

Monthly Tax Update

February 2026

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

Gun reform Bill containing customs and tax amendments now law.

The **Combating Antisemitism, Hate and Extremism (Firearms and Customs Laws) Bill 2026** (the Act) received assent as Act No 1 of 2026 on 21 January 2026.

The Act amends the Income Tax Assessment Act (ITAA) 1997 to treat compensation received under the national firearms surrender program as non-assessable income, applying to income years in which such proceeds are derived. It also amends customs legislation to ban the import and export of prohibited symbols and violent extremist material, introduce a new information-sharing framework for firearms and related information, and clarify certain technical powers. The customs amendments commenced on 22 January 2026.

Other Updates

Additional time to register foreign ownership of Australian assets.

A legislative instrument (Foreign Acquisitions and Takeovers (Register Notices – Extensions of Time) Instrument 2026 (**F2026L00006**)) has been made, allowing the Commissioner to extend the 30-day deadline for foreign persons to notify the Australian Taxation Office (ATO) of acquisitions or disposals of Australian property and other assets under the Foreign Acquisitions and Takeovers Act 1975.

Rules for global minimum tax relating to OECD BEPS Pillar Two amended.

A The Taxation (Multinational - Global and Domestic Minimum Tax) Rules 2024 have been amended to reflect OECD administrative guidance.

The **Taxation (Multinational - Global and Domestic Minimum Tax) Amendment (2025 Measures No 1) Rules 2025** (Amending Rules):

- Clarify when securitisation entities are subject to undertaxed profits rules (UTPR) top-up tax.
- Introduce an equity investment inclusion election and rules for qualified flow-through tax benefits.
- Make minor changes to domestic minimum tax provisions; and
- Clarify the investment entity transparency election for regulated mutual insurance companies.

The amendments follow consultation in late 2025 and apply retrospectively to fiscal years starting on or after 1 January 2024.

Determination on Pillar Two global minimum tax lodgment exemptions.

A **legislative instrument** has been made to exempt certain multinational enterprise group entities from lodging Australian global and domestic minimum tax returns where they can only ever have a nil tax liability.

Monthly Tax Update

February 2026

Following the enactment of a package of legislation in December 2024 implementing the OECD Global Anti-Base Erosion (GloBE) Model Rules, in-scope multinational groups became subject to new reporting obligations, including Australian Income Inclusion Rule (IIR)/Undertaxed Profits Rule (UTPR) and Domestic Minimum Tax (DMT) returns.

The [Taxation Administration \(Exemptions from Requirement to Lodge Australian IIR/UTPR Tax Return and Australian DMT Tax Return\) Determination 2025](#) sets out specific circumstances under which entities are exempt from lodging these returns for a fiscal year. The exemptions apply only where the Commissioner considers lodgement unnecessary and do not extend to GloBE information returns or foreign lodgement notifications.

The instrument applies on a year-by-year basis and commenced on 23 December 2025. The Taxation

Draft legislation to replace quarterly TFN reporting by closely held trusts.

Treasury has released exposure draft materials of amendments to streamline the process by which closely held trusts report their beneficiaries' tax file numbers (TFNs) to the ATO.

Currently, trustees of closely held trusts must report beneficiaries' TFNs that have been quoted to them using a separate approved form, within one month after the end of the relevant quarter.

Under the proposed amendments, trustees will instead be required to report beneficiary TFNs at the same time they lodge the trust tax return for any income year in which a beneficiary is presently entitled to a share of the trust's income. This change is designed to enhance the ATO's data-matching and pre-filling capabilities for beneficiary tax returns.

The amendments also clarify the Commissioner's obligations to notify trustees where a TFN quoted and reported is incorrect.

The Draft [Treasury Laws Amendment Bill 2025 \(Modernising the Trust Administration System\)](#) proposes to replace section 202DP and amend section 202DR in Division 4B of the ITAA 1936 to give effect to these changes. The proposed amendments are intended to apply to income years commencing on or after 1 July 2026. The initiative to enhance trust and beneficiary income reporting was originally announced in the March 2022–23 Budget and aims to strengthen pre-filling capabilities while reducing the compliance burden for taxpayers.

Submissions for comments on the draft legislation closed on 1 February 2026.

Exposure draft on updated \$3m superannuation tax measure.

Treasury has released [exposure draft materials](#) on the government's revised Better Targeted Superannuation Concessions measure, reflecting changes announced on 13 October 2025.

The material package includes draft Bills introducing a new Division 296 tax aimed at reducing superannuation tax concessions for individuals with large superannuation balances.

From the 2026–27 income year, individuals with total superannuation balances exceeding \$3 million would be subject to higher concessional tax rates on earnings. The existing 15% concessional rate will continue to apply to balances up to \$3 million, while effective concessional rates of up to 30% will apply to earnings attributable to balances between \$3 million and \$10 million, and up to 40% for balances above \$10 million. The Div 296 tax will be imposed directly on individuals, separate from income tax and fund-level tax, and may be paid either by releasing amounts from superannuation or from personal funds. The \$3 million and \$10 million thresholds will be CPI-indexed.

Transitional arrangements address the treatment of CGT assets held before commencement, with adjustments to ensure only post-commencement gains are subject to Div 296. Different adjustment methods will apply to small superannuation funds and larger funds. A further transitional rule applies for 2026–27 so that Div 296 tax will only apply where an individual's total superannuation balance exceeds \$3 million on 30 June 2027.

Key operational details, including exclusions from earnings, attribution methods, valuation of certain interests and transitional

Monthly Tax Update

February 2026

CGT adjustments for large funds, will be set out in supporting regulations.

Public consultation on the draft materials closed on 16 January 2026.

Draft legislative instrument on PAYG withholding variation — certain payments to religious practitioners.

The ATO has released draft Legislative Instrument [LI 2025/D26](#), which reduces to nil the withholding obligations for certain payments to religious practitioners and removes some reporting requirements. Key variations include.

- Allowances: Nil withholding applies up to specified allowance limits if deductible work expenses are expected to equal or exceed the allowance.
- Locum services: No withholding is required for locum services of up to 2 days per quarter; normal withholding applies above this.
- Non-religious entities: Nil withholding applies to certain work by religious practitioners, except for chaplaincy or counselling services exceeding set limits.

The instrument repeals and replaces the 2016 instrument, introduces updated limits for chaplaincy or counselling payments from 1 July 2026, and takes effect the day after registration.

Public consultation closed on 22 January 2026.

Exposure draft: Miscellaneous amendments to Treasury portfolio laws.

The government has released exposure draft legislation and supporting materials proposing minor and technical amendments to Treasury portfolio laws to address unintended outcomes and ensure the law operates as intended.

Key proposed changes include:

- Taxation Administration Act 1953: simplifying foreign resident capital gains withholding credits;
- Superannuation Industry (Supervision) Act 1993: allowing Public Trustees to appoint and remunerate directors of SMSF corporate trustees in limited circumstances; and
- Superannuation Industry (Supervision) Regulations 1994 and Retirement Savings Accounts Regulations 1997: enabling superannuation funds to accept Paid Parental Leave Superannuation Contributions even where a member's TFN has not been quoted.

Additional amendments include updating regulatory references and correcting typographical errors.

Public consultation closed on 2 January 2026.

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

Monthly Tax Update

February 2026

Exposure draft legislation released to exclude tobacco and gambling activities from the R&D Incentive.

Exposure draft legislation proposes to exclude tobacco and gambling related activities from eligibility for the R&D tax incentive for income years starting on or after 1 July 2025.

The exclusions cover R&D related to gambling services and practices, as well as tobacco, vaping and nicotine products, to prevent public subsidies for activities linked to health risks and addiction. R&D undertaken solely for harm minimisation will remain eligible.

The measure was announced in the 2024–25 Mid-Year Economic and Fiscal Outlook.

Public consultation closed on 30 January 2026.

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

Community charity trust specified for deductible gift recipient purposes.

A legislative amendment has specified the Jewish Community Foundation as an individual community charity trust under Div 426 of Schedule 1 to the Taxation Administration Act 1953.

The [Taxation Administration \(Community Charity Trusts and Corporations\) Amendment \(2025 Measures No 1\) Declaration 2025](#) amends the Taxation Administration (Community Charity Trusts and Corporations) Declaration 2025 to allow the Jewish Community Foundation to apply for deductible gift recipient endorsement as a community charity.

The instrument commenced on 24 December 2025.

Monthly Tax Update

February 2026

OECD Updates

BEPS 2.0: OECD releases Pillar Two Side-by-Side package.

The OECD/G20 Inclusive Framework has released further administrative guidance for the Global Anti-Base Erosion (GloBE) Model Rules under the Two-Pillar Solution. The [guidance](#) introduces a “Side-by-Side” package aimed at simplifying compliance and ensuring consistent application of the 15% global minimum tax for large multinational enterprise groups.

Key elements include:

- Simplification measures to reduce compliance burdens;
- New and expanded safe harbours (including a targeted substance-based tax incentive safe harbour and safe harbours linked to eligible parent jurisdictions);
- An evidence-based stock take process to maintain a level playing field, and
- Reinforcement of the role of qualified domestic minimum top-up taxes in protecting local tax bases.

Additional implementation tools and fact sheets will be released shortly.

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

OECD calls recommends major tax reform, as well as further reductions to super concessions.

The OECD's 2026 Economic Survey of Australia recommends major tax reform to reduce reliance on personal and corporate income taxes and shift towards more efficient tax bases, particularly the GST and land tax. Key proposals include broadening the GST base by reducing exemptions (and potentially increasing the rate), with compensation for low-income households through income tax cuts. The OECD also calls for further cuts to superannuation tax concessions that benefit high-wealth individuals, including lowering the concessional contributions cap.

To improve housing affordability, the survey recommends phasing out negative gearing concessions and replacing stamp duties with recurrent land taxes to better align real estate taxation with other assets. It also suggests gradually increasing motor fuel taxes to European levels, reducing fuel tax credits for businesses, and reforming road-user charges to offset declining fuel tax revenues as electric vehicle use rises.

Given ongoing projected budget deficits, population ageing, and climate transition pressures, the OECD advises commissioning a new comprehensive tax reform review.

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

Monthly Tax Update

February 2026

Other Updates & News

Tax Practitioners Board announces compliance priorities for 2026.

The Tax Practitioners Board has announced its 2026 compliance priorities for the first time to increase transparency for the tax profession. These priorities, alongside the TPB's existing focus areas, target emerging and ongoing risks, particularly tax practitioner misconduct and unethical behaviour.

Key areas of concern include facilitating tax avoidance, phoenix and shadow economy activities, overclaiming expenses, exploiting vulnerable Australians, and failing to meet personal tax obligations.

The TPB will continue to work closely with the ATO and other regulators, focusing on education and support for compliant practitioners while taking strong action against misconduct.

Please refer [here](#) for further information.

Mid-Year Economic and Fiscal Outlook for 2025–26.

The Treasurer released the 2025–26 Mid-Year Economic and Fiscal Outlook (MYEFO) on 17 December 2025, outlining several new or expanded tax measures.

Key measures include the implementation of the OECD Crypto Asset Reporting Framework from 2027, with the first automatic exchange of crypto-asset information with foreign tax authorities occurring in 2028. A domestic crypto tax reporting regime will also commence in 2027, with reporting to the ATO from 2028, to improve transparency and tax compliance.

The MYEFO also updates the list of specifically listed deductible gift recipients. Four organisations will be granted DGR status for five years for gifts received between 1 July 2026 and 30 June 2031, and additional charities affiliated with Community Foundations Australia may seek ATO endorsement as community charity DGRs if they meet legislative requirements.

Tax exemptions will be provided to support the AFC Women's Asian Cup, including income tax, withholding tax and customs duty exemptions for the Asian Football Confederation over specified periods from 2025 to 2028.

Finally, diplomatic and consular representations of Angola will gain access to refunds of indirect taxes, including GST, fuel and alcohol taxes, under the Indirect Tax Concession Scheme.

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

Monthly Tax Update

February 2026

ATO Rulings and Activity

ATO releases draft update to transfer pricing guidance.

The ATO has released a draft update to [PCG 2019/1](#) on transfer pricing for inbound distribution arrangements to keep profit markers and risk assessments current.

The draft introduces a new “white zone,” under which the ATO will generally not apply compliance resources where arrangements are covered by an APA, settlement, court or tribunal decision, or a recent low-risk review. It also updates the risk framework to four zones (white, low, medium and high), revises profit markers across general and specific industry sectors, and clarifies the guideline’s scope and reporting obligations.

The changes are proposed to apply to income years ending after finalisation, with consultation closed on 13 February 2026.

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

Minor updates to simplified transfer pricing record-keeping guideline.

The ATO has made minor amendments to [PCG 2017/2](#), which provides simplified transfer pricing record-keeping guidance for eligible taxpayers. Updates include revised maximum and minimum interest rates for low-level inbound and outbound loans for 2025–26, updated examples reflecting these rates, and minor changes to align with current ATO style and accessibility standards.

Superseded CBC reporting ruling withdrawn.

The ATO has withdrawn Law Companion Ruling [LCR 2015/3](#) with effect from 19 December 2025, as it no longer reflects the current law.

The ruling, which dealt with Country-by-Country (CBC) reporting under Subdivision 815-E of ITAA 1997, became outdated following changes from 1 July 2019 to the definition of a “significant global entity” and the introduction of the separate concept of a “country-by-country reporting entity”.

Country-by-Country reporting obligations are now governed by updated legislative definitions and are explained through various ATO website guidance materials, including:

- Guidance on significant global entities ([QC 51607](#)),
- Country-by-country reporting entities ([QC 64479](#)),
- Country-by-country reporting guidance ([QC 54484](#)); and
- Annual information published on the local file eg Local file instructions 2025 ([QC 103617](#)) and Local file/master file 2025 ([QC 103618](#)) and local and master file reporting.

In response to the withdrawal, the ATO has also updated several practice statements dealing with false or misleading statement penalties and transfer pricing penalties to ensure consistency with the current framework.

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

Monthly Tax Update

February 2026

Board of Taxation to review 2024 amendments to thin capitalisation.

The Board of Taxation will conduct an independent review of the thin capitalisation amendments introduced by Act No 23 of 2024 (the Amending Act) and provide a final report to the government by 31 January 2027. Under s 4 of the Amending Act, the Minister is required to initiate an independent review of these amendments by 1 February 2026.

The 2024 reforms to Division 820 of the ITAA 1997 included the introduction of a new “general class investor” category, capturing investors that are neither authorised deposit-taking institutions (ADIs) nor financial entities, who may apply the fixed ratio, group ratio, or third-party debt tests. Subdivision 820-EAA was also added to establish debt deduction creation rules for relevant entities.

The Board’s review will assess the overall effectiveness of the amendments in strengthening Australia’s thin capitalisation regime and addressing risks from excessive debt deductions. It will consider whether minor or technical drafting changes are needed, particularly for the third-party debt test and undefined terms, and examine whether the \$2 million exemption threshold should operate as a net debt deduction concept. The Board will also review whether the default tax EBITDA calculation accurately reflects an entity’s economic activity across income years, and the practical impact of the debt deduction creation rules on compliance costs after restructures, including whether the rules have effectively discouraged debt creation schemes.

The review commenced on 1 February 2026, involve public consultation, and include close collaboration with Treasury and the ATO. Recommendations will explain their importance, maintain the practical effect of the 2024 amendments, and balance complexity with tax integrity.

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

Taxpayer alert on contrived property development arrangements.

The ATO is reviewing related-party property development arrangements that use long-term construction contracts to defer income recognition and generate tax losses. These arrangements typically involve inserting a special-purpose developer entity between the landowner and the construction entity, despite the activities forming a single property development in substance.

The ATO is concerned that this structure creates an artificial mismatch between deferred development income and progressively claimed construction deductions, allowing losses to be used within the group to reduce tax. Common features include delayed recognition of developer income until project completion, limited evidence that the developer has real development capability, and repeated use of the structure to align losses with other group income.

The ATO considers that these arrangements may constitute a tax avoidance scheme under section 177D of the ITAA 1936, attracting the application of Part IVA. The ATO will issue a draft practical compliance guideline outlining its compliance approach and will engage with taxpayers involved in higher-risk related-party arrangements.

The ATO will release a draft practical compliance guideline alongside [TA 2026/1](#), setting out its proposed compliance approach, including indicators of higher-risk arrangements and examples likely to attract scrutiny. The ATO will also engage with taxpayers involved in related-party arrangements that present compliance risks.

Guidance on ATO compliance approach for first year of Payday Super.

The ATO has finalised Practical Compliance Guideline [PCG 2026/1](#), outlining its compliance approach to investigating superannuation guarantee (SG) shortfalls in the first year of the Payday Super regime, which starts on 1 July 2026. Payday Super requires SG contributions to be paid in line with employees’ pay cycles (based on “qualifying earnings” - QE), rather than quarterly, to avoid SG charge liabilities.

Recognising the implementation challenges for employers, the ATO will apply a risk-based compliance approach for QE days occurring between 1 July 2026 and 30 June 2027. Employers will be categorised into low, medium or high risk depending on

Monthly Tax Update

February 2026

their behaviour and whether SG shortfalls are ultimately rectified. The ATO will generally not apply compliance resources to low-risk employers, may investigate medium-risk employers, and will prioritise high-risk employers, particularly where SG shortfalls remain unpaid more than 28 days after the end of the relevant quarter.

Employers who attempt to pay SG on time but experience delays due to fund rejections may still fall into a lower risk zone if errors are corrected as soon as reasonably practicable. However, employers who continue paying SG only quarterly without attempting more frequent payments will not be considered low risk. The guidance does not change the law, limit the ATO's obligation to apply it where SG shortfalls are identified, or affect other superannuation or industrial obligations, and applies regardless of employer size.

The final guideline expands on the earlier draft (PCG 2025/D5), adds further illustrative examples, and is accompanied by a compendium of feedback. The ATO has also released employer transition checklists (see below), including specific guidance for small businesses moving away from the Small Business Superannuation Clearing House ahead of its closure on 1 July 2026, with further guidance to be issued before commencement of the reforms.

Payday Super employer checklists.

The ATO has published a [checklist](#) to support employers with planning their transition to the Payday Super regime as well as a [checklist](#) for small business employers transitioning from the Small Business Superannuation Clearing House (SBSCH) which will be closing on 1 July 2026.

Guidance on public rulings updated for promoter penalty rules.

The ATO has issued an [addendum](#) to Taxation Ruling TR 2006/10 clarifying the application of the Div 290 promoter penalty laws. The update confirms that promoter penalties may apply where a scheme is promoted as complying with a public ruling but is either materially different from the ruling or implemented in a materially different way.

The addendum applies both retrospectively and prospectively.

Practice statement on remission of penalties for failure to withhold updated.

The ATO has updated its Practice Statement [PS LA 2007/22](#) on remitting penalties for failure to withhold, to improve consistency with other ATO policies and better reflect the purpose and operation of the penalty.

The update removes the previous two-step and behaviour-based remission frameworks, along with specific aggravating and mitigating factors and remission percentages. Instead, it introduces a principles-based list of remission decision considerations and updates examples to focus on practical decision-making. The guidance has also been simplified for certain withholding provisions and updated to meet current ATO style and accessibility standards.

Changes to interest and failure to lodge penalty remission requests.

The ATO has introduced interim changes to improve the process for requesting interest and penalty remissions, including new application forms.

From 22 January 2026, registered tax and BAS agents must submit remission requests for interest charges or penalties using the relevant form via ATO online services or by mail, with a separate form required for each taxpayer and each charge type. Agents without online access may request the ATO to complete the form via the registered agent phone line. Requests

Monthly Tax Update

February 2026

lodged before this date will proceed under existing arrangements, though delays are expected during the transition. Please refer [here](#) for ATO's guidance on how to request for a remission of interest and failure to lodge penalties.

The changes aim to improve consistency by routing requests to a dedicated team, alongside updated guidance on when remissions are likely to be granted or refused, with further reforms possible as the ATO's broader review continues.

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

Meaning of right to occupy dwelling under will for CGT main residence exemption.

The Commissioner has issued Draft Taxation Determination [TD 2026/D1](#) to clarify when the CGT main residence exemption is available for a dwelling acquired from a deceased estate under s 118-195 of the ITAA 1997. The draft focuses on the condition requiring the dwelling to be the main residence of an individual who had a "right to occupy the dwelling under the deceased's will" from the date of death until the ownership interest ends.

The Commissioner's preliminary view is that this phrase applies only where the right to occupy is expressly granted in the will to a specifically named individual (or by court-ordered family provision), without reliance on subsequent arrangements. Rights granted under trustee discretion, separate agreements, or testamentary trusts are excluded. Where a right to occupy is time-limited and occupation continues beyond that period, only a partial CGT exemption may be available.

The draft is intended to provide greater certainty for estate planning and will drafting. It is accompanied by updates to ATO ID 2006/34 and the withdrawal of several earlier ATO interpretative decisions. Submissions on the draft determination close on 27 February 2026.

Fuel and grocery retailers must accept cash from 1 January 2026.

From 1 January 2026, most Australian businesses selling fuel and groceries must accept cash for in-person transactions of \$500 or less between 7 am and 9 pm. Small businesses with an annual turnover under \$10 million are exempt, unless they share a trademark with a larger retailer.

The regulations were finalised on 14 December 2025, and the government plans to review the mandate after three years.

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

WET determination on NZ producer rebate remade.

Eligible New Zealand wine producers exporting wine to Australia will continue to be able to claim a producer rebate in the form of a wine tax credit for up to four years after the credit arises. This is facilitated by the new A New Tax System (Wine Equalisation Tax) (New Zealand Producer Rebate Claim Lodgment) Determination 2026 (the Determination), which repeals and replaces the 2016 Determination that would have otherwise sunset on 1 April 2026, while maintaining the same substantive effect. Under the Wine Equalisation Tax Act 1999, an eligible New Zealand producer must be approved by the Commissioner as a "New Zealand participant" and satisfy conditions confirming that they produce rebatable wine in New Zealand that has been, or is likely to be, exported to Australia. GST registration in Australia is not required.

A producer rebate becomes available once wine tax has been paid in Australia during the relevant financial year, and a wine tax credit arises immediately before the end of that financial year. Section 17-10 allows the Commissioner to determine the timing for lodging claims. The Determination provides flexibility for non-GST registered New Zealand participants, enabling them to lodge a claim at any time within four years of the credit arising, independent of Australian GST lodgment cycles. This flexibility is expected to reduce compliance costs and administrative burdens for eligible producers. The Determination commences on 31 January 2026.

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

Monthly Tax Update

February 2026

Updates to ATO guidance on exploration expenditure and farm-out arrangements.

The ATO has released a draft update [TR 2017/1DC](#) and addenda to [MT 2012/1](#) and [MT 2012/2](#) in response to the Shell Energy Federal Court and Full Federal Court decisions, which were largely unfavourable to the Commissioner on the deductibility of mining and petroleum exploration expenditure. The draft ruling clarifies the Commissioner's view on the meaning of "exploration or prospecting" for uniform capital allowance purposes and confirms his position on deductions under ss 8-1 and 40-730 of the ITAA 1997, including minor updates on economic feasibility studies.

The addenda to [MT 2012/1](#) and [MT 2012/2](#) address the impact of the Shell Energy decisions on farm-out arrangements, confirming when a farm begins to hold an interest in a mining tenement and updating guidance, references and examples. The draft ruling is proposed to apply both before and after issue, with consultation open until 6 February 2026, while the addenda apply from 10 December 2025.

Child support ATO data matching program.

The ATO will obtain child support data from Services Australia for the 2024–25 to 2026–27 income years to support compliance and administrative activities. The data, including client identification details and child support information, will be used to identify discrepancies with ATO records, target taxpayers who may not be meeting their tax return obligations, and promote voluntary compliance. Where mismatches are identified, the ATO may share findings with Services Australia to assist in assessing child support obligations and improving the collection of child support debts.

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

Practice statements on Australian Business Register updated.

The ATO has updated the practice statements [PS LA 2016/4](#) & [PS LA 2016/5](#) regarding the Australian Business Register, to include additional information required to be entered into the Australian Business Register for a registered entity and reflect current legislative references, in line with current ATO style and accessibility requirements.

Practice statement on insolvency issues updated.

The ATO has updated its internal guidance on bankruptcy, liquidation, and dealing with incapacitated entities under the Bankruptcy Act 1966 and the Corporations Act 2001. The revised Law Administration Practice Statement [PS LA 2011/6](#) includes new guidance for ATO officers on assessing small business restructuring plans as an alternative to liquidation.

Under the updated guidance, the ATO will generally vote against a restructuring plan where there are unpaid employee entitlements, overdue tax lodgements, or where the plan would breach the principle that all admissible debts and claims rank equally. The practice statement has also been reorganised with updated headings and reviewed to ensure technical accuracy and currency.

Monthly Tax Update

February 2026

Class rulings issued:

- Class Ruling [CR 2025/85](#) Wesfarmers Limited – return of capital. This ruling sets out the income tax consequences for certain shareholders of Wesfarmers Limited. It applies from 1 July 2025 to 30 June 2026.
- Class Ruling [CR 2025/86](#) Domain Holdings Australia Limited – scheme of arrangement and special dividend. This ruling applies from 1 July 2025 to 30 June 2026 to certain shareholders of Domain Holdings Australia Limited.
- Class Ruling [CR 2025/87](#) CSIRO – studentship or internship stipends. This ruling applies from 1 July 2025 to 30 June 2030.
- Class Ruling [CR 2025/88](#) WorkCover WA – settlement of compensation claim – Workers Compensation and Injury Management Act 2023 (WA). This ruling applies from 1 July 2024 to 30 June 2029.
- Class Ruling [CR 2025/89](#) Diabetes Victoria – loans from public and private ancillary funds. This ruling applies from 1 July 2025 to 31 December 2026. It continues to apply until 10 years after the date of a loan.
- Class Ruling [CR 2025/90](#) Equity Mates Media Pty Ltd – employee share scheme – disposal of shares under an off-market takeover. This ruling applies from 1 July 2022 to 30 June 2026.
- Class Ruling [CR 2025/91](#) Infomedia Ltd – scheme of arrangement and dividends. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling [CR 2025/92](#) Leo Lithium Limited – return of capital and special dividend. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling [CR 2026/1](#) Maurice Blackburn – Qantas aircrew settlement. This ruling applies from 17 December 2024 to 17 December 2026.
- Class Ruling [CR 2026/2](#) Delta Lithium Limited – in specie return of capital. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling [CR 2026/3](#) Aurumin Limited – scrip for scrip roll-over for shareholders. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling [CR 2026/4](#) Aurumin Limited – scrip for scrip roll-over for option holders. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling [CR 2026/5](#) Oceania Capital Partners Limited – return of capital and special dividend. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling [CR 2026/6](#) Charter Hall Limited – capital reallocation. This ruling applies from 1 July 2025 to 30 June 2026.
- Class Ruling [CR 2026/7](#) Symal Group Limited – employee share scheme - entitlement to franking credit tax offset. This ruling applies from 1 July 2024 to 30 June 2029.

Other rulings issued:

- Product Ruling [PR 2025/16](#) Tax consequences for a borrower being charged an 'Indexed Loan Rate' under a loan. It applies to specified entities that enter into the scheme set out in the ruling from 10 December 2025 to 30 June 2028.
- Product Ruling [PR 2025/17](#) Instreet Structured Investment Pty Ltd – Instreet Masti. It sets out the income tax consequences for investors that participate in the scheme set out in the ruling from 10 December 2025 to 30 June 2028.
- Addendum to Product Ruling [PR 2025/17](#) Instreet Structured Investment Pty Ltd – Instreet Masti, The addendum clarifies the ruling's date of effect, applicable from 10 December 2025.

Monthly Tax Update

February 2026

Latest Australian Tax Cases

- ***Sunna v FC of T 2025 ATC [2025] FCA 1499, 3 December 2025.***

The Federal Court held that the Commissioner was entitled to amend the taxpayer's 2019 assessment under s 170(10AA) of the ITAA 1936 to retrospectively impose a CGT liability arising from the sale of property, despite an earlier 2020 assessment that incorrectly reported the same CGT event. The Court found that the existence of the 2020 assessment did not prevent the amendment of the 2019 assessment, as the Commissioner's power under s 170(10AA) operated independently to give effect to the timing rule for CGT event A1 in s 104-10(3) of the ITAA 1997. However, the Court allowed the taxpayer's appeal in relation to the amended 2020 assessment, finding it was not made for the purpose of giving effect to s 104-10(3) but merely to correct errors in the original 2020 assessment. The conclusiveness of an assessment under s 350-10 of Schedule 1 to the TAA 1953 was held to apply only to the relevant income year and did not preclude inconsistent findings in another year.

- ***Charles Apartments Pty Ltd v FC of T (No 2) 2025 ATC [2025] FCAFC 180, 11 December 2025.***

The Full Federal Court dismissed the taxpayer's appeal against the Federal Court's decision in [2025] FCA 461, which denied an interest deduction claim because the taxpayer was a guarantor, not a borrower. The taxpayer, a company within the Demian Group, held the Astoria properties and sought deductions for interest under a refinancing arrangement through Suncorp Bank. Although the taxpayer had guaranteed the Suncorp loan, it was not a party to the facility, and an intragroup loan was used to repay an earlier St George Bank loan. When the properties were sold, net proceeds were remitted to Suncorp. The Administrative Tribunal had allowed the deduction, reasoning the interest was incurred in earning assessable income. The Commissioner argued the Tribunal applied a "but for" test rather than the proper nexus test under s 8-1 of ITAA 1997 and that the payments were capital in nature, related to discharging a guarantee. The Federal Court agreed, finding the taxpayer was not a borrower and the payments were capital outlays. On appeal, the taxpayer claimed it was a "true borrower" since the intragroup loan replaced the original loan. The Full Federal Court rejected this, holding that the payment served to prevent enforcement under the guarantee and protect the properties from Suncorp. The taxpayer remained a guarantor, and the payments were capital in nature. Any interest discharged related to West Apt's obligations, not the taxpayer's, so the interest deduction was not allowable.

- ***Kilgour & Anor v FC of T 2025 ATC [2025] FCAFC 183, 12 December 2025.***

The Full Federal Court dismissed appeals by minority shareholders of Punters Paradise who sought to reduce their assessable capital gains and access the small business CGT concessions. The taxpayers argued that the sale price of their shares was inflated by "synergistic" value arising from News Corp's acquisition of 100% of the company, and that this special value should be excluded when determining market value for CGT purposes. The court upheld the primary judge's findings that the parties dealt at arm's length and that the market value of the shares was not less than the capital proceeds actually received. It rejected the contention that synergies or strategic value to a particular purchaser must be excluded from market value, and held that the existence of a willing buyer with a special interest does not necessarily distort market value under the principles in *Spencer v Commonwealth*. Because the shares were sold as part of a coordinated disposal of 100% of Punters Paradise under a binding agreement, it was inappropriate to value the taxpayers' 20% holdings in isolation. The agreed transaction was relevant evidence of market value at the time "just before" the CGT event. As a result, the taxpayers failed to satisfy the maximum net asset value test in s 152-15 of ITAA 1997 and were not entitled to the small business CGT concessions.

- ***Cerreto v FC of T 2025 ATC [2025] ARTA 2729, 22 December 2025.***

The Tribunal upheld penalties of \$1.53 million imposed on a property developer for intentional disregard of taxation laws and failure to lodge returns. The taxpayer had omitted substantial trust income, falsely claimed tax withheld on non-existent salary payments, and received unexplained income. The Tribunal rejected his claims of ignorance, reliance on

Monthly Tax Update

February 2026

undocumented professional advice, mental health issues, and alcohol abuse, finding his conduct deliberate and consistent with sophisticated non-compliance. As there was no evidence supporting safe harbour reliance or incapacity

to comply, the penalties were correctly imposed and no remission was warranted.

- ***Applebee v FC of T 2025 ATC 10-784; [2025] ARTA 2625, 8 December 2025.***

The Tribunal rejected a consultant's claim to deduct home office occupancy expenses for the 2021 income year, despite him working from home three days a week and having a dedicated workspace. While his spare room was his actual workplace during the initial COVID-19 lockdowns, this was no longer the case in the 2021 year after a return to the employer's office was permitted. The home office was found to be an adjunct to his employment rather than having the character of a place of business. The Tribunal accepted the Commissioner's position that working from home due to COVID-19 restrictions, without a requirement to maintain a home office as the sole or principal workplace, does not justify deductions for occupancy expenses. The taxpayer's circumstances were distinguished from *Hall v FCT*, as there was insufficient evidence that he was required to maintain a home office for on-call duties. However, the taxpayer was partly successful. The Tribunal allowed deductions for work-related software subscriptions and increased the allowable proportion of mobile phone expenses to 50%. Claims for higher internet usage, travel expenses, and occupancy costs were denied due to insufficient evidence.

- ***Smith v FC of T 2026 ATC [2026] ARTA 25, 12 January 2026.***

The Administrative Review Tribunal found that the taxpayer's dog breeding activities constituted an "enterprise" for GST purposes and sent the matter back to the Commissioner to determine what input tax credits were allowable for that activity. The Tribunal accepted there was sufficient evidence that the dog breeding was carried on as a business, or alternatively as an adventure in the nature of trade. However, the taxpayer was unsuccessful on several other issues. The Tribunal upheld the Commissioner's denial of input tax credits for food and consumables, finding they were entertainment expenses, and also upheld the reduction of input tax credits relating to a property investment in NSW. It further found that the taxpayer's reconstructed records, allegedly lost in a flood, were inadequate to substantiate his claims. In relation to penalties, the Tribunal agreed that penalties for recklessness were appropriate, but ruled that the additional 20% uplift to the base penalty should not have been applied.

- ***Robinson & Anor v FC of T 2026 ATC [2026] ARTA 50, 16 January 2026.***

The Administrative Appeals Tribunal (ART) held that the company, TCR Group Pty Ltd, rather than its controlling director and sole shareholder, Mr R, was the legal and beneficial owner of the property developed and sold as part of its property development enterprise. The ART rejected Mr R's claim that the company held the property on trust or as nominee for him, finding insufficient evidence of any personal financial contribution by Mr R or of a trust arrangement. Consequently, the company was assessable on the income from the transfer of the property to Mr R and liable for GST on that transfer, while no deemed dividend arose to Mr R under Division 7A, as the independent valuation of \$2.25 million reflected arm's length value. The ART also found that Mr R did not occupy the property as his main residence for any relevant period, so the CGT main residence exemption was not available. Regarding GST, the transfer from the company to Mr R constituted a taxable supply made in the course of the company's enterprise, with the GST payable calculated based on the \$2.25 million consideration under s 9-75 of the GST Act, rather than the higher price later paid by a third-party purchaser. For income tax purposes, the GST-exclusive portion of the \$2.25 million consideration was included in the company's assessable income. In relation to Division 7A, the ART concluded that no deemed dividend arose for Mr R, accepting that the higher third-party sale price reflected an "anxious purchaser" rather than the market value that would have been agreed upon by parties dealing at arm's length. While the ART found that both taxpayers made false or misleading statements in their returns, penalties were upheld only for the company, as no tax shortfall arose for Mr R due to the absence of a deemed dividend and the Commissioner not having established a CGT liability on his subsequent disposal of the property. Overall, the objection decision was varied for the company and set aside for Mr R.

Monthly Tax Update

February 2026

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

Cameron Allen
Office Managing Director
Tel: +61 (0) 3 9939 4488
Tel: +61 (0) 2 8226 8756
Email: cameron.allen@au.Andersen.com
MELBOURNE | SYDNEY

www.au.Andersen.com

This and other Andersen Australia Publications are available on www.au.Andersen.com

This document is of a general nature and is not intended to be relied upon as, nor be a substitute for, specific professional advice. We accept no responsibility for any loss suffered as a result of reliance placed on this document by any party. Please contact your Andersen adviser if you wish to discuss how the topics covered in this document will affect your specific circumstances.

Liability limited by a scheme approved under Professional Standards Legislation.

© ANDERSEN AUSTRALIA PTY LTD, February 2026. All rights reserved.