

TaxTalk Monthly

Keeping you up to date on the latest Australian and international tax developments

April 2019



Corporate Tax Update

Restructuring for demerger purposes

The Australian Taxation Office (ATO) has released Draft Taxation Determination [TD 2019/D1](#) which provides guidance on what is a 'restructuring' for the purposes of the demerger rules (in subsection 125-70(1) of the *Income Tax Assessment Act 1997*). Demerger relief applies so as to facilitate the demerging of entities by ensuring that capital gains tax considerations are not an impediment to restructuring a business.

According to the draft determination, what constitutes a particular restructuring is essentially a question of fact and the scope of the restructuring will be critical in establishing whether or not the conditions to qualify as a demerger are satisfied.

Key aspects of the draft determination include:

- Transactions which are to occur under a plan for the reorganisation of the demerger group may constitute parts of the restructuring of the demerger group even though those transactions are legally independent of each other, contingent on different events, or may not all occur.
- A transaction is not necessarily part of the restructuring of the group merely because it is necessary for the restructuring of the group to occur, or was the occasion for the restructuring, or because it is enabled by the restructuring of the group or is a consequence of the restructuring of the group.

Comments on the draft are due by 30 April 2019.

Proposed changes to voluntary tax transparency code

The Board of Taxation has released a [consultation paper](#) on proposed changes to the voluntary tax transparency code (TTC). The Board recommends key changes including the following

- supplement the minimum standards for large and medium businesses with "best practice" elements to expand on the optional elements for large businesses in order to encourage continuous improvement in tax transparency

- the inclusion of a "basis of preparation statement" as a new minimum standard in the TTC which would provide explanatory information about the basis on which the disclosures have been prepared, including treatment of non-wholly owned entities/operations, source of information, reporting currency, glossary of definitions, and approach to materiality. It should also indicate whether the business has followed the Australian Accounting Standards Board (AASB) guidance in preparing its disclosures, and explain the reasons for any departures from this guidance
- link tax transparency reports produced under the TTC to the ATO annual corporate tax transparency disclosures as a new minimum standard
- updated existing minimum standards set out in the TTC to provide additional guidance to businesses adopting the TTC to improve the quality and usefulness of disclosures, including, among other things, expanding the reconciliation of accounting profit to income tax paid and income tax payable, and expanding the tax contribution details to include other Australian taxes and Government imposts, and
- additional best practice disclosures that should be incorporated into the TTC for large businesses such as disclosure of information regarding material tax disputes with tax authorities, information about global tax operations, and approach to co-operative compliance with tax authorities.

Of note, the Board is not proposing any changes to the current thresholds for 'large businesses' (those with TTC Australian turnover of AUD 500 million or more) and 'medium businesses' (those with TTC Australian turnover of greater than AUD 100 but less than AUD 500 million) in the TTC. Comments were due on 26 March 2019.

Addendum to R&D ruling

The ATO has issued an [addendum](#) to *Taxation Ruling* TR 2013/3 Income tax: research and development (R&D) tax offsets: feedstock adjustments. The addendum amends the ruling to clarify the Commissioner's view of the law following the decision in *GHP 104 160 689 Pty Ltd v Commissioner of Taxation* [2014] AATA 515. The addendum applies on and from 1 July 2014.

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Employment Taxes Update

Remote area tax concessions and payments

The Productivity Commission has released an [issues paper](#) to determine the appropriate ongoing form and function of the zone tax offset, Fringe Benefits Tax (FBT) remote area concessions and Remote Area Allowance. In conducting this review, the Commission will:

- examine the operation of the zone tax offset and FBT remote area concessions, including the levels of assistance provided, indexation and the boundaries of eligible areas and prescribed zones
- examine the economic and employment impacts of the zone tax offset, FBT remote area concessions and Remote Area Allowance, including the effect of applying indexation, in regional Australia
- examine the operation of the Remote Area Allowance, which extends the benefits of the zone tax offset to income support recipients in remote zones
- consider whether the zone tax offset, FBT remote area concessions and the Remote Area Allowance are delivering on their policy objectives and whether those objectives remain appropriate in a contemporary Australia
- consider if businesses in remote areas should be provided with similar support, and
- consider if there are alternative mechanisms to better provide this support to Australians residing in specified geographic areas.

Comments are due by 29 April 2019.

Home care service provider — payroll tax exemption

The NSW Supreme Court in [KinCare Community Services Limited v Chief Commissioner of State Revenue \[2019\] NSWSC 182](#) has held that a taxpayer which provided home care services to aged and disabled people, people with disabilities and Aboriginal and Torres Strait Islander people was a non-profit organisation for payroll tax exemption purposes. This was on the basis that the Court was satisfied that the taxpayer had discharged its onus of proving that its dealings with its for-profit related entities were at arm's length and on commercial terms in accordance with its Commonwealth and NSW Government grants.

While the Court was satisfied that the entity was a non-profit organisation for payroll tax exemption purposes, the Court held that the wages paid by the entity to its workers were only exempt under Schedule 2 clause 12(1) (c) of the Payroll Tax Act 2007 (NSW) to the extent that the wages were paid to a worker "in respect of time" engaged in the "charitable work...of the non-profit organisation." Accordingly, the Court held that it was appropriate to apportion the wages based on time spent by the worker engaged in charitable work of the organisation and the time spent on other activities e.g. supporting other for-profit related entities.

Leave loading and superannuation guarantee

The Australian Taxation Office (ATO) has provided further insight into its compliance approach to dealing with Superannuation Guarantee (SG) and when it should apply to leave loading payments. Employers who do not apply these guidelines risk the imposition of historic SG charge liabilities, lost deductibility of SG Charge payments, and material penalties. Fortunately, the ATO guidelines offer several practical steps which can be undertaken to limit any such risk. Refer to our [TaxTalk Alert](#) for further insights.

Proposed superannuation guarantee amnesty

The ATO has indicated that it will continue to apply the current law until changes giving effect to the proposed [Superannuation Guarantee amnesty](#) are enacted. The current law includes applying the mandatory administration component (AUD20 per employee per period) to SG charge statements lodged by employers.

The proposal amnesty is currently scheduled to end on 24 May 2019, however there remain only two sitting days for both houses of Federal Parliament prior to the expected date for a Federal election.

In the event the law is enacted, the ATO indicates that it will then apply the new law retrospectively to voluntary disclosures made during the 12-month period of the amnesty, including entitlement to the benefits of the amnesty for any SG shortfalls voluntarily disclosed, subject to the eligibility criteria.

Reminder – Single Touch Payroll

Single Touch Payroll (STP) reporting started on 1 July 2018 and will soon extend to include all employers from 1 July 2019. The ATO has [prompted](#) employers who may not yet have entered into the STP regime and who were covered by specific deferrals, to get ready for the regime before their deferral period ends.

ATO annual report on working holiday maker framework

The ATO has released its [report](#) on the operation of the working holiday maker framework for the 2017/18 income year, representing the first full year of operation. The key features of the framework are:

- a mandatory registration process for employers
- a different rate of income tax, including amounts of income tax withholding, for working holiday makers.

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Global Tax Update

Latest news from international tax and transfer pricing

Australia's response to digital economy

The Australian Treasurer has [announced](#) that it will continue to focus efforts on engaging in a multilateral response to the tax challenges presented by the digitalisation of the economy and will not proceed with an interim measure, such as a digital services tax. The Treasurer noted that many stakeholders who responded to the Treasury [discussion paper](#) issued last year raised significant concerns about the potential impact of an Australian interim measure across a wide range of Australian businesses and consumers, including discouraging innovation and competition, adversely affecting start-ups and low-margin businesses, and the potential for double taxation.

Separately, the Organisation for Economic Cooperation and Development (OECD) has [released](#) the responses from its public [consultation document](#) on the possible solutions to the tax challenges arising from the digitalisation of the economy. Refer to this [PwC Insight](#) which looks at the proposals of the OECD.

ATO guidance on transfer pricing and inbound distribution arrangements

The Australian Taxation Office (ATO) has finalised Practical Compliance Guideline [PCG 2019/1](#) which sets out its profit expectations for Australian distributors. Guidance is provided for specific industry segments (pharmaceutical and life sciences, information and communications technology (ICT), and automotive), and for all other industry segments. The framework set out in the Guideline can be used by taxpayers to assess the transfer pricing risk of inbound distribution arrangements, understand the ATO's compliance approach according to the transfer pricing risk profile of an inbound distribution arrangement, and to mitigate the transfer pricing risk of such arrangements.

The guideline applies from 13 March 2019 to existing and new inbound distribution arrangements. However for the period of 12 months from 13 March 2019, the ATO will consider remitting shortfall penalties to nil and shortfall interest charge to the base rate if certain pre-conditions are met, including making a voluntary disclosure in relation to all

income years where arrangements are in place to adjust historic and prospective pricing to reflect an appropriate transfer pricing outcome based on the law.

PCG 2019/1 was initially issued as PCG 2018/D8 and is substantially the same as the draft guidance.

ATO releases synthesised text of Australia's tax treaties under MLI

The ATO has released a synthesised text of each of Australia's tax treaties with [Japan](#), [New Zealand](#), [Poland](#) and [the United Kingdom](#), as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI). The MLI entered into force for Australia from as early as 1 January 2019 for these countries. Although the synthesised text does not constitute a source of law, it helps users of the applicable tax treaty to understand how the MLI modifies the treaty.

New Zealand Tax working Group proposes CGT regime

The New Zealand Government's Tax Working GroupT has issued its [final report](#) on possible changes to the New Zealand tax system and has made various recommendations across a broad spectrum of taxes, including recommending the introduction of a broad capital gains tax (CGT). Consistent with the New Zealand Government's political commitment, any new capital gains tax would not take effect until 1 April 2021. A number of other recommendations have also been refined further since the Working Group's Interim Report, including more detailed analysis of how the New Zealand tax system may be used to combat environmental challenges facing New Zealand. For further information refer to [PwC New Zealand's TaxTips Alert](#).

OECD developments

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes has released peer review reports for [Hong Kong \(China\)](#), [Liechtenstein](#), [Luxembourg](#), [the Netherlands](#), [North Macedonia](#), [Spain](#) and the [Turks and Caicos Islands](#), these jurisdictions were rated "Largely Compliant". These reports are part of the second round of Global Forum reviews which assess jurisdictions against the updated international

standard on transparency and exchange of information. Which incorporates beneficial ownership information of all relevant legal entities and arrangements.

In the context of the Mutual Agreement Procedure (MAP) peer review and monitoring process under Action 14 of the base erosion and profit shifting (BEPS) Action Plan, the OECD has [invited taxpayer input](#) on its latest batch of dispute resolution peer reviews relating to Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino and Serbia. Comments were due on 19 March 2019.

In other developments:

- Finland has [deposited](#) its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). This means that the MLI will have effect in relation to the Australia-Finland double tax agreement as early as 1 June 2019.
- Morocco has [joined](#) the Inclusive Framework on BEPS.
- The OECD released a [beneficial ownership toolkit](#) prepared by the Secretariat of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes in partnership with the Inter-American Development Bank. The toolkit is intended to help governments implement the Global Forum's standards on ensuring that law enforcement officials have access to reliable information on who the ultimate beneficial owners are behind a company or other legal entity so that criminals can no longer hide their illicit activities behind opaque legal structures.

UK changes definition of permanent establishment

The United Kingdom (UK) domestic tax law has been amended to align with the UK's position on the changes to the Permanent Establishment (PE) definition arising from the OECD's BEPS project and included within the MLI. This effectively expands the

definition of PE in the UK which — together with forthcoming changes to many double tax treaties — is likely to result in more PEs arising. Any business that is relying on treaty exemptions in relation to PE activities in the UK should review its situation carefully to assess its ongoing ability to rely on these exemptions. For further information refer to [PwC Global Tax Insights](#).

French tax developments

The French Government has commenced the legislative process to introduce a tax on digital sales realised by large internet and technology companies from 1 January 2019. The proposed 3 per cent digital tax would apply to companies providing certain digital services in France with global annual revenue in excess of EUR 750M and revenue in France exceeding EUR 25M. The draft bill also includes a provision postponing the decrease of the corporate income tax rate for companies or tax groups with global revenue in excess of EUR 250M. For further information refer to [PwC Global Tax Insights](#).

Luxembourg proposes corporate tax rate reduction, tax unity regime revamp

The Luxembourg Government has submitted its draft 2019 budget law which proposes two major corporate tax measures – reducing the corporate income tax rate and amending the Luxembourg tax unity regime to permit application of the anti-tax avoidance directive 1 (ATAD 1) interest limitation rules at the Luxembourg group level. The corporate income tax rate reduction is to apply as from the 2019 tax year and tax unity rules revamp are to apply to tax years beginning on or after 1 January 2019. For further information refer to [PwC Global Tax Insights](#).

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Indirect Tax Update

Amended GST rulings

The Australian Taxation Office (ATO) has issued the following addenda to a number of goods and services tax (GST) rulings or determinations since our last monthly TaxTalk and that reflects various recent amendments to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act):

- [addendum](#) to GSTR 2003/15, which deals with the importation of goods, so as to reflect the new rules relating to the importation of low-value goods on or after 1 July 2018
- [addendum](#) to GSTR 2000/37 on agency relationships to reflect amendments made in respect to supplies made through electronic distribution platforms and supplies made by resident agents to Australian-based business recipients
- [addendum](#) to GSTR 2001/7 which considers the meaning of GST turnover to take into account amendments made in relation to the GST turnover tests in section 188-15(3) and 188-20(3) of the GST Act
- [addendum](#) to GSTD 2012/7 which considers when supplies of interconnection services made by an Australian resident telecommunication supplier are GST-free to reflect recent amendments made to section 38-190(3) of the GST Act in relation to certain intangible supplies that are made to non-residents not in Australia when the thing supplied is done, that are not excluded from table item 2 in subsection 38-

190(1) when the supplies are provided to an Australian-based business recipient.

Fuel tax credit obligations by farmers in disaster areas

The ATO has released [PCG 2019/2](#) which provides acceptable, practical compliance methods to assist farmers in disaster affected areas in meeting their fuel tax credit obligations on:

- calculating the number of litres of taxable fuel they acquired in the tax period, and
- identifying the rate of the fuel tax credit in force on the day the taxable fuel was acquired.

GST revenue sharing relativities

The Federal Government has released a [legislative determination](#) on GST revenue sharing relativities for a State, the Australian Capital Territory or Northern Territory for the 2019-20 payment year. The instrument gives effect to the recommendations of the Commonwealth Grants Commission (CGC) on the GST revenue sharing relativities reflecting its assessment of each state's fiscal capacity over the three years from 2015-16 to 2017-18. See also the Government's [media release](#).

Road user charge applied to travel on toll roads

The Administrative Appeals Tribunal (AAT) in [Linfox Australia Pty Ltd and Commissioner of Taxation \[2019\] AATA 222](#) has held that the road user charge in section 43-10 of the *Fuel Tax Act 2006* (FTA)

applied to fuel acquired for use in a vehicle for travelling on the toll roads and for use in powering air conditioning units in the taxpayer's heavy vehicle fleet and therefore no additional Fuel Tax Credit was available for these uses of fuel. In addition, the Tribunal found that the taxpayer had not ceased to be entitled to certain fuel tax credits that were not quantified in an assessment within the specified four year period according to section 47-5 of the FTA.

Specifically, the Tribunal stated that so long as "the historical acquisition of fuel and a claimed associated fuel tax credit is taken into account in the assessment, whether or not the net fuel amount is itself quantified in the assessment, s47-5(1) of the FTA is not engaged". Accordingly, since the taxpayer's assessment took into account the fuel tax credits, the taxpayer could and did lodge a valid objection to the assessment.

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Personal Tax Update

Value of goods taken from stock for private use

The Australian Taxation Office (ATO) has released Taxation Determination [TD 2019/2](#) which provides updated the amounts that it will accept as estimates of the value of goods taken from trading stock for private use by taxpayers for certain named industries in 2018-19.

Workers' compensation payments assessable income

The Administrative Appeals Tribunal (AAT) in [Keys v Commissioner of Taxation \[2019\] AATA 238](#) has held that payments received by a taxpayer from injury suffered in the course of their employment was assessable as income and was not a mere loan. The Tribunal also held that the damages awarded to the taxpayer represented compensation or damages for a wrong or an injury the taxpayer suffered in his occupation, as such, it was not excluded from being assessable income under section 59-30 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Settlement payment treated as capital

The AAT in [JSJG v Commissioner of Taxation \[2019\] AATA 336](#) has set aside the Commissioner of Taxation's decision and held that a lump sum payment made to a taxpayer to settle claims made against insurers was not assessable income. The Tribunal found that the payment constituted a single undissected sum that was characterised as being capital in nature. The Tribunal also found that although part of the lump sum payment might amount to a capital gain relating directly to compensation or damages for a wrong or injury that the taxpayer suffered personally, it is not possible to dissect which portion is attributable to that part of the claim and section 118-37(1) (a) of the ITAA 1997 could not apply to exempt the amount from capital gains tax.

Tax assistance for North Queensland floods

The ATO has [announced](#) that people impacted by the recent floods in North Queensland will be granted extra time to deal with their tax affairs. The ATO will automatically make arrangements to defer

all income tax, activity statement and fringe benefits tax lodgements and payments due in February, March, April and May 2019, to the deferred due date of 31 May 2019.

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State Taxes Update

Duty decisions

The following key duties decisions have been handed down since our last update:

- The State Administrative Tribunal of Western Australia in [Crugnale v Commissioner of State Revenue \[2019\] WASAT 8](#) affirmed the Commissioner of State Revenue's decision finding that the taxpayers were subject to duty on two transactions which occurred as a result of the termination of a strata scheme. The Tribunal held that section 39 of the *Duties Act 2008 (WA)* did not apply to exempt the taxpayers from duty as there was an acquisition of new dutiable property, and the property that was being transferred was not the same property being partitioned between joint owners.
- The NSW Civil and Administrative Tribunal in [First Master Capital Pty v Chief Commissioner of State Revenue \[2019\] NSWCATAD 35](#) has varied the Chief Commissioner of State Revenue's assessment of duty, finding that the only dutiable property agreed to be sold and purchased under a Business Contract was in relation to the plant and equipment. As such, section 27 of the *Duties Act 1997 (NSW)* required the apportionment of the consideration under the Business Contract between dutiable and non-dutiable property which was agreed to be purchased and sold under the contract.
- The Victorian Civil and Administrative Tribunal in [Zarpat Pty Ltd v Commissioner of State Revenue \[2019\] VCAT 306](#) has confirmed the Victorian Commissioner of State Revenue's assessment of duty on the acquisition of trust units by the taxpayer finding that there was a change in beneficial ownership of the relevant units, such that they were liable to duty. The Tribunal also held that there was no basis for the exercise of discretion in section 85(2) of the *Duties 2000 Act (VIC)* to exempt the acquisition.
- The Supreme Court of New South Wales – Court of Appeal has granted the Commissioner's appeal in [Chief Commissioner of State Revenue v Adams Bidco Pty Ltd \[2019\] NSWCA 34](#) and held that the taxpayer was not a primary producer for the purposes of the primary producer concession in section 163D of the *Duties Act 1997 (NSW)*. Since the company was found not to be a primary producer within the meaning of the relevant provision, the acquisition was not exempt from duty.

Land valuation matter

The State Administrative Tribunal of Western Australia in [Chevron Australia Pty Ltd and Valuer General \[2019\] WASAT 7](#) concluded that the income capitalisation approach was the preferred available market related approach to the valuation of unimproved land. The Tribunal considered that there was existing evidence to assess the hypothetical

ground rental value of the subject land and that there was evidence of capitalisation rates for unimproved properties.

Land not eligible for primary production exemption

The NSW Civil and Administrative Tribunal in [McCabe v Chief Commissioner of State Revenue \[2019\] NSWCATOD 33](#) has affirmed the New South

Wales (NSW) Chief Commissioner of State Revenue's finding that taxpayer was not entitled to the NSW land tax primary producers exemption as there was no substantial use of the land. The Tribunal found, having regard to the facts, there were no cattle on the land at the relevant times and the applicant's work in slashing and maintaining the land in good condition did not constitute an actual use of the land for grazing purposes, much less a substantial one.

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Superannuation Update

Draft super amendments

Treasury has released [draft legislation and regulations](#) dealing with minor technical amendments to superannuation tax legislation and to correct unintended outcomes that relate to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016*.

The draft legislation contains provisions to:

- Correct an error in the way that market-linked pensions are valued under the transfer balance cap when they are commuted or rolled over, resulting in a nil debit.
- Ensure that death benefits that include life insurance proceeds are not subject to tax when they are rolled over to a new superannuation fund.
- Permit the Commissioner of Taxation to account for additional tax debts in running balance accounts.

The draft regulations:

- Fix the valuation of defined benefit pensions under the transfer balance cap to reflect when pensions are permanently reduced following an initial higher payment, such as for some public sector defined benefit reversionary pensions.

- Change the definition of life-expectancy period for innovative income stream products to account properly for the number of days in a leap year.
- Maintain the capped defined benefit treatment of market-linked pensions under the transfer balance cap where they have been rolled over as a result of a successor fund transfer.

Draft regulations to support Protecting Your Super Package

Treasury has released an [exposure draft regulations](#) to supplement and implement the Protecting Your Super Package. The regulations provide further detail on trustee notification, additional detail needed to administer the fee cap including the percentage of the cap, and rules to direct the Commissioner of Taxation as to which fund an amount should be paid to when consolidating amounts held by the Commissioner and the member has more than one active fund.

ATO guidance on transition-to-retirement income streams

The Australian Taxation Office (ATO) has released *Super Guidance Note GN 2019/1* which provides guidance for individuals who are receiving or considering starting a transition-to-retirement income stream (TRIS) which commenced from 1 July 2017.

Superannuation rates and thresholds for 2019-20

The ATO has published the [key superannuation rates and thresholds](#) for the 2019-20 financial year. Some of these key superannuation rates and thresholds include:

- concessional contributions cap is AUD 25,000
- non-concessional contributions cap is AUD 100,000
- capital gains tax cap amount for non-concessional contributions is AUD 1.515 million
- the low-rate superannuation benefit cap is \$210,000
- the untaxed plan cap amount is AUD 1.515 million
- the general transfer balance cap is AUD 1.6 million
- the defined benefit income cap is AUD 100,000
- the employment termination payments (ETP) cap amount for life benefit termination payments and death benefit termination payments is AUD 210,000, and
- the tax-free part of genuine redundancy payments and early retirement scheme payments is AUD 10,638 and AUD 5,320 for each complete year of service.

ATO's new approach to misuse of SMSF auditor numbers

The ATO has [announced](#) that it is providing all self-managed super fund (SMSF) auditors with a list of funds that reported their SMSF auditor names and SMSF auditor numbers (SANs) on SMSF annual returns for the 2017 income year. Since the

Australian Securities and Investments Commission (ASIC) introduced SMSF auditor registration and began publishing SMSF auditor names and SANs, some SMSF auditors have expressed concern about the potential for their SAN to be misused to facilitate SMSF annual return lodgement misuse.

ATO speech on transparency and trust in Super

ATO Deputy Commissioner of Superannuation, James O'Halloran, in a [presentation](#) to the Conference of Major Superannuation Funds discussed transparency and trust in superannuation. Of note, in relation to 2018-19 priorities, the Deputy Commissioner stated that the ATO views increased transparency and timely reporting of transactional data is in the interests of fund members and the super system. Other issues discussed include the superannuation environment since 1 July 2018, improvements in ATO future reporting and superannuation guarantee and related enforcement tools.

ATO commences reviews of large APRA-regulated super funds

The ATO has commenced [streamlined assurance reviews](#) of large APRA-regulated super funds in February 2019 as part of its Top 1000 Tax Performance Program. This program aims to obtain additional evidence to achieve greater assurance that the largest 1,000 public and multinational entities are reporting the right amount of income tax. The ATO indicates that it will focus on understanding a fund's: business structure, investment profile and tax risk management and governance frameworks, including controls over data provided by custodians and other third party administrators.

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Legislative Update

Since Federal Parliament finished its autumn session on Thursday 21 February 2019, there has been no movement on the legislative front. However, it is worth noting that the following key tax Bills were given Royal Assent since our last monthly update:

- [Treasury Laws Amendment \(2018 Measures No. 5\) Bill 2018](#), which, among other things, makes technical amendments to the managed investment trust (MIT) and attribution managed investment trust (AMIT) rules.
- [Treasury Laws Amendment \(2017 Enterprise Incentives No. 1\) Bill 2017](#) which introduces the 'similar business test' as an alternative test for companies to potentially access tax losses and net capital losses (and tax losses for listed widely held trusts) where they have changed their ownership. Refer to our [TaxTalk Alert](#) further detail.
- [Treasury Laws Amendment \(Protecting Your Superannuation Package\) Bill 2018](#) which gives effect to the 2018-19 Federal Budget announcements relating to the protection of individuals' retirement savings from erosion such as the capping of the amount of fees that can be charged annually to certain low value

superannuation balances and measures to deal with inactive low-balance accounts.

- [Treasury Laws Amendment \(2018 Measures No. 4\) Bill 2018](#) which implements measures to strengthen compliance with taxation and superannuation guarantee obligations, enable the sharing and verification of tax file numbers, and to make a number of miscellaneous amendments to taxation, superannuation and other laws.
- [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Bill 2017](#) which extends the corporate whistleblower protection regime and introduces new protections for tax whistleblowers.

Federal Parliament will resume sittings on Tuesday 2 April 2019, which is also the day that the 2019-20 Federal Budget will be delivered. With the prospect of a Federal election being called in the coming weeks, it is expected that there will be very few sitting days in this current session of Parliament.

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Other News

IGTO review into ATO's use of garnishee notices

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has released its [final report](#) on its review into the Australian Taxation Office's (ATO) use of garnishee notices. This review was undertaken to maintain community confidence in the administration of the tax system after serious allegations were made about the ATO's inappropriate use of garnishee notices upon small businesses.

In the IGTO's view, the allegations that there was an ATO direction for a 'cash grab' on small businesses or that ATO debt staff's personal performance were set on amounts collected were found not to be sustained on the evidence. The IGTO made four recommendations, all of which were accepted and agreed by the ATO:

- having contingency plans for major assumptions used to estimate staffing resources needed for collection activities to minimise the impact should the assumptions not hold
- improving the automated models which select garnishee cases for ATO staff to review and refine these models with feedback from staff, to remove taxpayers who are less likely to warrant garnishee action
- facilitating consistency of communications between ATO staff at all levels for critical or complex messages where major changes to work focus occur, and
- improving support for the ATO's Early Intervention debt staff by providing those staff with direct feedback on cases they work on, and by incorporating role-playing exercises into training sessions, both of which support better staff decision-making.

The Commissioner of Taxation issued a [statement](#) in response to the release of the report.

New appeals avenue for small business tax disputes

The [Administrative Appeals Tribunal Amendment \(Small Business Taxation Division\) Regulations 2019](#) has been made to amend the *Administrative Appeals Tribunal Regulation 2015* to create the Small Business Taxation Division at the Administrative Appeals Tribunal (AAT) to hear matters defined as a "small business taxation decision which relates to a decision made under a

taxation law in relation to a small business entity (within the meaning of the *Income Tax Assessment Act 1997*). This new appeals Division, operative from 1 March 2019, will include a reduced application fee, procedural support, assistance through an expanded Outreach program, and a faster decision timeframe to ensure that the cost, time, or lack of understanding of the process does not prevent a small business from challenging an ATO decision. These features will help level the playing field and make it easier, cheaper, and quicker for small businesses to resolve tax disputes with the ATO. See also the Government's [media release](#).

The ATO has also released Dispute Resolution Instruction Bulletin [DR IB 2019/1](#) which provides the ATO policy on conducting litigation in the Small Business Taxation Division of the AAT.

In addition, small business taxpayers will now be able to address their tax disputes with the ATO, with the aid of a [small business concierge service](#) within the office of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) for assistance. The ATO has also released Dispute Resolution Instruction Bulletin [DR IB 2019/1](#) which provides the ATO policy on conducting litigation in the Small Business Taxation Division of the AAT.

Commissioner's address to the TIA national convention

The Commissioner of Taxation, Chris Jordan, in his [address](#) to The Tax Institute National Convention discussed various topics, including the tax gap for small businesses, and the Inspector-General of Taxation and Taxation Ombudsman's report on the ATO's use of garnishee notices.

The Commissioner noted that the ATO will be focusing on rental income and deductions with errors being found in rental property claims in almost nine out of 10 returns reviewed. He indicated that the ATO is seeing incorrect interest claims for investment loans that have been refinanced for private purposes, incorrect classification of capital works as repairs and maintenance, and taxpayers not apportioning deductions for holiday homes when they are not genuinely available for rent.

ATO targets black economy

The ATO has [announced](#) that it will visit up to 500 small businesses in Tasmania in March 2019 as part of a nationwide crackdown on the black economy. The ATO will target those businesses that advertise as "cash only" and businesses that are

operating outside of the ATO's performance benchmarks. The ATO also will be visiting a further 10,000 small businesses across the country, including in Tasmania, during the 2019-20 financial year.

ATO draft effective lives of assets

The ATO is seeking comments on the draft list of effective lives for depreciating assets used in the following industries:

- [mineral processing and metallurgical laboratory industry](#) (comments were due 15 March 2019)
- [wholesaling industries](#) (comments were due 31 March 2019)

The updated list for these industries is planned to be included in the ATO's effective life determinations for assets purchased (or otherwise first used or installed ready to use) on or after 1 July 2019.

ATO updates practice statements on penalties and lodgement

The ATO has updated and rewritten into a new format the following law practice statements relating to penalties and lodgement:

- [PS LA 2012/4](#) and [PS LA 2012/5](#) provide the guidelines the ATO applies to the imposition (and remission) of the penalty for making a false or misleading statement. The practice statements have been rewritten into a new format and updated to add new content relating to penalty relief and significant global entities, provide extra examples about what is a "material particular", and consolidate information in relation to who is responsible for the penalty in the case of a trust.
- [PS LA 2011/15](#) which provides guidance on lodgement obligations, has been updated in relation to fringe benefits tax matters, and for multiple entry and consolidated groups and to reflect extensions of the taxable payments reporting system.

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