

February 2025

# 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

Since our last update, the following Bills have received Royal Assent and are now law.

### BEPS Pillar Two: global minimum tax Bills

The package of Bills to implement the 15% global minimum tax and domestic minimum tax in Australia as part of Pillar 2 of the OECD/G20's Two Pillar Solution have received Royal Assent.

The package consists of the following 3 Acts:

- Taxation (**Multinational—Global and Domestic Minimum Tax**) Bill 2024(Act No. 132 of 2024)
- Taxation (**Multinational—Global and Domestic Minimum Tax**) Imposition Bill 2024(Act No. 133 of 2024)
- Treasury Laws Amendment (**Multinational—Global and Domestic Minimum Tax**) (Consequential) Bill 2024(Act No. 134 of 2024)

### Bill amending foreign resident capital gains withholding payments regime and other measures

A Bill containing measures relating to the foreign resident capital gains withholding regime, self-amendment period for small and medium businesses, and other tax administration matters has received Royal Assent as Act No 135 of 2024.

Treasury Laws Amendment (**2024 Tax and Other Measures No. 1**) Bill 2024 (Act No. 135 of 2024) contains measures in respect of the following matters:

- Schedule 1 – Foreign resident capital gains withholding payments
- Schedule 2 – Single touch payroll standing declarations
- Schedule 3 – Self-amendments by small and medium businesses
- Schedule 4 – Reducing use of cheques for tax refunds

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## Legislation Update (Cont.)

### DGR and other miscellaneous amendments Bill

The Treasury Laws Amendment (**Fairer for Families and Farmers and Other Measures**) Bill 2024 has received assent as Act No. 136 of 2024. The Bill includes:

- amendments made to the listing of deductible gift recipients (DGRs) in ITAA 1997;
- further amendments consequential to the thin capitalisation reforms made by Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Act 2024 to ensure associate entities of general class investors are correctly categorised under the rules, to apply to income years starting on or after 1 July 2023, and
- amendments to the Corporations Act 2001 to clarify tax residency disclosures required for subsidiaries of public companies under s 295(3A).

### Build-to-rent tax concessions, CBC and other measures

The **Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024** has received assent as Act No 138 of 2024.

The Bill was passed with Senate amendments to

- refine the build-to-rent tax (BTR) concessions eligibility criteria;
- remove Sch 7 in relation to the instant asset write-off threshold for the 2024–25 income year;
- implements mandatory public disclosures of country-by-country tax information for multinational groups.

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## Other Legislation Update

### Sunsetting of TFN privacy legislative instrument deferred

A legislative instrument has been made that defers the sunsetting of the Privacy (Tax File Number) Rule 2015 (Privacy Rule) by 24 months.

The Privacy Rule safeguards individuals' Tax File Number (TFN) information by restricting its recording, collection, use, or disclosure to circumstances permitted under taxation, personal assistance, or superannuation law. The [Legislation \(Deferral of Sunsetting—Privacy \(Tax File Number\) Rule\) Certificate 2025](#) extends the sunsetting date of the Privacy Rule from 1 April 2025 to 1 April 2027.

The 24-month deferral provides sufficient time for the Office of the Australian Information Commissioner to review the Privacy Rule in response to the findings of the Royal Commission into the Robodebt Scheme. It also prevents the need to remake the rule in its current form for a short period before it is repealed and replaced with a new instrument.

### Deferral of sunsetting of residential care legislative determinations

A legislative instrument has been made that defers the sunsetting of legislative determinations dealing with the GST treatment of residential care services.

The [Legislation \(Deferral of Sunsetting—A New Tax System \(Goods and Services Tax\) \(GST-free Supply—Residential Care\) Instruments\) Certificate 2025](#) (the Certificate) defers the sunsetting date of the following instruments by 24 months from 1 April 2025 to 1 April 2027 (together, the Determinations):

- [A New Tax System \(Goods and Services Tax\) \(GST-free Supply—Residential Care—Government Funded Supplier\) Determination 2015](#), and
- [A New Tax System \(Goods and Services Tax\) \(GST-free Supply—Residential Care—Non-government Funded Supplier\) Determination 2015](#).

The Determinations ensure that the same GST-free supply provisions applicable to residents of Commonwealth-funded residential care homes also extend to individuals residing in residential care homes that are privately funded or funded by state or territory governments.

The Certificate extends the sunsetting date of the Determinations by 24 months to 1 April 2027, allowing time for the department to remake the Determinations in alignment with the new aged care legislative framework set to commence on 1 July 2025. The Certificate takes effect on 22 January 2025.

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## Other Legislation Update (Cont.)

### Rules on operative aspects of global minimum tax made

A legislative instrument ([Taxation \(Multinational—Global and Domestic Minimum Tax\) Rules 2024 \(F2024L01740\)](#)) has been created to implement the domestic framework for a multinational top-up tax in Australia as part of Pillar Two of the OECD/G20's Two Pillar Solution

The OECD Global Anti-Base Erosion Model Rules (GloBE Rules) under Pillar Two ensure that in-scope multinational enterprises (MNEs) are subject to a global minimum tax rate of 15%. This is achieved by identifying low-taxed pools of income within an MNE group and allowing parent jurisdictions—or, in some cases, other jurisdictions—to claim taxing rights over that income. Additionally, a domestic top-up tax applies to Australian entities with an effective tax rate below the 15% global minimum rate.

In December 2024, three Bills were enacted to implement both the global and domestic minimum tax rules in Australia (please refer above under "Legislation Update").

The instrument provides details on:

- computing and allocating GloBE Income or Loss
- computing and allocating Adjusted Covered Taxes
- application to investment and Tax Transparent Entities
- safe harbour provisions, and
- transitional provisions for MNE Groups in the initial phases of being in scope of the *Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024*.

The instrument also ensures that future administrative guidance issued by the OECD can be incorporated promptly and efficiently.

The instrument applies retrospectively from 1 January 2024, being the start date stipulated by the OECD's Pillar Two Solution.

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## Other Legislation Update (Cont.)

### Specified jurisdictions for new CBC reporting obligation

A legislative instrument ([F2024L01713](#)) has been made to specify jurisdictions for which a country-by-country (CBC) reporting parent will be required to publish selected tax information on a CBC basis. The list includes Singapore, Switzerland and Hong Kong, all common Australian trading partners. This legislative instrument is now in force but is subject to a disallowance period outlined further below.

[Taxation Administration \(Country by Country Reporting Jurisdictions\) Determination 2024](#) sets out the jurisdictions for which a CBC reporting parent must publish selected tax information on a CBC basis, if the CBC reporting group operates in that jurisdiction. The CBC reporting parent must publish information about the specified jurisdictions for reporting periods starting on or after 1 July 2024.

Certain large multinational enterprises (CBC reporting parents) are required to publish selected tax information on a CBC basis for specified jurisdictions under amendments made to the Taxation Administration Act 1953 by Sch 4 to the [Treasury Laws Amendment \(Responsible Buy Now Pay Later and Other Measures\) Act 2024](#) (Amending Act). Unless otherwise exempt, the reporting obligation applies to CBC reporting parents that are certain types of constitutional corporations, partnerships or trusts, and that are members of a CBC reporting group. The CBC reporting parent is only subject to the reporting obligation if \$10 million or more of their aggregated turnover for the income year is Australian-sourced.

The instrument commenced on 1 January 2025, being the day Sch 4 to the Amending Act commences.

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## Other updates

### TPB guidance to support reforms to Code of Professional Conduct

The Tax Practitioners Board (TPB) has issued new guidance products on the 8 new Code items contained in the Tax Agent Services (Code of Professional Conduct) Determination 2024.

The guidance products include the following information sheets:

- **TPB(I) 43/2024** Breach reporting under the Tax Agent Services Act 2009
- **TPB(I) 44/2024** Upholding and promoting the ethical standards of the tax profession
- **TPB(I) 45/2024** False or misleading statements
- **TPB(I) 46/2024** Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government
- **TPB(I) 47/2024** Obligation to keep proper client records of tax agent services provided
- **TPB(I) 48/2024** Supervision, competency and quality management under the Tax Agent Services Act 2009
- **TPB(I) 49/2024** Keeping your clients informed

The TPB has also updated guidance relating to:

- **Breach reporting obligations**, summarising additional obligations and requirements outlined in **TPB(I) 43/2024**
- **Code obligations when undertaking activities for or in dealings with government**, in relation to new obligations under ss 20 and 25 of the Determination
- **Obligation to keep proper client records**, in relation to the new obligation under s 30 of the Determination
- **Upholding and promoting the ethical standards of the tax profession**, in relation to the new obligation under s 10 of the Determination
- **Keeping your clients informed**, in relation to the new obligation under s 45 of the Determination
- **Code obligations when making or preparing statements**, in relation to the new obligation under s 15 of the Determination, and
- Practice Note **TPB(PN) 3/2019** Letters of engagement, in relation to ss 15 and 45 of the Determination.

The new obligations in the Determination commenced for larger tax practitioner firms with more than 100 employees from 1 January 2025. For tax practitioners with 100 or less employees as at 31 July 2024, including new tax practitioners that register between 1 August 2024 and 30 June 2025, the new obligations will commence from 1 July 2025.

The TPB is continuing to develop practical guidance and case studies addressing a variety of tax practitioners, from sole practitioners to large firms.

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

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## Other updates (Cont.)

Discussion paper on use of legal professional privilege in Commonwealth investigations

The Attorney-General's Department (AG Department) and Treasury has released a discussion paper on the use of legal professional privilege (LPP) in Commonwealth investigations for consultation, as part of reforms announced in response to the PwC tax leaks scandal.

The [discussion paper](#) explores and evaluates key issues identified by the AG's Department and Treasury through initial consultation and research on the use of Legal Professional Privilege (LPP) in Commonwealth investigations.

According to the AG Department, feedback on this paper will guide further consultation and the development of potential reform options. A second and final paper outlining these options will be released for public consultation later this year.

The last day to submit comments on the discussion paper is 28 February 2025.

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

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## OECD Updates

Global minimum tax: release of compilation of qualified legislation and information filing and exchange tools

The OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS) has released a compilation of qualified domestic rules, along with other tools to streamline the co-ordinated administration of the global minimum tax.

The global minimum tax follows an agreed rule order that prevents the application of minimum tax rules in one jurisdiction when "qualified" rules exist in another jurisdiction. In 2024, the Inclusive Framework on BEPS established a **fast-track process** to confirm the transitional qualified status of a jurisdiction's domestic legislation. The **Central Record of Legislation with Transitional Qualified Status** lists jurisdictions whose minimum tax laws have completed this process, including Australia, which has secured qualified status. This record will be updated regularly to include additional jurisdictions as they complete the fast-track process.

The Inclusive Framework has also agreed to **Administrative Guidance on Article 9.1 of the GloBE Model Rules** which excludes certain deferred tax assets from the calculation of an MNE group's effective tax rate. This exclusion applies when the assets arose before the implementation of the global minimum tax due to specific governmental arrangements or the introduction of a new corporate income tax. While this guidance clarifies the application of Article 9.1, some jurisdictions may need to assess whether amendments to their domestic legislation are necessary to implement certain aspects of the guidance.

### *GloBE Information Return*

The Inclusive Framework also released an update to the standardized Global Anti-Base Erosion Rules (GloBE) Information Return (GIR). The GIR is a standardized reporting mechanism that jurisdictions implementing the global minimum tax will use to assess the accuracy of a constituent entity's liability under their minimum tax rules. The GIR may be filed in a single jurisdiction, with relevant sections of the return exchanged with other implementing jurisdictions as required.

The **updated version of the GIR**, originally released in July 2023, includes simplifications and clarifications based on stakeholder feedback. These updates address scenarios where no jurisdictions have taxing rights under the GloBE Rules. Additionally, a new annex provides a notification template that jurisdictions can use to require MNE groups to confirm that they will receive the GIR through information exchange. The Inclusive Framework has also agreed on further **guidance** to assist with completing specific sections of the GIR.

To support central filing and exchange of the GIR, the Inclusive Framework has released the **GIR Multilateral Competent Authority Agreement** which sets out the conditions and modalities for the automatic exchange of GIR information. Central filing is expected to reduce the compliance burden on groups, limiting the number of jurisdictions where entities are required to file the GIR.

For further information, please refer to **OECD website**.



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## ATO Rulings and Activity

### ATO's updated guidance on simplified transfer pricing record keeping options

The ATO has updated its guidance on simplified transfer pricing record-keeping options in Practical Compliance Guideline [PCG 2017/2](#). The guidance has been updated with the interest rate for the 2024-25 income year in respect of inbound and outbound loan options.

The new interest rate for both options during the 2024–25 income year will be 5.61%.

### Draft guidance on Div 7A payments and loans through interposed entities

The ATO has set out its preliminary view that the requirement in s 109U of ITAA 1936 that a private company guarantees a loan made by the "first interposed entity" does not contain any restrictions on the type of entity the first interposed entity must be.

Section 109U of ITAA 1936 forms part of Div 7A and deals with payments and loans through interposed entities relying on guarantees.

Draft Taxation Determination [TD 2024/D3](#) addresses whether the first interposed entity (i.e., the entity receiving the guarantee) must be a private company for section 109U of the *Income Tax Assessment Act 1936* (ITAA 1936) to apply. The determination outlines the Commissioner's position that section 109U(1)(a), which requires a private company to guarantee a loan made by the first interposed entity, does not impose any restrictions on the type of entity the first interposed entity must be. Consequently, the Commissioner considers that the first interposed entity can be any entity, including a public company or a bank.

The draft determination also outlines the Commissioner's proposed compliance approach to section 109U. The ATO acknowledges that banks and other financial institutions commonly require guarantees from related entities when lending to private companies. It states that compliance efforts will be focused on high-risk arrangements exhibiting clearly artificial or contrived elements. This includes situations where, based on an objective assessment, one or more private companies involved in the arrangement acted with the intent to circumvent Division 7A, such as by exploiting private companies with no distributable surplus.

To eliminate any doubt, the ATO clarifies that its compliance approach applies solely to section 109U. This means that if the private company providing the guarantee makes a payment to the third-party lender or the private company borrower, resulting in a deemed dividend under another provision of Division 7A, the ATO may allocate compliance resources to enforcing that provision. This approach applies regardless of whether the third-party lender is a private company or another type of entity.

When finalised, the determination is proposed to apply to years of income commencing both before and after its date of issue.

Comments on draft [TD 2024/D3](#) closed on 31 January 2025.

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## ATO Rulings and Activity (Cont.)

### ATO guidance on inbound related party funding for private groups

The ATO has published new guidance for private groups that receive funding from an overseas related party or associate for property and construction.

According to the ATO, the guidance clarifies the transfer pricing rules and assists businesses in implementing and demonstrating arm's length funding arrangements. It ensures that such arrangements align with commercial terms that would be expected between independent parties acting at arm's length.

The guidance covers topics such as:

- how to demonstrate the commerciality of funding arrangements and ensure it is at arm's length;
- the ATO's observations of conventional funding practices in the property and construction industry;
- the ATO's concerns and factors that attract its attention;
- examples of different funding arrangements and behaviours along with the ATO's view on the private group's level of tax risk; and
- record-keeping and other compliance obligations when receiving funding from an overseas related party or associate.

The guidance aims to prevent businesses from using non-arm's length terms and conditions in funding arrangements to claim excessive debt deductions, such as interest, or to defer or avoid interest withholding tax.

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

### Draft update to ruling on application of CGT event K6

The ATO has released a draft update to Taxation Ruling [TR 2004/18DC](#), revising its position on calculating the capital gain when CGT event K6 occurs under section 104-230 of the *Income Tax Assessment Act 1997* (ITAA 1997).

The draft update specifically reflects the view that only a single capital gain can arise under CGT event K6 (relating to pre-CGT shares and pre-CGT trust interests). It also clarifies which property should be considered when determining the amount of the capital gain.

Once finalized, the updated ruling will apply both prospectively and retrospectively. However, for CGT event K6 occurrences before the final ruling's issuance, taxpayers will have the option to rely on either the original or the updated version of the ruling.

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## ATO Rulings and Activity (Cont.)

ATO guidance on meaning of "employee" for super guarantee finalised

The ATO has updated a Taxation Ruling, TR 2023/4 on the meaning of "employee" to insert guidance for superannuation guarantee (SG) purposes.

The updated Ruling, [TR 2023/4A1](#) considers who is an "employee" for pay as you go withholding purposes.

The [addendum](#) to [TR 2023/4](#) inserts guidance in Appendix 2 on when a person is considered to be an employee under s 12 of the *Superannuation Guarantee (Administration) Act 1992* (SGAA).

*Importantly, Appendix 2 is useful as it:*

- confirms the ATO's view in light of case law developments in the context of SGAA since the last update of *Superannuation Guarantee Ruling SGR 2005/1* Superannuation guarantee: who is an employee? (now withdrawn)
- consolidates the ATO's view in respect of the common law definition of employee in the withdrawn [SGR 2005/1](#) and [TR 2023/4](#), and
- provides a holistic ATO view of the common law meaning of employee and extended meaning of the word as contained in SGAA.

Appendix 2 applies both retrospectively and prospectively from its date of issue.

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## ATO Rulings and Activity (Cont.)

### ATO rental bond data-matching program

The ATO will collect rental bond data from state and territory rental bond regulators on a bi-annual basis for the 2023–24 to 2025–26 financial years.

The rental bond data collected under the program will be cross-checked against tax return information to identify taxpayers who own or have sold income-producing properties but have not met their reporting, lodgment, or payment obligations. Additionally, the program will help detect non-compliance with foreign investment laws, including breaches of conditions on foreign investment approvals, improper use of dwellings, and failure to pay vacancy fees.

Data items that will be acquired include:

- individual client details, including landlord and tenant information
- managing agent identification details, and
- rental bond transaction details, including rental property addresses and information about leases, rental bonds and rental payments.

The ATO will collect data on approximately 2.2 million individuals each financial year.

For further information, please refer to the [ATO website](#) and [Gazette notice \(C2025G00006\)](#).

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## ATO Rulings and Activity (Cont.)

Taxpayer alert on arrangements to circumvent Div 7A through the guaranteeing by private companies of third-party loans

The ATO has issued Taxpayer alert [TA 2024/2](#) which confirms that the ATO is currently reviewing arrangements where:

- A private company (the first company) provides a guarantee for a loan issued by a financial institution to a related private company that has little or no distributable surplus.
- The related company then on-lends or transfers some or all of the borrowed funds to the first company's shareholders (or their associates) on terms that do not comply with the requirements of Division 7A.

Taxpayers who have entered into or are considering such arrangements are encouraged to contact the ATO using the details provided in the alert or seek a private ruling. The ATO also advises affected entities to seek independent professional advice and consider making a voluntary disclosure to mitigate potential penalties.

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## ATO Rulings and Activity (Cont.)

Taxpayer alert where early stage investor tax offset claimed using circular financing arrangements

The ATO has issued Taxpayer Alert [TA 2024/1](#) which highlights the ATO's review of cases where individuals have claimed the early stage investor tax offset on shares acquired through tailored financing arrangements.

These arrangements appear to be structured to artificially satisfy the conditions for claiming the maximum tax offset, enabling individuals to benefit with little to no investment risk.

Entities involved in these schemes promote, coordinate, and finance the arrangements primarily to facilitate access to the tax offset, with the refunded offset being shared among the participants.

As outlined in [TA 2024/1](#), these arrangements typically display all or most of the following features:

- The individual becomes or is made aware of an opportunity to invest in a start-up company.
- The company is held out to qualify as an early stage innovation company (ESIC) under s 360-40 of ITAA 1997.
- A financing arrangement is offered to fund the individual's share subscription amount, less any nominal deposit required. This enables the individual to acquire shares, typically up to an amount that qualifies for the maximum tax offset.
- The company places the subscription amount back on deposit with the financier who controls the use of the subscription monies by the company. This includes limiting that amount which the company can directly apply to further its stated innovation and commercialisation activities.
- The individual claims the tax offset in their tax return and receives a refund. This refund is typically available as the tax offset reduces the individual's tax liability on their salary and wage income, enabling a refund of PAYG withholding or other credits.
- The tax offset refund is used to partially repay the finance.
- The remainder of the financing is repaid by the individual within a short period out of subscription monies returned to the individual by the company. This returned amount is typically by way of selective share buy-back (or other disposal) of some or all of the individual's shares.
- In substance, the individual has paid no amount for any residual shareholding they might continue to have in the company, and the refunded tax offset is shared between the individual, the company and the entities facilitating and financing the individual's share subscription.

For sophisticated investors, the terms of the arrangement usually provide a longer period that covers the greater tax offset available to them and the longer period over which the benefit of the tax offset may be realised.

This alert does not apply to arrangements where an individual makes a genuine investment for the full value of shares acquired in a start-up that qualifies as an Early Stage Innovation Company (ESIC) and where the invested funds are genuinely used by the ESIC.

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## ATO Rulings and Activity (Cont.)

Taxpayer alert where early stage investor tax offset claimed using circular financing arrangements (Cont.)

The ATO is concerned that:

- The individual investor does not qualify for an early stage investor tax offset under Div 360 of the ITAA 1997 for amounts received or entitled to be received by the issuing company, given the issuing company immediately after the time of share issue is not an ESIC under s 360-40 of ITAA 1997.
- The individual investor is not entitled to a general deduction for interest expenses incurred on their borrowing under s 8-1 of ITAA 1997.
- The ESIC investment arrangement is a scheme under s 177D of ITAA 1936 to which the general anti-avoidance provisions in Pt IVA of ITAA 1936 apply, and if the individual investor was entitled to an early stage investor tax offset or general deduction, the ATO would cancel the offset and deduction.

Individuals will also not be entitled to capital gains tax exemptions under s 360-50 of ITAA 1997 when they dispose of their shares because they were not entitled to the tax offset.

The ATO is also concerned that these arrangements are being promoted by advisers as legitimate tax arrangements to both individual taxpayers and start-up companies seeking seed capital.

The ATO is actively reviewing these arrangements, engaging with taxpayers and companies regarding both historical and existing cases. It is also preparing a taxation determination on whether Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) may apply to the arrangements covered by this alert.

Taxpayers who have entered into or are considering such arrangements are encouraged to contact the ATO using the details provided in the alert or seek a private ruling. The ATO also advises affected taxpayers to seek independent professional advice and consider making a voluntary disclosure to mitigate potential penalties.

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## ATO Rulings and Activity (Cont.)

### ATO's updated practice statements

The ATO has updated the following practice statements in line with current ATO style and accessibility requirements, and checked for technical accuracy and currency.

- [PS LA 2004/3 \(GA\)](#) - Valuation of goods taken from trading stock for private use by sole traders or partners in a partnership
- [PS LA 2005/19](#) - Approved forms
- [PS LA 2006/16](#) - GST-free exports - the Commissioner's discretion to extend the time to export.
- [PS LA 2014/2](#) - Administration of transfer pricing penalties for income years commencing on or after 29 June 2013
- [PS LA 2014/3](#) - Simplifying transfer pricing record keeping
- [PS LA 2015/3](#) - Approval process for the application of subsections 815-130(2) to 815-130(4) of the ITAA 1997
- [PS LA 2016/1](#) - Transfer pricing adjustments with potential customs implications
- [PS LA 2016/2](#) - Administration of scheme penalties arising from the application of Subdivision 815-A for income years which started on or after 1 July 2004 and before 1 July 2012.
- [PS LA 2014/3](#) - Simplifying transfer pricing record keeping.
- [PS LA 2001/8](#) - ATO interpretative decisions (ATO IDs).
- [PS LA 2005/7](#) - substantiating an individual's work-related expenses.
- [PS LA 2012/2](#) - Change of trustee
- [PS LA 2021/2](#) - The ATO's administrative approach to the extension of the Commissioner's discretion to retain tax refunds
- [PS LA 2011/5](#) - Recovery of administrative overpayments
- [PS LA 2011/30](#) - Remission of administrative penalties relating to schemes imposed by s 284-145(1) of Sch 1 to the *Taxation Administration Act 1953*
- [PS LA 2013/5](#) - Collection of consolidated group liabilities
- [PS LA 2013/6](#) - Collection from GST groups, GST joint ventures and other entities of debts arising from indirect tax laws.



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## ATO Rulings and Activity (Cont.)

### ATO's updated practice statements (Cont.)

- **PS LA 2011/18** - Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts. This Practice Statement has been brought up to date and now includes guidance on exercising the Commissioner's power to estimate unpaid GST liabilities and issue director penalty notices for GST liabilities. The update expands on the director penalty notice and estimates sections and has not removed information.

### Class rulings issued:

- Class Ruling **CR 2024/76** APM Human Services International Limited – scrip for scrip roll-over. This ruling applies from 1 July 2024 to 30 June 2025.
- Class Ruling **CR 2024/77** Toyota Motor Corporation Australia Limited – Toyota Halo system in conjunction with the Data Communication Module hardware for car logbook and odometer records. This ruling applies from 1 April 2024 to 31 March 2028.
- Class Ruling **CR 2024/78** Vertical Telecoms Pty Limited – buy-back of employee shares acquired with a limited recourse loan. This ruling applies to the income year in which the Buy-Back occurs.
- Class Ruling **CR 2025/1** AFL Players' Association Limited — employment termination payment. This ruling applies from 1 November 2024 to 31 December 2027.
- Class Ruling **CR 2025/2** DBG Global Enterprises Pty Ltd — customer equity scheme. This ruling applies from 1 July 2025 to 30 June 2030.
- Class Ruling **CR 2025/3** Australian Cricketers' Association – employment termination payment. This ruling applies from 1 November 2024 to 31 December 2027.
- Class Ruling **CR 2025/4** Boral Limited – compulsory acquisition – exchange of shares for shares in SGH Limited. This ruling applies from 1 July 2023 to 30 June 2025.
- Class Ruling **CR 2025/5** Boral Limited – off-market takeover – exchange of shares for shares in SGH Limited. This ruling applies from 1 July 2023 to 30 June 2024.
- Class Ruling **CR 2025/6** Fleetsu Pty Ltd – Fleetsu Vehicle Logbook System for car logbook and odometer records. This ruling applies from 1 April 2021 to 31 March 2028.
- Class Ruling **CR 2025/7** QANTM Intellectual Property Limited – scheme of arrangement and special dividend. This ruling applies from 1 July 2024 to 30 June 2025.

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## ATO Rulings and Activity (Cont.)

Other rulings issued:

- Product Ruling **PR 2024/20** ING Bank (Australia) Limited – Orange Everyday Round Up to Charity. This ruling applies from 1 July 2024 to Account Holders specified in paragraph 4 of this ruling who have activated the Round Up to Charity feature from 1 July 2024 until 30 June 2027.
- **Erratum for GST 2024/2** to update the ruling type from "Goods and Services Determination" to "Goods and Services Tax Determination".

## Latest Australian Tax Cases

- Shareholder distribution - The Administrative Review Tribunal has determined that a distribution received by a taxpayer as a company shareholder qualifies as a dividend and is therefore assessable as ordinary income. Despite being sourced from the capital proceeds of the company's property sale, the distribution was not considered a return of capital and thus was not assessed under the CGT provisions. [*Cheung v FC of T* 2025; [2024] ARTA 152, 4 December 2024.]
- Tax agent regulation - The Administrative Review Tribunal has upheld the Tax Practitioners Board's decision to revoke a tax agent's registration and prohibit him from reapplying for four years. The Tribunal found that the applicant had repeatedly violated multiple provisions of the Code of Professional Conduct and exhibited neither an understanding of the severity of his misconduct nor any remorse. [*Colin v Tax Practitioners Board* 2024 ATC; [2024] ARTA 43, 13 November 2024.]
- Amended income tax assessments - The Commissioner has lodged an appeal with the Full Federal Court against the Federal Court's decision in *Cheung v FC of T* 2024 ATC; [2024] FCA 1370. The case concerns amended income tax assessments issued by the Commissioner regarding \$33 million in receipts transferred from Vanuatu to the taxpayer's account over a 10-year period. The Federal Court ruled that none of the receipts constituted the taxpayer's income under ordinary concepts but were instead gifts of capital voluntarily provided by their sibling in Vanuatu.
- GST - The Administrative Review Tribunal (ART) has upheld the Commissioner's determination that materials such as bangles/bracelets, electrical nodes, and silver foil purchased by a precious metal refiner do not qualify as "precious metals" under section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). [*Siltech PMR Pty Ltd v FC of T* 2025 ATC; [2025] ARTA 26, 7 January 2025.]
- R&D tax offset - The Federal Court has issued declarations in response to admitted breaches of the promoter penalty regime. It also confirmed that the agreed civil penalties for the two individual respondents, as well as the proposed civil penalties for the now-defunct corporate respondents, were appropriate considering all relevant factors. [*FC of T v Bakarich & Ors (No 2)* 2024 ATC; [2024] FCA 1448, 16 December 2024.]

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