time that is convenient to them.

For NFPs that have engaged a registered tax agent, their agent can also lodge on their behalf through Online services for agents.

As an interim arrangement for the 2023–24 transitional year, eligible NFPs unable to lodge online will be able to submit their NFP self-review return using an interactive voice response phone service.

The first return is for the 2023–24 tax year and NFPs will need to prepare and submit their annual self-review between July and October 2024.

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

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ATO Rulings and Activity (Cont.)

Draft instrument on reporting exemptions for EDP operators

Under the Sharing Economy Reporting Regime (SERR) operators of electronic distribution platforms (EDP) are required to report information about certain supplies made through their platforms to the Commissioner of Taxation. The ATO has issued a draft instrument to exempt EDP operators from having to include specified classes of transactions in reports lodged under the sharing economy reporting regime for reporting periods starting on or after 1 July 2024.

Draft Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators) Determination 2024 ([LI 2024/D1](#)) will reduce the compliance costs imposed on operators of EDP by exempting transactions which the Commissioner considers to be a low risk to the broader taxation revenue base, or certain transactions which are reported to the Commissioner by other EDP operators.

The exemptions provided in the draft instrument generally replicate those provided in [Taxation Administration \(Reporting Exemptions for Electronic Distribution Platform Operators - Relevant Accommodation and Taxi Travel\) Determination 2023](#) (which ceases to apply after 30 June 2024) but also contains new, additional exemptions that cover certain types of suppliers and transactions.

Consultation on the draft instrument closes on 15 April 2024.

Draft update to GST Ruling dealing with improvements on land

The ATO has issued a draft update to GST Ruling GSTR 2006/6 to reflect the Full Federal Court's decision in *FC of T v Landcom* 2022 ATC; [2022] FCAFC 204 on the application of the margin scheme provisions in the GST Act.

GSTR 2006/6 sets out the Commissioner's view on the meaning of the phrase "improvements on the land" for the purposes of Subdiv 38-N (grants of land by governments) and Div 75 (margin scheme for supplies of freehold interests) of the GST Act.

The draft update proposes amendments to GSTR 2006/6 to reflect the *Landcom* decision, clarifying that each freehold land title is to be considered separately for the purposes of applying ss 38-445, 38-450 and 75-10(3) of the GST Act, including for long-term leases. The proposed changes update examples on the supply of land comprising separately titled lots used as a single site and land subdivided from land with improvements on the land at 1 July 2000.

Example 2 in GSTR 2006/6 on the supply of land comprising separately titled lots as multiple supplies has been removed.

Comments on the draft updates will be closed on 19 April 2024.

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

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ATO Rulings and Activity (Cont.)

Decision impact statement on income derived by a self-managed superannuation fund was non-arm's length income (NALI)

The ATO has published a decision impact statement on the AAT's decision in BPFN v FC of T [2023] AATA 2330.

In that decision, the AAT held that the non-arm's length income (NALI) provisions did not apply to trust distributions of interest income that was derived from a series of loan agreements between related entities as the amounts received by the fund did not exceed the amount that the fund would have expected to receive under an arm's length arrangement. This meant that the distributions were not precluded from being treated as exempt current pension income (ECPI).

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

ATO updated guidance on liability of a legal personal representative of a deceased person

The ATO has revised Practical Compliance Guideline [PCG 2018/4](#) dealing with liabilities of a legal personal representative (LPR) of a deceased person.

The revised guideline updates the requirements that a legal personal representative of a less complex deceased estate has to satisfy in order to finalise the estate and ensure that they are not personally liable for any outstanding tax-related liabilities of the deceased person.

This Guideline does not deal with outstanding tax-related liabilities that an LPR may have in relation to the deceased estate, that is, for the period after the death of the deceased person.

Practice statement on fraud or evasion updated

The ATO has updated Practice Statement PS LA 2008/6, dealing with fraud or evasion, to provide more detail of work practices that apply in relation to fraud or evasion cases.

This practice statement considers fraud or evasion in the context of the unlimited time limit allowed for the Commissioner to issue amended assessments and seek the payment of tax, which has been underpaid, due to fraud or evasion.

This Practice Statement outlines:

- what fraud or evasion is;
- the policy reasons for having an unlimited amendment period where there is fraud or evasion;
- the principles underpinning our approach to fraud or evasion;
- the procedures and work practices to be followed, including technical engagements and referrals, in considering fraud or evasion.

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ATO Rulings and Activity (Cont.)

Fact sheet on taxation of match payments

The ATO has released a fact sheet outlining the taxation implications of payments received by a 'Category B player' of Australian Rules Football for a club associated with or governed by the West Australian Football League (WAFL).

The fact sheet states that match payments are not taxable as involvement in the club (or WAFL) as a Category B player is a private recreational pursuit or hobby rather than an income-producing activity. This means that any match payment made to a Category B player is not income and does not need to be included in the player's tax return.

The fact sheet only applies to payments received pursuant to WAFL Category B player contracts.

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

Class rulings issued:

- Class Ruling [CR 2024/17](#) Invex Therapeutics Ltd – return of capital. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling [CR 2024/18](#) Newcrest Mining Limited – scrip for scrip roll-over, final ordinary dividend and special dividend. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling [CR 2024/19](#) Symbio Holdings Limited – employee share scheme – shares disposed of under scheme of arrangement. This ruling applies from 1 July 2021 to 30 June 2024.
- Class Ruling [CR 2024/20](#) Symbio Holdings Limited – scrip for scrip roll-over and special dividend. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling [CR 2024/21](#) The Ian Potter Cultural Trust – fellowships. This ruling applies from 1 January 2024.
- Class Ruling [CR 2024/22](#) Australia and New Zealand Banking Group Limited – ANZ Capital Notes 9. This ruling applies from 1 July 2023 to 30 June 2034.
- Class Ruling [CR 2024/23](#) The Trustee for the Voyager Resort – tax consequences for former timeshare owners. The ruling applies from 1 July 2021 to 30 June 2024.
- [Addendum](#) to Class Ruling CR 2019/27 to update the “date of effect” paragraph and correct a typographical error. This addendum applies from 1 April 2019.

Other rulings issued:

- Product Ruling [PR 2024/2](#) Lannock Strata Finance 2 Pty Ltd – Lot Owner Upfront Payment Agreement. This ruling applies from 13 March 2024, the date it was published, to a Participating Lot Owner specified in para 4 of the ruling that enters into a Lot Owner Upfront Payment Agreement from 13 March 2024 until 30 June 2026.

April 2024

Monthly Tax Update

Latest Australian Tax Cases

- **Application of Part IV A tax benefit** - The Federal Court has allowed a taxpayer's appeal against determinations issued by the Commissioner disallowing deductions and consequential carry forward losses in relation to the acquisition of a global pharmaceutical business. The Court found that although the taxpayer obtained a tax benefit, it did not enter into the scheme or arrangement for the dominant purpose of obtaining a tax benefit. [*Mylan Australia Holding Pty Ltd v FC of 2024 ATC*; [2024] FCA 253, 20 March 2024.]
- **Superannuation guarantee** - An employer's reasons (illness and COVID-19) presented as exceptional circumstances for its failure to lodge superannuation guarantee (SG) statements or provide information about its SG shortfall in a timely manner have been rejected by the AAT. [*Delbake Pty Ltd v FC of T 2024 ATC*; [2024] AATA 449, 18 March 2024.]
- **Default assessments** - The Commissioner has appealed against the decision in *Huang v FC of T 2024 ATC*. In that case, a taxpayer who claimed that cash transactions and suspicious activity in his business bank accounts were attributed to his wife failed to prove that the relevant default assessments were excessive. The taxpayer, however, succeeded in having the associated penalty assessments revoked on the basis that the shortfall amount did not result from the reckless disregard of the taxation law identified by the Commissioner. [*Huang v FC of T*]
- **Interest deduction** - The Full Federal Court on appeal has confirmed assessments disallowing interest deductions of \$894 million to an Australian company that had obtained a transfer pricing benefit from a Loan Note Issuance Agreement with a related overseas company [*Singapore Telecom Australia Investments Pty Ltd v FC of T 2024 ATC*, 8 March 2024]

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