

September 2024

# Monthly Tax Update

In the September 2024 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

### OECD BEPS Pillar Two: Bills for global minimum tax pass House

Bills to implement the 15% global minimum tax and domestic minimum tax in Australia have been passed by the House of Representatives and are now before Senate.

The package of Bills include the:

- Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024
- Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024, and
- Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Bill 2024.

The Bills are part of a legislative package needed to introduce a global and domestic minimum tax in Australia, aligning with Pillar Two of the OECD/G20's Two Pillar Solution. Pillar Two aims to tackle the tax challenges posed by the digitalization of the economy, as outlined in Action 1 of the Base Erosion and Profit Shifting (BEPS) project, with the overarching goal of ensuring that multinational enterprises contribute a fair share of tax in each jurisdiction where they operate globally.

### Senate Economics Committee publishes report on build-to-rent bills

The Senate Economics Legislation Committee has released its report on its inquiry into the **Treasury Laws Amendment (Build to Rent) Bill 2024** (BTR Bill) and the **Capital Works (Build to Rent Misuse Tax) Bill 2024**.

In the Senate's **report**, the Committee believes that the 15 percent managed investment trust withholding tax rate proposed in the BTR Bill, which offers a 50 percent reduction from the current rate, is a compelling and appropriate measure to boost investment in build-to-rent (BTR) developments in Australia.

Furthermore, the Committee finds the BTR Bill's proposed changes bring BTR development concessions in line with other investments, such as commercial offices, shopping centres, and affordable housing which have a withholding tax rate of 15 percent, making BTR housing an equally attractive investment option.

The committee also acknowledges that the BTR Bill's enhanced capital works deduction rate of 4 percent per year for qualifying new BTR developments will offer incentives to domestic investors.

The committee recommends that the bill be passed.

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

September 2024

# Monthly Tax Update

## Other Legislation Update

### Application of new tax agent Code of Conduct obligations delayed

A legislative measure has been enacted to postpone the implementation of new Code of Professional Conduct provisions introduced in the [Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#) (the Determination).

The [Tax Agent Services \(Code of Professional Conduct\) Amendment \(Measures No 1\) Determination 2024](#) modifies the application provision in the Determination to grant tax practitioners a transitional period for developing, implementing, and updating the necessary systems and processes to meet their obligations by the end of the applicable transitional period. For smaller tax practitioner firms (those with 100 or fewer employees as of 31 July 2024) and their employees and members, compliance with the new requirements must be achieved by no later than 1 July 2025. For all other tax practitioner firms and their employees and members, compliance is required by no later than 1 January 2025.

Where a tax agent or BAS agent is an employee or member of a partnership or company that is also a registered tax or BAS agent, the employees of the partnership or company (or any other entity connected with, or an affiliate of, the partnership or company) are to be counted in determining how many employees a registered tax agent or BAS agent has.

Tax practitioners are expected to be compliant with the new obligations at the end of their transitional period. Practitioners who do not take genuine steps during their transitional period towards compliance will not be provided a further period of permitted non-compliance.

The Assistant Treasurer had previously announced that the government would insert a transitional period into the Determination on 1 August 2024. Please refer [here](#) for further information.

## Other updates

### TPB consultation on guidance for new Code obligations extended

The Tax Practitioners Board (TPB) has extended the deadline for feedback on two draft information sheets concerning three of the eight new obligations introduced under the [Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#).

The closing date for comments on Draft Information Sheet [TPB\(I\) D54/2024](#) and Draft Information Sheet [TPB\(I\) D55/2024](#) has been extended from 3 September 2024 to 24 September 2024.

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

September 2024

# Monthly Tax Update

## Other Updates (Cont.)

### Treasury consults on extension of small business responsible lending obligations exemption

Treasury has released Treasury Laws Amendment Instrument 2024: Small Business Exemption (the Draft Regulations) for public comment.

The Draft Regulations, [Treasury Laws Amendment Instrument 2024: Small Business Exemption](#), amends the National Consumer Credit Protection Regulations 2010, which had a time-limited exemption added in April 2020 as a temporary measure to support timely access to finance for small businesses during the COVID-19 pandemic.

According to the [Draft Regulations' explanatory statement](#), the exemption provides that certain mixed-purpose small business loans are exempt from the responsible lending obligations so long as there is a 'genuine' business purpose that is not minor or incidental – effectively replacing the “predominant purpose test” with a “genuine purpose test” for small businesses.

The exemption was initially put in place for a period of six months but has since been extended three times, which is now due to expire on 3 October 2024.

The Draft Regulations amend the Credit Regulations to extend the exemption for a further 2 years, until 3 October 2026.

Although the exemption has been in place for nearly four years, the statement mentions that the extended time period doesn't necessarily cover the full life of a business loan, and extending the exemption provides additional data to inform a future decision on whether the exemption should be made permanent, allowed to expire, or modified to improve its effectiveness.

Consultation on the draft regulations closed on 19 August 2024.

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

September 2024

# Monthly Tax Update

## ATO Rulings and Activity

### ATO draft guidance on personal services businesses and alienation arrangements

The ATO has issued draft guidance ([PCG 2024/D2](#)) on its compliance approach to the potential application of the general anti-avoidance provisions in Pt IVA of ITAA 1936 to an alienation arrangement where personal services income (PSI) of an individual is derived through a personal services entity (PSE) that is conducting a personal services business (PSB).

Draft Practical Compliance Guideline [PCG 2024/D2](#) offers guidance on identifying alienation arrangements that the ATO views as either "low" or "higher" risk concerning Part IVA. It also outlines the likelihood of these arrangements being reviewed by the ATO. In an alienation arrangement, a tax benefit typically arises when an amount is not included in an individual's assessable income - an amount that would have been included, or reasonably expected to be included, if the arrangement had not been made.

According to the draft guideline, alienation of Personal Services Income (PSI) occurs when an individual's services are provided through an interposed entity (the PSE) controlled by or associated with the individual, rather than directly by the individual. Such arrangements pose a compliance risk when they are used to either retain income within the PSE (known as "retention of profits" arrangements) or to divert income to associates (referred to as "income splitting" arrangements), or both, with the aim of reducing the overall tax rate.

The draft guideline is relevant for taxpayers who have entered, or are contemplating entering, alienation arrangements where:

- there is a PSE (a company or trust) that derives the PSI of an individual, and
- the PSI rules in Pt 2-42 of ITAA 1997 do not apply to that PSI because the PSE is conducting a PSB.

The draft guideline does not apply to alienation arrangements where:

- the income of the interposed entity is not PSI - i.e., income mainly generated from the supply and sale of goods, the supply and use of income producing assets, or from the business structure of the interposed entity
- despite the interposed entity being held out as a PSE, the entity does not derive the PSI, in which case it will be the individual rather than the entity to whom the PSI is assessable under s 6-5 of ITAA 1997, and
- a PSE has incorrectly self-assessed that it is conducting a PSB in an income year, in which case the PSI rules will apply.

While the draft guideline discusses the risk and likelihood of Part IVA applying to alienation arrangements and the potential for review, it does not offer detailed guidance on when Part IVA might specifically apply to arrangements involving income splitting or retention of profits. For broader guidance on the administration and application of Part IVA, refer to Law Administration Practice Statement [PS LA 2005/24](#).

When finalised, the guideline is proposed to apply to arrangements entered into both before and after its date of issue. Submission for comments on Draft [PCG 2024/D2](#) closes on 11 October 2024.

September 2024

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Updated ATO guide on work expenses for employees

The ATO has revised its guide for employees, outlining how to determine if a work expense is deductible, how to apportion expenses that are only partially deductible, and what records are required to substantiate work expenses.

The [Employees guide for work expenses](#) has been updated to include:

- information on the electric vehicle home charging rate for zero emission vehicles (electric vehicles) and references to *Practical Compliance Guideline PCG 2024/2* Electric vehicle home charging rate – calculating electricity costs when a vehicle is charged at an employee's or individuals home;
- references to *Taxation Ruling TR 2024/3* Income tax: deductibility of self-education expenses incurred by an individual;
- additional common myths about claiming work expense deductions, and
- updated information to clarify when certain commonly claimed work expenses are allowable.

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

### Updated ATO practice statement on taxpayer alerts

The practice statement providing guidance on the Taxpayer Alert program has been updated.

*Law Administration Practice Statement PS LA 2008/15* has been updated to:

- include references to the Public Advice and Guidance (PAG) Steering Committee notification process.
- reflect that any public advice or guidance must be developed following the processes in the Producing PAG product procedure which, along with other Enterprise Knowledge Management system processes, is progressively replacing the PAG manual.
- include the PAG Steering Committee's governance of the ATO's PAG and its decision-making authority to request and endorse post-implementation reviews for taxpayer alerts.

September 2024

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Gazette notice on officeholder data-matching program

The ATO will gather officeholder data from ASIC, the Office of the Registrar of Indigenous Corporations (ORIC), the Australian Charities and Not-for-profits Commission (ACNC), and the Australian Business Registry Service (ABRS) for the period from 2023–24 to 2026–27.

The data items include name, address, date of birth, Australian business number, email address, contact phone number, business name, organisation class, organisation type, organisation status, state of incorporation, officeholder type, role type, officeholder role start and end dates as recorded on the publicly available ASIC Companies register, the ORIC register of Aboriginal and Torres Strait Islander corporations, and the ACNC Charity Register.

It is estimated that records relating to more than eleven million individuals will be obtained.

The objectives of the officeholder data-matching program are to:

- enable the ABRS to increase uptake of the director identification number (director ID) through better information on officeholders recorded by ASIC, ORIC and the ACNC;
- effectively link persons known to the ATO to officeholders and their associated companies as recorded on the ASIC Companies register, the ORIC Register of Aboriginal and Torres Strait Islander corporations, and the ACNC Charity Register;
- promote voluntary compliance and strengthen community confidence in the integrity of the tax and superannuation systems by publicising the running of this data-matching program;
- identify and educate company officeholders who may be failing to meet their registration and ongoing payment, withholding, or lodgement obligations and assist them to comply;
- identify and educate new company officeholders of their director ID obligations;
- identify and contact company office holders to confirm registration details including contact numbers, addresses or names;
- help ensure company officeholders are fulfilling their tax and superannuation reporting and compliance obligations;
- identify, deter, and disrupt those promoting or engaging in illegal phoenix activity; and
- better utilise registry data to combat unlawful activity.

For further information, please refer to the gazette notice [here](#).

September 2024

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Gazette notice on property management data-matching program

The ATO will obtain property management data from property management software companies covering the period from 2018–19 to 2025–26.

The data items include:

- property owner identification details (names, addresses, phone numbers, dates of birth, email addresses, business name and ABNs, if applicable)
- property details (property address, date property first available for rent, property manager name and contact details, property manager ABN, property manager licence number, property owner or landlord bank details)
- property transaction details (period start and end dates, transaction type, description and amounts, ingoings and outgoings, and rental property account balance).

The objectives of the property management data-matching program are to:

- identify and educate individuals and businesses who may be failing to meet their registration or lodgement obligations and help them:
  - lodge their income tax returns
  - correctly report assessable income from a rental property in their individual income tax return
  - correctly report associated rental deductions in their individual income tax return, and
  - comply with capital gains tax obligations for properties used to derive rental income
- gain insights to help develop and implement strategies, which may include educational or compliance activities for individuals and businesses who lease or let real property;
- promote voluntary compliance and increase community confidence in the integrity of the tax and superannuation systems.

For further information, please refer to the gazette notice [here](#).

### Results from ATO rental property data matching

The ATO has released a list of frequent taxpayer mistakes identified through its recently expanded property management data matching program, which has offered valuable insights into common errors made with investment properties.

Key findings are as follows:

- instead of reporting gross rental income and claiming expenses, net rent (after expenses) is reported and the same expenses are claimed a second time;
- properties are being omitted from returns;
- where properties are owned by multiple stakeholders, only one owner reports the property – when both are required to report;
- not reporting the rental income received when purchasing an already tenanted property that the new owner intends on moving in to; and
- capital works or depreciating assets being claimed as repairs and maintenance.

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

September 2024

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Gazette notice on lifestyle assets data-matching program

The ATO will obtain lifestyle assets data from insurance providers for the period from 2023–24 to 2025–26.

Insurance policy data will be collected for the following asset classes, provided the asset value meets or exceeds the specified thresholds.

Asset class	Minimum asset value threshold
Caravans and motorhomes	\$65,000
Motor vehicles including*: - cars and trucks - motorcycles	\$65,000
Thoroughbred horses	\$65,000
Fine art	\$100,000 per item
Marine vessels	\$100,000
Aircraft	\$150,000

*\*Due to how some data providers classify assets they insure, the ATO may receive data about other types of motor vehicles and assets that are not listed in the motor vehicle asset class above.*

The data items include:

- Client identification details (names, addresses, phone numbers, dates of birth, Australian business number, email address).
- Policy details (insurance brand name, policy number, policy inception date, start date of current policy, end date of current policy, last date policy was updated, total value insured, purchase price of the property insured, registration or identification number of the property, vehicle details (year, make, model), finance, policy cost, description of the property insured, primary use type).

The objectives of the lifestyle assets data-matching program are to:

- promote voluntary compliance and increase community confidence in the integrity of the tax and superannuation systems;
- assist with profiling to provide compliance staff with a holistic view of a taxpayer's wealth;
- identify possible compliance issues with income tax, capital gains tax (CGT), fringe benefits tax (FBT), goods and services tax (GST) and superannuation obligations;
- determine avenues available to assist in debt management activities;
- gain insights from the data to help develop and implement treatment strategies to improve voluntary compliance, which may include educational or compliance activities as appropriate;
- identify and educate those individuals and businesses who may be failing to meet their registration or lodgement obligations and assist them to comply, and
- help ensure that individuals and businesses are fulfilling their tax and superannuation reporting obligations.

For further information, please refer to the gazette notice [here](#).



September 2024

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Update to food list for GST purposes

The ATO has issued an addendum to the Detailed Food List for GST purposes to determine if a food or beverage item is GST free or taxable. The Detailed food list provides details of the GST status of major food and beverage product lines.

This addendum amends the Detailed Food List ([GSTII FL 1](#)) to align relevant entries with *Goods and Services Tax Determination GSTD 2024/1, add new food and beverage product lines, merge similar entries, update a number of entries to correctly reference updates to A New Tax System (Goods and Services Tax) Regulations 2019, delete duplicate entries and combine similar entries.*

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

### Withdrawal GST Industry Issues advice on sunscreen

The ATO has withdrawn advice on sunscreen in [GST Industry Issues Pharmaceutical Health Forum 5](#) (GSTII PH5) and [GST Industry Issues Pharmaceutical Health Forum 6](#) (GSTII PH6), with effect from 14 August 2024.

[GSTII PH5](#) provided advice on what was considered a “sunscreen preparation for dermal application”, while [GSTII PH6](#) outlined the factors that should be taken into account in determining whether a sunscreen preparation was “marketed principally as a sunscreen”.

GSTII PH5 and GSTII PH6 are being replaced by Draft Goods and Services Tax Determination [GSTD 2024/D2](#). The ATO view in the draft determination remains consistent with that expressed in these industry issues.

### Draft GST determination on supplies of sunscreen

The ATO has issued provisional guidance on when the supply of a sunscreen product is GST-free.

Draft Goods and Services Tax Determination [GSTD 2024/D2](#) has been created to update and clarify the ATO’s position on when sunscreen products are considered GST-free. It supersedes the current guidance provided in the ATO’s Pharmaceutical Health Forum Issues Register, as detailed below.

The draft determination states that a supply of a product that contains sunscreen is GST-free, if that product is of a kind of sunscreen preparation for dermal application, with SPF of 15 or more, that is required to be included on the Australian Register of Therapeutic Goods and is marketed principally for use as a sunscreen.

The draft determination addresses modern sunscreen products with dual features, such as those containing moisturizers or tints, and offers guidance on assessing whether these products are primarily marketed as sunscreens. Its goal is to simplify the GST classification process for sunscreen suppliers throughout the supply chain. Additionally, it includes seven examples demonstrating the Commissioner’s interpretation of how the law applies in practice.

Comments on the draft determination can be submitted until 13 September 2024. Once the final determination is released, it is expected to apply retroactively as well as prospectively from its date of issue.

September 2024

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Update to GST rulings to reflect new meaning of an “ATM”

The ATO has issued draft updates to GST Rulings [GSTR 2014/2](#) and [GSTR 2002/2](#) with regard to how “ATM” and “ATM services” are defined, to reflect the AAT’s decision in *Banktech Group Pty Ltd v FC of T 2023 ATC ; [2023] AATA 3850*.

In the *Banktech* case, the taxpayer unsuccessfully argued that the fees charged for cash withdrawals using their equipment in hotels and clubs should be considered input taxed financial supplies under section 40-5.09(5) of the *A New Tax System (Goods and Services Tax) Regulations 2019* and thus exempt from GST. Unlike traditional ATMs, their equipment required staff intervention, used multiple devices, and was not marketed as an ATM. The Commissioner concluded that the provision did not apply because the taxpayer’s equipment did not meet either the technical or ordinary definitions of an ATM service, and therefore, the fees were subject to GST. The Administrative Appeals Tribunal (AAT) upheld the Commissioner’s decision but disagreed with the Commissioner’s narrow interpretation of an ATM service. The AAT observed that the input taxed status for ATM services under section 40-5.09(5) of the GST regulations should not be restricted to services provided through ATMs defined by the Reserve Bank of Australia’s (RBA) Issuers and Acquirers Community (IAC) Code Sets.

The Draft GST Ruling [GSTR 2014/2DC2](#) proposes to replace this existing technical IAC definition with the ordinary meaning of the term “ATM”. The following three requirements must be met for a facility, machine or device to satisfy the ordinary meaning:

- its primary purpose and function are to provide banking facilities to account holders in relation to accounts with authorised deposit-taking institutions (for example, bank or credit unions) or overseas equivalent financial institutions;
- it dispenses cash to account holders upon request; and
- it is properly characterised as an ATM.

The draft ruling also includes a non-exhaustive list of factors that suggest a device is more likely to be classified as an ATM. It emphasizes that the classification of the device ultimately depends on the specific circumstances and is determined based on factual considerations.

Once it is established that the device is an ATM, the ATM service must be one of the 4 ATM services listed under s 40-5.09(5) of the GST Regulations. A fee imposed for an ATM service listed under s 40-5.09(5) is consideration for an input taxed supply.

Similar amendments to reflect the *Banktech* decision are included in the draft update to GST Ruling [GSTR 2002/2DC2](#) and refers to “ATM” or “automatic teller machine” as having its ordinary meaning as set out in [GSTR 2014/2DC2](#) discussed above.

Comments on the draft rulings will close on 18 October 2024.

The ATO has also withdrawn [GSTR 2014/2DC1](#) with effect from 4 September 2024, as it has been replaced by [GSTR 2014/2DC2](#). Proposed changes issued on 22 March 2023 as [GSTR 2014/2DC1](#) to reflect the RBA rules for merchant surcharging and designation of prepaid cards have now been included in this latest draft.

# Monthly Tax Update

## ATO Rulings and Activity (Cont.)

### Class rulings issued:

- Class Ruling [CR 2024/49](#) Talon Energy Limited – return of capital. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling [CR 2024/50](#) Digital Surge Pty Ltd – voluntary administration. This ruling applies from 1 July 2022 to 30 June 2028.
- Class Ruling [CR 2024/51](#) VMware LLC – acquisition by Broadcom Inc. – employee share scheme. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling [CR 2024/52](#) CSR Limited – employee share schemes – disposal of shares under scheme of arrangement. This ruling applies from 1 July 2021 to 30 June 2025.
- Class Ruling [CR 2024/53](#) University of Melbourne – loans from public and private ancillary funds. This ruling applies from 1 July 2024 to 30 September 2025.
- Class Ruling [CR 2024/54](#) EML Payment Solutions Limited – use of living expenses card facility to acquire a stored value prepaid card. This ruling applies from 1 April 2024 to 31 March 2029.
- Class Ruling [CR 2024/55](#) Millennium Services Group Limited – scrip for scrip roll-over. This ruling applies from 1 July 2023 to 30 June 2024.

### Other rulings issued:

- Product Ruling [PR 2024/13](#) Friends Provident International – Global Portfolio – Collective Investments. This ruling applies from 1 July 2024.
- Product Ruling [PR 2024/14](#) Carly Car Subscription Agreement. This ruling applies from 1 July 2024 to specific entities that enter into the scheme from 1 July 2024 until 30 June 2027.
- Product Ruling [PR 2024/15](#) AG Warehouse Pty Ltd – June Prepayment Discount Scheme. This ruling applies from 1 July 2024 to specific customers that enter into the scheme from 1 July 2024 until 30 June 2027.

# Monthly Tax Update

## Latest Australian Tax Cases

- Tax Agent Services Act - The Federal Court has imposed a civil penalty of \$1,800,000 on a person acting as a tax agent without ever applying for registration as a tax agent, contravening s 50-5 of the *Tax Agent Services Act 2009* (TASA) an unprecedented 3,359 times. [*Tax Practitioners Board v Van Dyke* 2024 ATC; [2024] FCA 899, 14 August 2024.]
- The taxpayers have appealed to the Full Federal Court against the decision in *Rusanov & Anor v FC of T* 2024 ATC; [2023] FCA 777. In that case, the Federal Court dismissed the taxpayers' appeal from an AAT decision ([2023] AATA 2782) that upheld default assessments in which unexplained deposits and expenses in bank accounts had been attributed as the taxpayers' taxable income. It found that the AAT had not erred in circumstances where contemporaneous evidence that the unexplained amounts were gifts or loans had not been provided. [*Rusanov & Anor v FC of T* 2024 ATC; [2023] FCA 777]

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