

June 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.

## 2024/25 Federal Budget

The 2024/25 Federal Budget was handed down by the Treasurer Jim Chalmers on 14 May 2024. The Australian Government has positioned this year's Budget as one that seeks to balance competing priorities including providing cost of living relief, responsible economic management, and investing in a Future Made in Australia.

Please refer [here](#) for Andersen's Federal Budget Report for further details.

## Legislation Update

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

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

Three Administrative Review Tribunal Bills establishing the Administrative Review Tribunal (ART) as a replacement for the Administrative Appeals Tribunal (AAT) have received assent.

The **Administrative Review Tribunal Bill 2024** received assent as Act No 40 of 2024 on 3 June 2024. The Administrative Review Tribunal Act 2024 establishes the ART and sets out its operating framework.

The **Administrative Review Tribunal (Consequential and Transitional Provisions No 1) Bill 2024** and the **Administrative Review Tribunal (Consequential and Transitional Provisions No 2) Bill 2024** received assent on 31 May 2024 as Act No 38 of 2024 and Act No 39 of 2024 respectively.

The Administrative Review Tribunal (Consequential and Transitional Provisions No 1) Act 2024 repeals the Administrative Appeals Tribunal Act 1975 (AAT Act) and makes other consequential amendments to 138 Commonwealth Acts to facilitate the transition.

The Administrative Review Tribunal (Consequential and Transitional Provisions No 2) Act 2024 contains further consequential amendments to the remaining Commonwealth Acts that interact with the AAT Act, including amendments to Acts that required consultation with states and territories under cooperative schemes or intergovernmental agreements.

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## Legislation Update (Cont.)

- Digital ID Bill 2023
- Digital ID (Transitional and Consequential Provisions) Bill 2023

Bills to create an economy wide Digital ID system have become law.

The **Digital ID Bill 2023** received assent as Act No 25 of 2024 on 30 May 2024.

The Act provides for the Digital ID as a secure and voluntary way to verify one's identity online against existing government-held identity documents without having to hand over any physical information. Digital ID is not a card, it is not a unique number, nor a new form of ID.

The **Digital ID (Transitional and Consequential Provisions) Bill 2023** received assent as Act No 26 of 2024 on 30 May 2024. The Act contains consequential amendments to ensure that the principal Act operates as intended. This includes amendments to the Taxation Administration Act 1953 that will allow the Commissioner of Taxation to offer accredited identity provider services and accredited attribute provider services to non-Commonwealth participants in the Australian Government Digital ID System.

### Summary of new the Digital ID legislation

- The Accreditation Scheme will be voluntary for digital ID service providers, aiming to provide secure and convenient online identity verification.
- Within two years of commencement, private sector entities can apply to be providers or users of accredited digital ID services.

*What the Digital ID legislation entails:*

#### Accreditation Scheme for Digital ID Services:

- Implements a voluntary accreditation scheme.
- Accredited entities must adhere to additional privacy safeguards beyond the Privacy Act 1988 (Cth).
- Ensures nationally consistent standards for security and reliability.

#### Expanding the Australian Government Digital ID System:

- Facilitates shared use of Digital IDs between public and private sectors.
- Aims to streamline processes like accessing government services and financial transactions.
- Enables easier and more secure customer identity verification for businesses.

#### Regulation of Accredited Digital ID Service Providers:

- Introduces robust privacy safeguards and penalties for non-compliance.
- The ACCC will oversee compliance, and the Information Commissioner will regulate privacy protections.

#### Impact on the Private Sector:

- Allows private sector entities to access accredited digital ID service providers for secure customer verification.

- Implementation of standardized accreditation criteria enhances security and efficiency in online identity verification and government interactions.

Next Steps:

- Organisations offering digital ID services should prepare to meet accreditation requirements by November 2024.
- Businesses using digital ID services should assess the risks of continuing with non-accredited providers once accreditation is available.

Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

The **Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023** received assent as Act No 37 of 2024 on 31 May 2024.

The Act contains various measures announced on 6 August 2023 as part of the government's response to the PwC tax leaks scandal. These include measures to reform the Tax Practitioners Board (TPB), enhance promoter penalty laws, extend tax whistleblower protections, and enhance information sharing by taxation officers and TPB officials with Treasury and prescribed professional disciplinary bodies.

The Act also includes changes to the petroleum resource rent tax (PRRT) legislation to effectively cap the availability of deductible expenditure incurred in relation to a petroleum project for a year of tax.

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## Other Legislation Update

### Bills for build-to-rent tax concessions, CbC, instant asset write-off and other measures introduced

Legislative amendments to implement various tax measures have been introduced into parliament, including changes to tax concessions for eligible new build-to-rent developments, assessment of certain eligible lump sum payments in arrears for Medicare levy purposes, country-by-country (CbC) reporting, the list of deductible gift recipients and the instant asset write-off for small business entities.

Aside from the Buy Now Pay Later (BNPL) measures, the [Treasury Laws Amendment \(Responsible Buy Now Pay Later and Other Measures\) Bill 2024](#), which was introduced alongside the [Capital Works \(Build to Rent Misuse Tax\) Bill 2024](#), contains several other measures including:

- CbC reporting for certain MNEs

The Bill intends to implement Australia's public CbC reporting regime by amending the Taxation Administration Act 1953 to require certain large multinational enterprises (defined as CbC reporting parents) to publicly disclose selected tax information based on the Global Reporting Initiative's Sustainability Reporting Standards GRI 207.

The information required to be disclosed is on a CbC basis for specified jurisdictions and on either a CbC basis or an aggregated basis for the rest of the world. The measure will apply in relation to a reporting period that starts on or after 1 July 2024.

- Build-to-Rent (BTR) incentives

The Bill aims to increase the capital works deduction rate from 2.5% to 4% per year for eligible new BTR developments and reduce the final withholding tax rate on eligible fund payments from managed investment trust for eligible new BTR developments from 30% to 15%.

To ensure the integrity of these tax concessions, Capital Works (Build to Rent Misuse Tax) Bill 2024 (Imposition Bill) will impose a misuse tax when one or both tax concessions are claimed in circumstances where they are not available due to BTR development ineligibility.

- \$20,000 instant asset write-off for small business entities

The Bill contains an amendment to the Income Tax (Transitional Provisions) Act 1997 to extend the \$20,000 instant asset write-off (for businesses with an aggregated annual turnover of less than \$10 million) by 12 months until 30 June 2025.

- Medicare levy exemption for lump sum payments

The Bill amends the Medicare Levy Act to make changes to how certain eligible lump sum payments in arrears are assessed for the purposes of the Medicare levy.

The amendments seek to put eligible recipients of lump sum payments in arrears back into a similar position that they would have been had they been paid correctly.

The senate committee is expected to publish its report on 24 June 2024.

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## Other Legislation Update (Cont.)

### Superannuation (prudential standard) determination No 2 of 2024 (F2024L00636)

The above legislative instrument has been made to revoke Prudential Standard SPS 310 Audit and Related Matters, and replace it with a new version.

SPS 310 sets out requirements for a registrable superannuation entity (RSE) licensee to ensure that independent advice is provided to the RSE licensee on the operations, financial position and risk controls of the business operations of the RSE licensee. It outlines the roles and responsibilities of the RSE auditor and the obligations of an RSE licensee to make arrangements to enable an RSE auditor to fulfil their responsibilities. The key responsibility of the RSE auditor is the preparation of the auditor's report of the RSE.

In June 2023, the Treasury Laws Amendment (2022 Measures No 4) Act 2023 extended the financial reporting and auditing requirements in Ch 2M of the Corporations Act 2001 to apply to RSEs. The amendments aligned RSE financial reporting obligations with those that apply to public companies, registered schemes and other APRA regulated entities. The changes apply from 1 July 2023 (for year ends from 30 June 2024) and require lodgment of RSE financial statements and audit reports with ASIC rather than APRA.

Amendments to the prudential requirements for superannuation, including SPS 310, were necessary to align them with the new legislative obligations. The key requirements of SPS 310 are set in the instrument, including the amendments required to align the obligations in SPS 310 with the legislative changes.

**Superannuation (prudential standard) determination No 2 of 2024** revokes and replaces the existing SPS 310 with a new version, effective 30 June 2024.

### Treasury Laws Amendment (Extending the FBT Exemption for Plug-In Hybrid Electric Vehicles) Bill 2024

Independent Senator for Victoria David Van has introduced legislation in the Senate which proposes to extend the fringe benefits tax exemption for plug-in hybrid electric vehicles until 1 April 2030.

According to the explanatory memorandum, the **Treasury Laws Amendment (Extending the FBT Exemption for Plug-In Hybrid Electric Vehicles) Bill 2024** will extend the sunset clause in the implementing legislation to encourage the uptake of hybrid and electric vehicles.

The implementing legislation **Treasury Laws Amendment (Electric Car Discount) Act 2022**, which received Royal Assent on 12 December 2022, says the Federal Government will review the electric car discount after three years, which will consider electric car take up at that time, whether this tax concessions should be continued, and if so, in what form.

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## Other Legislation Update (Cont.)

### ATO registers instrument for FY2023-24 lodgement requirement

The ATO has registered an instrument that specifies which persons are required to lodge an income tax return for the income year ending 30 June 2024, along with a new requirement for not-for-profit (NFP) self-review returns to be lodged.

The instrument, [Taxation Laws \(Requirement to Lodge a Return for the 2024 year\) Instrument 2024](#), also deals with other lodgement requirements for:

- franking returns;
- venture capital deficit tax returns;
- ancillary fund returns; and
- trustees of self-managed superannuation fund

## OECD update

### OECD guidance on the implementation of CbC reporting

The OECD has updated its [guidance on the implementation of country-by-country \(CbC\) reporting: BEPS Action 13](#)

The guidance has been updated to clarify how to report, in Table 1 of a CbC report, payments received from other constituent entities. The guidance ensures a consistent treatment of payments in the payer and recipient jurisdictions, and ensures consistency between the published guidance on CbC reporting and the Pillar Two guidance published in December 2023.

## Other updates

### APRA clarifies expectations on cyber security and data backups

The Australian Prudential Regulation Authority (APRA) has written to all APRA-regulated entities emphasising the critical role of data backups in cyber resilience. This communication is part of APRA's ongoing commitment to supervising cyber resilience across industry, as outlined in its Interim Policy and Supervision Priorities update.

The letter is part of APRA's ongoing commitment to supervising cyber resilience across industry, as outlined in its Interim Policy and Supervision Priorities update released on 31 January 2024.

In the letter, APRA details the common issues observed in backup practices that could hinder system restoration during an incident. APRA expects regulated entities to review their backup arrangements. If the review identifies gaps that could materially impact the entity's risk profile or financial soundness, APRA considers this a material security control weakness notifiable under para 36 of Prudential Standard CPS 234 Information Security.

The letter is available on [APRA's website](#).

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## Other updates (Cont.)

### ASIC announces 30 June 2024 reporting focus areas

The Australian Securities and Investments Commission (ASIC) has announced its focus areas for 30 June 2024 financial reporting. ASIC also announced a new review of auditor compliance with ethical and independence standards to support ASIC's financial reporting and audit surveillance program and uplift their commitment to improved financial reporting and audit quality.

Aside from the "enduring focus areas" that apply to all reporting periods, which includes asset values, adequacy of provisions, subsequent events, and disclosures, ASIC says particular focus areas that are relevant to the 30 June 2024 period include 'grandfathered' large proprietary companies and registrable superannuation entities.

A key announcement in ASIC's statement is its review of how auditors are complying with auditor independence requirements in the Corporations Act, and ethical and independence requirements contained in the Australian Auditing Standards.

ASIC also continued to encourage voluntary climate reporting and urge directors and assurance providers to prepare for the proposed introduction of mandatory climate reporting requirements. For more information, please refer to the [ASIC website](#).

## ATO Rulings and Activity

### ATO draft taxation ruling on exempt income of international organisations and connected persons

The ATO has released provisional guidance on exempt income of international organisations and persons connected with these organisations.

The income of international organisations and persons connected with them is made exempt by s 6-20 of ITAA 1997 because of the application of the International Organisations (Privileges and Immunities) Act 1963 (IOPI Act). The IOPI Act provides for the conferral, by regulation, of privileges and immunities (including specified tax exemptions) on international organisations and persons connected with them.

Draft Taxation Ruling [TR 2024/D2](#) expands on the Commissioner's provisional views contained in Draft Taxation Ruling [TR 2019/D1](#), which in turn proposed to update the views contained in withdrawn Taxation Ruling TR 92/14 and withdrawn Taxation Determination [TD 92/153](#). Accordingly, [TR 2019/D1](#) had been withdrawn with effect from 22 May 2024.

[TR 2024/D2](#) considers when an international organisation is covered by the IOPI Act, and when a person is connected with an international organisation. It takes into account the High Court decisions in *Macoun v FC of T* 2015 ATC; [2015] HCA 44 and *FC of T v Jayasinghe* 2017 ATC ¶¶20-627; [2017] HCA 26.

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## ATO Rulings and Activity (Cont.)

### ATO update on how to avoid unexpected tax consequences in Division 7A loan repayments

The ATO has published a guide on how to avoid unexpected tax consequences in relation to Division 7A loan repayments. According to the ATO, to avoid an unfranked dividend under Division 7A, loans from a private company to its shareholders or their associates must be either repaid in full or placed on a Division 7A complying loan agreement before the company's lodgement day.

Under complying loan agreements, minimum yearly repayments (MYRs) comprising of interest and principal must be made each year, starting from the income year after the loan is made.

A shortfall in the loan's MYR could be assessed to the borrower as an unfranked dividend.

The ATO advises that when making MYRs, borrowers need to:

- start repayments in the income year after the complying loan was made;
- use the correct benchmark interest rate to calculate the MYR for the current year; and
- make their required payments on the loan by the due date – the end of the income year (usually 30 June).

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

### ATO draft instrument on PAYG withholding for US resident entertainers

The ATO has issued a draft legislative instrument ([LI 2024/D7 - Taxation Administration \(Withholding Variation for Certain Payments to US Resident Entertainers Including Athletes\) Legislative Instrument 2024](#)) to continue a pay as you go (PAYG) withholding variation for certain entertainers who are residents of the United States of America (US).

[LI 2024/D7](#) varies the amount a payer must withhold to nil for certain withholding payments made to entertainers who are residents of the United States of America (US).

An "entertainer" for the purposes of the draft instrument has the same meaning as Article 17 of the United States convention and includes theatrical, motion picture, radio or television artistes, musicians and athletes. Broadly, the withholding variation applies to payments for activities undertaken as an entertainer where the sum of such payments do not exceed US \$10,000 for the relevant income year.

The draft instrument also exempts payers from giving a payment summary for payments to US resident entertainers (including athletes or sports persons) where no amount was withheld from those payments in a financial year.

When finalised, the draft instrument will commence on the day after it is registered and replace a 2014 instrument ([F2014L00379](#)) due to sunset on 1 October 2024. The expression "athletes" in the draft instrument is intended to cover "sport persons" used in the 2014 instrument. This change is to ensure consistency with the terminology used in the United States convention.

Comments for the draft instrument closed on 6 June 2024.



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## ATO Rulings and Activity (Cont.)

### ATO practice guidance updated

The ATO has updated the following internal guidance:

- Practice Statement Law Administration [PS LA 2000/2](#) - An exemption for the trustees of some trust estates from the requirement to furnish a tax return on behalf of the trust estate.

The practice statement has been updated throughout in line with current ATO accessibility guidance and in relation to:

- updated language in relation to the requirement to lodge income tax returns in paras 8 and 9;
- para 12 and 13 (now para 12) updated as a result of the repeal of s 104-10(7)(a) of the ITAA 1997 and amendment to ss 106-50 and 106-60;
- the renumbering of paras 14 and 15 to paras 13 and 14, and
- the addition of footnote 1 and consequential renumbering of footnotes.

- Practice Statement Law Administration [PS LA 2015/2](#) - Time limits for trustee assessments.

The practice statement has been amended to update its title from "Trustee assessments" to "Time limits for trustee assessments". The guidance has also been reviewed for technical accuracy and updated to apply current ATO style and accessibility guidance.

- Practice Statement Law Administration [PS LA 2016/5](#) - The disclosure of information and documents collected by the Registrar of the Australian Business Register.

The practice statement has been amended throughout with an updated format in line with current ATO style. Other amendments to the guidance include:

- the removal, at para 7 "Disclosure is to government agencies", of the dot point 5 reference to "a prescribed body for the prescribed purposes" and associated footnote 9;
- the addition of "Australian Privacy Principle 6" at footnote 15;
- the reformatting of Attachment A into accessible format with individually numbered tables and headings, and
- the addition of table items 43 and 44 to Table 7 Attachment.

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## ATO Rulings and Activity (Cont.)

### ATO draft instrument on tax invoice waiver for motor vehicle incentive payments

The ATO has issued a draft legislative instrument ([LI 2024/D6 - A New Tax System \(Goods and Services Tax\): Waiver of Tax Invoice Requirement \(Motor Vehicle Incentive Payment Made to Motor Vehicle Dealer\) Determination 2024](#)) to continue waiving the requirement to hold a tax invoice in certain circumstances where a motor vehicle incentive payment is made to a motor vehicle dealer.

[LI 2024/D6](#) waives the requirement for a recipient of a supply of a motor vehicle in certain circumstances to hold a tax invoice before the relevant input tax credit will be attributable to a tax period where the recipient holds a document meeting specified requirements. The draft instrument will apply where the recipient makes a creditable acquisition of a motor vehicle from a motor vehicle dealer and, in addition to the consideration payable by the recipient, the motor vehicle dealer receives or is entitled to receive third-party consideration in the form of a motor vehicle incentive payment.

When finalised, the draft instrument will commence on the day after it is registered and replace a 2014 instrument ([F2014L00582](#)) due to sunset on 1 October 2024.

Consultation for the draft legislation closed on 6 June 2024.

### Synthesised text of tax treaty with China

The ATO has issued a synthesised text of Australia's tax treaty and protocol with the People's Republic of China as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI).

The purpose of the document is to help users understand the application of the MLI to the tax treaty, and does not constitute a source of law. The authentic legal texts of the tax treaty and the MLI take precedence and remain the legal texts applicable. The MLI entered into force for Australia on 1 January 2019. The ATO is preparing a synthesised text for each of Australia's tax treaties that are modified by the MLI.

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

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## ATO Rulings and Activity (Cont.)

### Class rulings issued:

- Class Ruling [CR 2024/30](#) Gamma Investments HoldCo Pty Ltd — reduction of share capital. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling [CR 2024/31](#) Link Administration Holdings Limited – scheme of arrangement and special dividend. This ruling applies from 1 July 2023 to 30 June 2024.

### Other rulings issued:

- Product Ruling [PR 2024/5](#) Challenger Lifetime Annuity (Liquid Lifetime) — 2024. This ruling applies from 1 July 2024 to the entities specified in para 4 of this Ruling in connection with an Annuity purchased from 1 July 2024 until 30 June 2027.
- Product Ruling [PR 2024/6](#) Tax consequences of investing in the Anadara Deferred Purchase Agreement. This Ruling applies from 1 September 2023 to Investors specified in paragraph 4 of this Ruling who enter into the scheme described in paragraphs 11 to 14 of this Ruling on a relevant Commencement Date from 1 September 2023 until 30 June 2026.
- Product Ruling [PR 2024/7](#) Perpetual WealthFocus Investment Advantage Fund. This ruling applies from 1 July 2024 to investors specified in the ruling that enter into the scheme from 1 July 2024 until 30 June 2027.
- Product Ruling [PR 2024/8](#) W.A. Blue Gum Project 2024. This ruling applies to the class of entities specified in the ruling that enter into the project from 29 May 2024 until 30 June 2024.
- **Addendum** to Product Ruling [PR 2021/3](#) Income tax: taxation consequences of changing the portfolio structure, contributing to and partially redeeming an investment in a unit in the Perpetual WealthFocus Investment Advantage Fund – 2021. This addendum applies both before and after its date of issue on 29 May 2024.

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## Latest Australian Tax Cases

- **Income, deductions** - The AAT has held that the proceeds of the sale of development application documents under a contract purportedly not involving the taxpayer was nevertheless assessable as ordinary income to the taxpayer, albeit found that the tax payable should be adjusted to allow for accrued interest on a mortgage facility. [*WCVB v FC of T* 2024 ATC; [2024] AATA 1259, 28 May 2024.]
- **Penalty reduction** - A land developer that incorrectly returned gains from property transactions on capital account and also wrongly claimed that certain properties had been held (and thus sold) on trust has had its administrative penalties reduced after the AAT found that the shortfalls were not due to the developer's intentional disregard for the law but rather to recklessness. [*Mitri & Ors v FC of T* 2024 ATC; [2024] AATA 1268, 28 May 2024.]
- A taxpayer who claimed he lived off personal wealth accumulated in China as well as loans from friends has again failed to have his default assessments revoked after the Federal Court held that the taxpayer could not satisfy his burden of proof merely by establishing errors in the default assessments, and that the AAT ([2023] AATA 2962) did not err in applying the "all or nothing" approach or in not accepting the taxpayer's testimony. [*Wang and Commissioner of Taxation (Taxation)* [2023] AATA 2962, 4 June 2024.]

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