Monthly Tax Update

December 2025

In this last edition of Andersen in Australia's **Monthly Tax Update** for the 2025 calendar year, 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

Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025

The Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025 (Act No. 72 of 2025) received assent on 4 December 2025. The Act introduces measures affecting small business tax concessions, corporate disclosure rules, GST and fuel tax administration, the ACNC, and regulatory oversight processes.

- Instant asset write-off extension
  - The $20,000 instant asset write-off for small businesses (turnover < $10m) is extended by 12 months to 30 June 2026.
  - Applies to eligible assets first used or installed ready for use between 1 July 2025 and 30 June 2026.

- Enhanced beneficial ownership disclosure requirements for listed entities
  - Strengthens disclosure rules under the Corporations Act, including:
    - Required disclosure of equity derivative interests and offsetting short positions
    - Expanded ASIC tracing and freezing powers
    - Coverage extended to foreign listed bodies
    - Higher penalties for non-compliance
  - Note: Commences 12 months after assent.

- Various GST, fuel tax and excise technical amendments
  - Disability services funded under the *Disability Services and Inclusion Act 2023* confirmed as GST-free.
  - Clarifies attribution of input tax credits and fuel tax credits when omitted from earlier returns, applying retrospectively from 1 July 2012 to align with long-standing practice.
  - Confirms the interaction of attribution determinations with the 4-year time-limit rules (retrospective to 1 July 2012).
  - Introduces a deduction for reverse-charged GST where GST paid exceeds input tax credits (applies from income years including 1 July 2023).
  - Excise Act amendments align tariff proposal rules with the Customs Act (commencing 28 days after assent).
  - Allows the Commissioner to rely on ASIC address records when issuing director penalty notices (retrospective to 1 July 2024).

- Inspector-General of Taxation
  - Allows delegation of certain day-to-day powers to EL/SES staff, effective 5 December 2025.

- ACNC secrecy provisions
  - Permits public disclosure of protected information relating to ACNC investigations, subject to a public harm test.
  - Applies to recognised assessment activity from 5 December 2025.

- Regulator review frequency
  - Reduces Financial Regulator Assessment Authority reviews of ASIC and APRA from every 2 years to every 5 years, beginning 5 December 2025.

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Legislation Update (Cont.)

VET Student Loans (Miscellaneous Measures) Bill 2025

The VET Student Loans (Miscellaneous Measures) Bill 2025 has received assent as Act No 77 of 2025. The Act clarifies that providers were permitted to handle TFNs from the commencement of the VSL program, but that this authority will cease from 1 October 2025 due to new system arrangements that conceal TFNs from providers.

The Act took effect the day after receiving Royal Assent.

Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025

A Bill containing several tax and superannuation-related measures has been introduced into Parliament. Schedule 1 of the Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025 (the Bill) reforms the employee onboarding process under the Superannuation Guarantee (Administration) Act 1992, giving employers greater flexibility to request and provide stapled super fund details to employees, supporting the transition to Payday Super; it commences the day after Royal Assent.

Schedule 3 of the Bill provides income tax and withholding tax exemptions for World Rugby, Rugby Australia, and associated entities in relation to the men's Rugby World Cup 2027 and women's Rugby World Cup 2029, applying to income from 1 July 2023 to 1 July 2031, with withholding tax amendments applying from the schedule's commencement.

Schedule 4 of the Bill implements the Portuguese Double Tax Agreement signed on 30 November 2023, commencing the day after Royal Assent once the treaty enters into force. Schedule 5 updates the list of deductible gift recipients, adding 6 new listings, extending 5, removing 8, and updating one name, commencing on the next 1 January, 1 April, 1 July, or 1 October after Royal Assent. \

Schedule 5 of the Bill updates the Income Tax Assessment Act 1997 (ITAA 1997) in several ways regarding deductible gift recipients (DGRs). The changes in Schedule 5 will take effect on the first 1 January, 1 April, 1 July, or 1 October after the Bill receives Royal Assent.

Schedule 6 of the Bill increases the Wine Equalisation Tax (WET) producer rebate from $350,000 to $400,000 per financial year for eligible wine producers, applying from 1 July 2026 and commencing on the next 1 January, 1 April, 1 July, or 1 October after Royal Assent.

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Other legislation Update

Draft legislative instrument on PAYG withholding variation - individual appointed as a director

The ATO has released draft legislative instrument LI 2025/D24, which sets the PAYG withholding rate to nil for payments made to individuals acting as directors, office holders, or committee members when those individuals must pass the full payment on to another entity (such as their firm or company).

The instrument also removes the requirement to issue payment summaries or report these payments through Single Touch Payroll (STP), since the payments are effectively made to the entity, not the individual.

LI 2025/D24 will replace the current 2016 instrument (F2016L00222), which sunsets on 1 April 2026. While largely the same, the new draft adds the STP reporting exemption, which wasn't relevant when the earlier instrument was made.

The instrument will begin the day after registration, and public comments was closed on 5 December 2025.

Draft legislative instrument on PAYG withholding variation - payments to Indigenous artists without ABN

The ATO has published a draft legislative instrument proposing to vary the PAYG withholding rate applicable to specific payments made to Indigenous artists who do not quote an ABN.

LI 2025/D25 sets the withholding rate to nil for payments made to Indigenous artists who live or work in Zone A (remote areas) where the payment relates to artistic work and the artist has not quoted an ABN.

Because no withholding is required, the instrument also removes the obligation for payers to issue a payment summary for these payments.

The measure is intended to reduce compliance obligations for both payers and recipients in situations where obtaining or quoting an ABN may be challenging due to factors such as age, language, education level or remoteness.

This instrument repeals and replaces the existing legislative instrument, PAYG Withholding Variation: Variation of amount to be withheld from Indigenous artists when an ABN is not provided (F2016L00358), which is due to sunset on 1 April 2026, and it preserves substantially the same effect.

The instrument will commence the day after it is registered on the Federal Register of Legislation. Public comments are open until 16 January 2026.

Critical Minerals Production Tax Incentive regulations

Treasury has finalised regulations supporting the Critical Minerals Production Tax Incentive (CMPTI), a refundable offset under Division 419 of the ITAA 1997 for companies undertaking eligible critical mineral processing activities.

Income Tax Assessment (1997 Act) Amendment (Critical Minerals) Regulations 2025 (F2025L01509) (the Regulations) prescribe additional processing activities, covering High Purity Alumina, Graphite and precursor cathode active material, that were intended to be eligible but fall outside the general definition in the primary law.

The CMPTI applies to expenditure on activities starting between 1 July 2027 and 1 July 2040. The Regulations commence the day after registration.

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OECD Updates

2025 updates to the OECD Model Tax Convention

The OECD has released a document outlining modifications to the OECD Model Tax Convention on Income and on Capital, with full incorporation planned for the 2026 edition. The 2025 update introduces targeted changes across several articles and commentaries, focusing on dispute resolution, permanent establishment (PE) rules, transfer pricing, and exchange of information.

The main changes included in the 2025 update are changes to the following articles and their commentaries:

- Article 25 - Dispute Resolution & GATS Interaction
  - Introduction of new paragraph 6.
  - Confirms the role of competent authorities in determining whether a matter falls within the scope of a tax treaty when applying dispute-resolution mechanisms under the General Agreement on Trade in Services (GATS).

- Article 5 - Home Office as a Place of Business
  - Clarifies when an individual's home may constitute a place of business for a company.
  - Reflects modern working arrangements (e.g., hybrid/remote work).
  - Provides additional certainty on when a fixed-place-of-business PE is or is not created by home-based work.

- Article 5 - Optional Provision for Natural Resource Activities
  - Adds an alternative, optional provision for activities related to exploration and exploitation of extractible natural resources.
  - Introduces a lower PE threshold, triggered after a non-resident enterprise operates in a State for more than a bilaterally agreed time period.

- Article 9 - Transfer Pricing and Financial Transactions
  - Updates respond to issues arising from the work on transfer pricing aspects of financial transactions (referencing Chapter X of the OECD Transfer Pricing Guidelines).
  - Clarifies the interaction between Article 9 and domestic interest-deductibility rules, including those recommended under BEPS Action 4.
  - Consequential changes made to commentaries on Articles 7 and 24.

- Article 25 - "Amount B" Guidance
  - Adds commentary linking to the Amount B report (simplified pricing for baseline distribution activities).
  - Ensures that non-adopting jurisdictions maintain full optionality across all dispute-resolution mechanisms.

- Article 26 - Exchange of Information
  - Explicit confirmation that exchanged information may be used for tax matters involving persons other than the original subject of the request.
  - Guidance on taxpayer access to exchanged information.
  - Rules permitting disclosure of non-taxpayer-specific information derived from or relating to exchanged information.

For further information, please refer to the OECD website.

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Other News / Updates

Consultation paper issued considering options to reduce harms impact from coerced directorships

Treasury has released a consultation paper examining ways to reduce the impact of coerced directorships, focusing on improvements to the director penalty regime and enhancements to available defences under tax law.

Under the current regime, directors can become personally liable for unpaid company tax and superannuation liabilities. This system can be misused in situations of financial abuse, where coerced directors may incur penalties without knowledge of the company's debts.

The consultation paper considers options to better support coerced directors, including:

- Creating clearer avenues for affected directors to engage with the ATO and disclose their circumstances.
- Extending timeframes for seeking remission of director penalties or lodging defences where coercive control is involved.

It also explores strengthening legal defences by:

- Introducing a new defence for directors who could not participate in company management due to coercive control.
- Defining "coercive control" in legislation to guide the scope, evidence requirements and consistent application of the defence across tax and corporate frameworks.

Submissions are open until 24 December 2025.

For more information, please refer here.

Tax Ombudsman plans to review ATO administration of DPNs

The Tax Ombudsman plans to review the ATO's use of Director Penalty Notices (DPNs), which allow the ATO to recover company tax and superannuation debts from directors personally. The review, included in the Ombudsman's 2025–26 work plan, will assess the effectiveness of DPNs in protecting revenue and superannuation, the ATO's case selection and communication practices in this regard, its consideration of available defences for Directors, and its handling of coerced directorships.

The timing of this review will depend on resource availability and aligns with the Ombudsman's broader work on financial abuse within the tax system.

The Ombudsman also expects to commence a review of the ATO's Online Services for Agents platform when resources permit and aims to complete its review of the ATO's general interest charge (GIC) remission practices in early 2026.

For further information, please refer here.

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Other News / Updates (Cont.)

TPB terminates registration of tax agent after large-scale misappropriation of client funds

The Tax Practitioners Board (TPB) has terminated the registrations of a tax agent company and its director, imposing a three-year ban on the director from reapplying, after uncovering widespread unlawful conduct facilitated by an unregistered preparer. Over a period of about three years, the unregistered individual lodged BASs, income tax returns and JobKeeper forms for clients and diverted nearly $1 million in refunds into bank accounts he controlled.

The TPB found that these actions were enabled by the tax agent company's and director's failure to maintain adequate supervision and control over tax agent services, resulting in incompetent and unlawful practices being carried out in their name. The lack of proper oversight caused serious harm to affected clients and undermined trust in the tax system, with the TPB concluding that the unregistered preparer's misuse of registered practitioners caused significant and lasting damage to those who relied on him.

Please refer here for further information.

ATO Rulings and Activity

Lodgment deferral for Country-by-Country reporting statements due 31 December 2025

The ATO has announced a lodgment deferral to 30 January 2026 for Country-by-Country (CbC) reporting entities with reporting periods that ended on 31 December 2024 and that would otherwise have been due on 31 December 2025.

Affected entities must lodge all required statements for the period – the Local file**,** Master file and CbC report, by the deferred due date. The same due date also applies to entities with an approved replacement reporting period ending on 31 December 2024. The deferral will be applied automatically, and no separate request is needed. Entities that do not lodge by 30 January 2026 may be subject to penalties.

For further information, please refer here.

Superannuation Guarantee Determination withdrawn

The ATO has withdrawn Superannuation Guarantee Determination SGD 94/6, which addressed the implications of the High Court decision in *Re Finance Sector Union of Australia; ex parte Financial Clinic (Vic) Pty Ltd* (1993) for the operation of the Superannuation Guarantee (Administration) Act 1992. The provisions considered by the High Court were repealed from 1 July 2008, and the issues in SGD 94/6 are no longer relevant to the current operation of the Act.

The determination is withdrawn without replacement, effective 27 November 2025.

For further information, please refer here.

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ATO Rulings and Activity (Cont.)

Draft guidance and compliance approach on rental property income and deductions

The ATO has released provisional guidance for individuals (not businesses or non-individual entities) on income and deductions for rental properties, including holiday homes.

1. Draft Taxation Ruling TR 2025/D1 – Rental property income and deductions

   Draft TR 2025/D1 provides updated guidance on how individuals should treat income and expenses from:

   - Short-term rentals (including sharing-economy platforms, holiday homes, and renting out rooms), and
   - Long-term rental arrangements.

   The ruling explains:

   - When rental income is assessable.
   - When expenses and losses are deductible.
   - How to apportion deductions between private and income-producing use.
   - When deductions for holiday homes are denied under s 26-50 (leisure facility rules), noting the ATO's view that a holiday home is a "leisure facility."

   Additional elements:

   - Appendix 1: Examples illustrating application to different situations.
   - Appendix 2: A transitional compliance approach—the ATO will not review whether s 26-50 applies to holiday-home expenses incurred before 1 July 2026 under arrangements entered before 12 November 2025.

   Draft TR 2025/D1 replaces IT 2167, which was withdrawn from 12 November 2025.

   Once finalised, it will apply to income years before and after its release, subject to the transitional rules.

2. Draft PCG 2025/D6 – Apportioning rental property deductions

   Draft PCG 2025/D6 outlines the ATO's proposed compliance approach to determining "fair and reasonable" apportionment of expenses when a property is used partly to earn income and partly for private purposes.

   The guideline:

   - Provides accepted apportionment methodologies in common scenarios. Individuals may use other methods but must justify that they are "fair and reasonable."

   - Does not apply to:
     - Individuals carrying on a rental property business.
     - Non-individual entities.
     - Holiday homes, except where they are mainly held for producing rental income (in which case apportionment rules apply).

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

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ATO Rulings and Activity (Cont.)

Draft guidance and compliance approach on rental property income and deductions (Cont.)

3. Draft PCG 2025/D7 – Applying s 26-50 to holiday homes

   Draft PCG 2025/D7 explains the ATO's compliance approach to determining whether a holiday home is mainly used (or held) to produce assessable income, which is critical because s 26-50 denies deductions unless the "mainly income-producing" exception applies.

   The guideline:

   - Provides a risk-based framework, using three coloured risk zones indicating the likelihood of s 26-50 denying deductions.
   - Outlines how the ATO assesses and manages compliance risks across different rental arrangements.
   - Excludes individuals operating a rental property business and non-individual entities.

   PCG 2025/D7 applies before and after its final issue.

Comments on TR 2025/D1, PCG 2025/D6, and PCG 2025/D7 are invited until 30 January 2026.

Inclusion of super funds and CIVs in Reportable tax position schedule

The ATO has announced that superannuation funds and collective investment vehicles (CIVs) will be required to complete a Reportable Tax Position (RTP) schedule from Tax Time 2026, bringing them into alignment with large public and private companies that already lodge the schedule.

The ATO considers this an appropriate extension given the significant economic role of these large entities. The RTP schedule instructions will set out the specific questions that superannuation funds and CIVs must answer and will incorporate public advice and guidance relevant to their industries. The ATO will release the necessary content and instructions ahead of the time these entities are required to lodge the schedule.

More information is available here.

Addenda to rulings issued for changes to promoter penalty laws

The ATO has issued addenda to the following three rulings to incorporate recent case law developments and legislative amendments to the promoter penalty provisions in Division 290 of Schedule 1 to the Taxation Administration Act 1953:

- addendum to Taxation Ruling TR 2006/10 Public Rulings
- addendum to Class Ruling CR 2001/1 Class rulings system, and
- addendum to Product Ruling PR 2007/71 The Product Rulings system

The updates apply both before and after 26 November 2025.

Practice statement on Commissioner's discretion to retain a refund updated

The ATO has updated Practice Statement PS LA 2011/22, which outlines the Commissioner's discretion to retain a refund.

The amendments reflect recent legislative changes, including an update to section 6 to incorporate the extended period within which the Commissioner must notify a taxpayer of a decision to retain an RBA surplus arising under business activity

statement provisions, as introduced by the Treasury Laws Amendment (Tax Incentives and Integrity) Act 2025.

Example 9 of PS LA 2011/22 has also been revised to reflect the reduced producer rebate cap of $350,000 enacted in the Treasury Laws Amendment (2017 Measures No. 4) Act 2017. In addition, the practice statement has been updated to align with current ATO style and accessibility requirements.

ATO Rulings and Activity (Cont.)

Minor updates to practice statement on Commissioner's discretion under s 109RB

The ATO has updated Law Administration Practice Statement PS LA 2011/29, which deals with the Commissioner's discretion under s 109RB of Division 7A of the ITAA 1936 to either disregard a deemed dividend or allow a deemed dividend to be franked.

The updates include a minor wording change in the section titled *"If there is a delay in taking corrective action or the relevant entities are only willing to take corrective action if the Commissioner's discretion is exercised"*. In addition, the practice statement has been reviewed for technical accuracy and currency and updated to align with current ATO style and accessibility standards.

ATO compliance guideline on alienation arrangements

The ATO has finalised PCG 2025/5, outlining its compliance approach to the potential application of Part IVA (anti-avoidance rules) to personal services income (PSI) alienation arrangements involving personal services entities (PSEs) that are conducting a personal services business (PSB) and therefore fall outside the PSI rules in Div 86.

The guideline explains that Part IVA can still apply, even where the PSI rules do not, if arrangements divert or retain PSI to obtain a tax benefit. Alienation occurs where an individual's services are provided through an interposed entity they control, creating risks where income is retained in the entity or split with associates to achieve lower overall taxation.

PCG 2025/5 sets out low- and high-risk indicators:

- Low risk: PSI is effectively assessed to the individual (e.g., via salary, wages or dividends) without deferral.
- High risk: PSI is diverted or retained in the entity, or substantial amounts are distributed to lower-taxed associates.

The ATO will consider the materiality of diverted PSI when deciding whether to review or apply Part IVA.
The guideline includes multiple examples and clarifies that taxpayers have a grace period until 30 June 2027 to restructure high-risk arrangements into low-risk ones before the ATO applies compliance resources to Part IVA reviews.

PCG 2025/5 will apply when:

- PSI is derived by a PSE (company or trust), and
- The PSE is conducting a PSB so Div 86 does not apply.

PCG 2025/5 does not apply when:

- The interposed entity does not derive PSI (e.g., income from goods, assets, or business structure).
- PSI is actually derived by the individual directly.
- A PSE has incorrectly self-assessed that it is conducting a PSB (in which case Div 86 applies).

The guideline applies both before and after issue and was previously released as PCG 2024/D2.

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ATO Rulings and Activity (Cont.)

Guidance on public country-by-country reporting exemptions finalised

The ATO has finalised guidance on how the Commissioner will exercise the discretion to grant full or partial exemptions from public country-by-country (CBC) reporting for a reporting period.

Law Administration Practice Statement PS LA 2025/2 sets out the principles governing this discretion. It emphasises that exemptions will be provided only in exceptional circumstances, that is, situations that are out of the ordinary and where the harm from disclosure would be disproportionate to the transparency objectives of the regime. Common, routine, or broadly-experienced circumstances, including claims that reporting is burdensome or costly, are unlikely to qualify.

A reporting entity can apply for an exemption on any basis, and the Commissioner will assess the application holistically, having regard to the facts and circumstances presented. Examples of relevant considerations include whether disclosure would:

- impact national security
- breach Australian law
- breach foreign laws, or
- expose commercially sensitive information

The Practice Statement applies from 5 December 2025.

PS LA 2025/2 was previously issued in draft form as PS LA 2025/D1, and a compendium of responses has also been released.

ATO's transitional approach to global and minimum tax lodgement obligations

The ATO has released Practical Compliance Guideline PCG 2025/4, outlining its transitional approach to penalties and expectations for the four new lodgment obligations introduced under Australia's Pillar Two 15% global and domestic minimum tax. These rules apply to in-scope multinational enterprise (MNE) groups under the OECD's GloBE Rules.

PCG 2025/4 provides practical guidance for the transition period (for fiscal years beginning on or before 31 December 2026 and ending no later than 30 June 2028). It covers:

- Pillar Two lodgment obligations and due dates
- Processes for seeking deferrals and suspension of enforcement
- The ATO's approach to late-lodgment and statement penalties

During the transition period, the ATO will take a 'soft-landing' approach, consistent with OECD transitional penalty relief guidance, where taxpayers take reasonable measures to understand and comply with their obligations.

The guideline sets out what the ATO considers reasonable measures, such as preparing timely lodgements, keeping adequate records, engaging early with the ATO, rectifying errors promptly, and documenting internal processes. It also lists the types of evidence MNE Groups can provide to demonstrate compliance readiness, including implementation plans, internal procedures, systems gap analyses, external advice, updated controls, and records of positions taken.

PCG 2025/4 applies from 1 January 2024, covers lodgements made during the transition period, and will be kept under continuous review. It was previously released in draft as PCG 2025/D3.

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ATO Rulings and Activity (Cont.)

Draft guidance and compliance approach on rental property income and deductions

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4. Draft Taxation Ruling TR 2025/D1 – Rental property income and deductions

   Draft TR 2025/D1 provides updated guidance on how individuals should treat income and expenses from:

   - Short-term rentals (including sharing-economy platforms, holiday homes, and renting out rooms), and
   - Long-term rental arrangements.

   The ruling explains:

   - When rental income is assessable.
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   - How to apportion deductions between private and income-producing use.
   - When deductions for holiday homes are denied under s 26-50 (leisure facility rules), noting the ATO's view that a holiday home is a "leisure facility."

   Additional elements:

   - Appendix 1: Examples illustrating application to different situations.
   - Appendix 2: A transitional compliance approach—the ATO will not review whether s 26-50 applies to holiday-home expenses incurred before 1 July 2026 under arrangements entered before 12 November 2025.

   Draft TR 2025/D1 replaces IT 2167, which was withdrawn from 12 November 2025.

   Once finalised, it will apply to income years before and after its release, subject to the transitional rules.

5. Draft PCG 2025/D6 – Apportioning rental property deductions

   Draft PCG 2025/D6 outlines the ATO's proposed compliance approach to determining "fair and reasonable" apportionment of expenses when a property is used partly to earn income and partly for private purposes.

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Draft guidance and compliance approach on rental property income and deductions (Cont.)

6. Draft PCG 2025/D7 – Applying s 26-50 to holiday homes

   Draft PCG 2025/D7 explains the ATO's compliance approach to determining whether a holiday home is mainly used (or held) to produce assessable income, which is critical because s 26-50 denies deductions unless the "mainly income-producing" exception applies.

   The guideline:

   - Provides a risk-based framework, using three coloured risk zones indicating the likelihood of s 26-50 denying deductions.
   - Outlines how the ATO assesses and manages compliance risks across different rental arrangements.
   - Excludes individuals operating a rental property business and non-individual entities.

   PCG 2025/D7 applies before and after its final issue.

Comments on TR 2025/D1, PCG 2025/D6, and PCG 2025/D7 are invited until 30 January 2026.

Draft guidance on the provision of benefits by ancillary funds

The ATO has released Draft Taxation Determination TD 2025/D3, setting out its preliminary view on when a public or private ancillary fund is considered to provide a "benefit."

Ancillary funds are charitable trust vehicles that support deductible gift recipients (DGRs) and receive favourable tax treatment. To maintain DGR endorsement, they must comply with the Private and Public Ancillary Fund Guidelines, which require that funds operate philanthropically and not provide prohibited benefits.

TD 2025/D3 explains the ATO's interpretation of:

- "Provision of … benefits" in s 15(4) of the Guidelines (which outlines how mandatory distributions may be made), and
- "Provide any benefit, directly or indirectly" in s 22(3) (which prohibits benefits being provided to certain related parties).

The draft determination does not address the meaning of "money," "property," or the phrase "sole benefit" in other sections of the Guidelines.

When finalised, the determination will apply both before and after issue, except where inconsistent with the terms of a prior settlement agreement.

Comments on draft TD 2025/D3 are open until 30 January 2026.

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ATO Rulings and Activity (Cont.)

ATO compliance guideline on alienation arrangements

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The guideline explains that Part IVA can still apply, even where the PSI rules do not, if arrangements divert or retain PSI to obtain a tax benefit. Alienation occurs where an individual's services are provided through an interposed entity they control, creating risks where income is retained in the entity or split with associates to achieve lower overall taxation.

PCG 2025/5 sets out low- and high-risk indicators:

- Low risk: PSI is effectively assessed to the individual (e.g., via salary, wages or dividends) without deferral.
- High risk: PSI is diverted or retained in the entity, or substantial amounts are distributed to lower-taxed associates.

The ATO will consider the materiality of diverted PSI when deciding whether to review or apply Part IVA.

The guideline includes multiple examples and clarifies that taxpayers have a grace period until 30 June 2027 to restructure high-risk arrangements into low-risk ones before the ATO applies compliance resources to Part IVA reviews.

PCG 2025/5 will apply when:

- PSI is derived by a PSE (company or trust), and
- The PSE is conducting a PSB so Div 86 does not apply.

PCG 2025/5 does not apply when:

- The interposed entity does not derive PSI (e.g., income from goods, assets, or business structure).
- PSI is actually derived by the individual directly.
- A PSE has incorrectly self-assessed that it is conducting a PSB (in which case Div 86 applies).

The guideline applies both before and after issue and was previously released as PCG 2024/D2.

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ATO Rulings and Activity (Cont.)

Guidance on calculating electricity costs for charging PHEVs at home finalized

The ATO has finalised updates to PCG 2024/2 to include a specific methodology for calculating electricity expenses for plug-in hybrid electric vehicles (PHEVs) charged at an employee's or an individual's home. Where a taxpayer follows this methodology, the Commissioner will not allocate compliance resources to review their calculation of electricity costs for fringe benefits tax (FBT) or income tax purposes.

The methodology involves seven steps:

(1) calculating the actual petrol costs for the FBT or income year
(2) calculating the actual quantity of petrol purchased in the year
(3) calculating the total petrol kilometres;
(4) calculating the total annual kilometres;
(5) calculating the total electricity kilometres;
(6) calculating the total electricity cost; and
(7) calculating total fuel expenses by combining petrol and electricity costs.

Taxpayers may adopt this approach on a year-by-year basis.

The update also introduces transitional rules for the 2024 - 25 FBT and income tax years. Where odometer records were not maintained as at the start of the year, taxpayers may use a reasonable estimate supported by service records, logbooks or other available information. Similarly, if records of actual petrol costs were not kept from the start of the 2024-25 year, reasonable estimates may also be used.

These updates were initially released in draft form as PCG 2024/2DC.

GST determination on supplies of sunscreen

The ATO has released GSTD 2025/2, which sets out when a sunscreen product is GST-free.

GSTD 2025/2 provides that, a product containing sunscreen will be GST-free if it:

- Is a sunscreen preparation for dermal (skin) application with SPF 15 or higher,
- Is required to be included in the Australian Register of Therapeutic Goods (ARTG), and
- Is marketed principally for use as sunscreen.

The determination clarifies how these rules apply to modern multi-purpose products, such as sunscreens that include moisturiser or tint. It provides guidance and examples on assessing whether a product is mainly marketed as a sunscreen, and includes a compliance approach for determining whether a product needs to be included on the ARTG.

GSTD 2025/2 applies both retrospectively and prospectively.

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ATO Rulings and Activity (Cont.)

Addenda issued for minor updates to GST Law Companion Rulings

The ATO has issued addenda to remove out of date contacts and update minor details to the following:

- addendum to *Law Companion Ruling* LCR 2016/1 GST and carrying on an enterprise in the indirect tax zone (Australia)
- addendum to *Law Companion Ruling* LCR 2018/1 GST on low value imported goods
- addendum to *Law Companion Ruling* LCR 2018/2 GST on supplies made through electronic distribution platforms, and
- addendum to *Law Companion Ruling* LCR 2018/3 When is a redeliverer responsible for GST on a supply of low value imported goods?

The addenda apply from 19 November 2025.

Taxpayer alert on barter credits schemes

The ATO is reviewing cases where taxpayers use non-recourse or limited-recourse loans from barter exchanges to obtain barter credits, which they then donate to deductible gift recipients (DGRs) to claim tax deductions equal to the credits' nominal face value.

The ATO is concerned that:

- These arrangements may be ineffective or invalid for tax purposes.
- Taxpayers may be incorrectly claiming deductions far greater than their actual economic outlay.
- Barter exchanges may be promoting these schemes as legitimate tax minimisation strategies.

Common features include:

- Paying a fee to access the barter exchange.
- Receiving barter credits through a non-recourse or limited-recourse loan with unusual terms (no security, long or flexible terms, no interest, and little or no repayment obligation).
- Donating these credits to a DGR, receiving a receipt for their nominal value, and claiming a deduction for that amount.
- DGRs may receive little or no real value from the credits.

The ATO notes some arrangements may be shams, or at least do not resemble genuine commercial loans. The ATO is developing its technical position and will issue further guidance.

For further information, please refer here.

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Class rulings issued:

- Class Ruling CR 2025/78 Greatland Gold Plc – employee share scheme – treatment of performance rights under the scheme of arrangement. This ruling applies from 1 July 2024 to 30 June 2025.
- Class Ruling CR 2025/79 Astron Corporation Limited – scheme of arrangement. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling CR 2025/80 IMB Ltd – off-market share buy-back. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling CR 2025/81 Firefinch Limited – return of capital and special dividend. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling CR 2025/82 Alliance Leasing Pty Ltd – recipient's payments made after 31 March but before lodgement of the FBT return. This ruling applies from 1 April 2025 to 31 March 2029.
- Class Ruling CR 2025/83 Salary Packaging Australia Pty Limited – benefits provided to fly-in fly-out employees. This ruling sets out FBT consequences for certain airline travel benefits. This ruling applies from 1 April 2025 to 31 March 2030.
- Class Ruling CR 2025/84 TPG Telecom Limited – return of capital and special dividend. This ruling applies from 1 July 2025 to 30 June 2026 to entities as specified in the ruling.

Other rulings issues:

- Product Ruling PR 2025/15 North West Rural Supplies Pty Ltd – Prepayment Program. It applies from 3 December 2025 to taxpayers as specified in paragraph 4 of the ruling that enter into the relevant scheme from 3 December 2025 until 30 June 2028.

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Latest Australian Tax Cases

- *Newmont Canada FN Holdings ULC & Anor v FC of T 2025 ATC [2025] FCA 1356, 10 November 2025.*
  The Federal Court has delivered a second judgment in quick succession on whether capital gains made by two non-resident companies, Newmont Canada FN Holdings and Newmont Capital Ltd on the sale of their shares in Newmont Australia Pty Ltd should be disregarded under Div 855 of the ITAA 1997. The central issue was whether the shares constituted "taxable Australian property," which required the court to determine whether the "principal asset test" in s 855-30 was met by valuing Newmont Australia's taxable Australian real property (TARP) and non-TARP assets. The case involved complex valuation and interpretive disputes, including the value of mining information, how to treat intercompany loans and receivables, the meaning of "real property" in s 855-20, and whether mining plant and equipment constituted fixtures or TARP. Colvin J rejected the Commissioner's argument that mining information had no value, instead attributing AUD371 million to it, and held that intercompany loans were not to be counted as assets for the s 855-30 calculation. His Honour construed "real property" as having an extended legal meaning that includes leasehold interests, consistent with international practice and the recent decision in YTL Power Investments. While the mining plant and equipment at the Boddington mine were fixtures at general law, they were not TARP for Div 855 purposes because doing so would be inconsistent with the High Court's reasoning in TEC Desert. The court also held that the market value substitution rule in s 116-30(2) applied because the parties were not dealing at arm's length, and accepted a 9.5% discount for lack of control and marketability when determining the market value of the shares. Cost bases were set at CAD391.3 million for Newmont Canada and USD165 million for Newmont US. Because the final TARP vs non-TARP asset values required detailed calculations, the court referred the matter to a referee to determine the remaining valuation issues necessary to conclude whether the capital gains should ultimately be disregarded.

- *EMH IV Pty Ltd ATF EMH IV Family Trust v FC of T 2025 ATC [2025] FCA 1429, 21 November 2025.*
  The Federal Court has upheld the ATO's refusal to remit general interest charge (GIC) imposed on Elton Matthew Hyder IV (EMH) as trustee of his family trust. EMH lodged the trust's 2015 return late and declared nil tax, but a later audit resulted in a $9 million assessment, due on 7 June 2016, from which GIC began accruing. After an earlier court-ordered reconsideration, the ATO again declined to remit the GIC, finding EMH had no valid reason for late lodgment, had sought no extension, and did not meet the statutory criteria for remission.EMH argued that the Tax Agent Lodgment Program 2015–2016 extended the lodgment deadline to 7 June 2016 under the "5 June concession". The Court rejected this, holding that the concession merely allowed remission of late-lodgment penalties and did not extend due dates, and that EMH did not fall within the eligible classes of taxpayers. The Court concluded that the tax was due on 7 June 2016, GIC validly accrued from that date, and no error was made by the ATO. The application was dismissed.

- *YTL Power Investments Ltd v FC of T 2025 ATC [2025] FCA 1317.*
  The Commissioner has appealed a Federal Court decision in YTL Power Investments Ltd v FC of T (2025), where Hespe J ruled that a foreign resident could disregard a capital gain of over $947 million from selling shares in ElectraNet Pty Ltd. The court rejected the Commissioner's broad interpretation of Division 855 of the ITAA 1997 and the argument that "real property" should be understood in its ordinary sense.

- *Ziegler v FC of T; Wellton Holdings Pty Ltd v FC of T 2025 ATC [2025] FCAFC 168, 26 November 2025.*
  The Full Federal Court has unanimously dismissed two taxpayers' appeals against a Tribunal decision concerning tax assessments issued to an individual, Mr Z, and a related company following a settlement deed with the ATO. The Court rejected all four grounds of appeal, holding that Mr Z's general interest charge (GIC) liability was not retrospectively extinguished by the later assessments and that the resulting credit to his tax account was properly treated as an assessable recoupment under s 20-25 of the ITAA 1997. It also found that the Commissioner was entitled to increase a penalty assessment at the objection stage, as his power to assess penalties had not been exhausted. Further, the Court upheld the Tribunal's conclusion that a purpose of obtaining an imputation benefit existed for the purposes of Pt IVA, and agreed that the Tribunal could not consider alleged breaches of the settlement deed by the Commissioner when determining whether the assessments were excessive. A more detailed summary of the decision will be released shortly.

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Latest Australian Tax Cases (Cont.)

- *Ziegler v FC of T; Wellton Holdings Pty Ltd v FC of T 2025 ATC [2025] FCAFC 168, 26 November 2025.*
  The Full Federal Court has unanimously dismissed two taxpayers' appeals against a Tribunal decision concerning tax assessments issued to an individual, Mr Z, and a related company following a settlement deed with the ATO. The Court rejected all four grounds of appeal, holding that Mr Z's general interest charge (GIC) liability was not retrospectively extinguished by the later assessments and that the resulting credit to his tax account was properly treated as an assessable recoupment under s 20-25 of the ITAA 1997. It also found that the Commissioner was entitled to increase a penalty assessment at the objection stage, as his power to assess penalties had not been exhausted. Further, the Court upheld the Tribunal's conclusion that a purpose of obtaining an imputation benefit existed for the purposes of Pt IVA, and agreed that the Tribunal could not consider alleged breaches of the settlement deed by the Commissioner when determining whether the assessments were excessive. A more detailed summary of the decision will be released shortly.

- *Geocon Land Holdings No 5 Pty Ltd v FC of T* 2025 ATC 20-984*; [2025] FCAFC 172*, 1 December 2025.
  The Full Federal Court has allowed a property developer's appeal against an Administrative Review Tribunal (ART) decision concerning excess GST paid under the margin scheme. The ART had found that the developer had "passed on" the excess GST to purchasers of residential units and would receive a windfall gain if refunded, relying heavily on the fact that the business was profitable. The dispute arose because the developer had overpaid GST after failing to factor non-monetary consideration (Development Services provided to the ACT Government) into the margin scheme calculation. Under Div 142 of the GST Act, a refund of overpaid GST is only available if the taxpayer has not passed on the excess amount, or if a refund would not lead to a windfall gain. The Full Court held that the ART applied the wrong test. It had incorrectly presumed that GST was passed on simply because the developer ran a profitable business and would recover its costs. This approach distorted the factual inquiry required by Div 142 and gave "passed on" a meaning inconsistent with its ordinary sense. Profitability alone does not demonstrate that GST has been passed on, nor that a refund would create a windfall gain. The Court also found errors in the ART's approach to s 142-15. That provision only applies once it is first established that GST has been passed on. If the sale prices of the units were unaffected by the developer's GST costs, and purchasers would have paid the same price regardless of the GST actually paid, the excess GST may not have been passed on at all—and any increased profitability would not amount to a windfall gain.
  The matter has been remitted to the ART for rehearing using the correct legal approach.

- *FC of T v Hicks; FC of T v Hicks Beneficiary Pty Ltd; FC of T v Ierna* 2025 ATC [2025] FCAFC 171, 3 December 2025.
  The Full Federal Court has unanimously dismissed the Commissioner's appeal in Ierna & Ors v FC of T, upholding the primary judge's finding that neither s 45B of the ITAA 1936 nor Pt IVA applied to a 2016 restructure of the City Beach business group. The restructure involved transferring units in the City Beach Trust (CBT) to a new company (Methuselah), a selective share buy-back to realise pre-CGT gains, and steps to deal with significant Div 7A loans. The Commissioner had treated the resulting capital payments as unfranked dividends under s 45B, or alternatively as tax benefits obtained under a Pt IVA scheme. The Full Court agreed with the primary judge that the purpose of the restructure was to eliminate the adverse effects of Div 7A loans, not to deliver a $52 million tax-free capital benefit. Crucially, the profits of the CBT were not capable of being distributed as assessable dividends to the taxpayers. As a result, the capital reduction by Methuselah could not be regarded as a substitute for dividends—an essential requirement for s 45B to apply. The Commissioner's reliance on the profits of associated entities (such as Mastergrove) did not establish the requisite purpose. The Court also rejected the Commissioner's Pt IVA arguments. The taxpayers had shown that, absent the impugned scheme, an alternative restructure would still have eliminated the Div 7A loans without giving rise to assessable dividends. This meant no tax benefit arose, and therefore Pt IVA could not apply. Overall, the Court found the Commissioner attempted to apply s 45B and Pt IVA beyond their statutory purpose, and the appeal was dismissed in full.

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

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