

# TaxTalk Monthly

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

June 2019



# Corporate Tax Update

## High Court to consider case concerning “sufficient influence”

The High Court has granted the taxpayer [special leave to appeal](#) against the decision of the Full Federal Court in [Commissioner of Taxation v BHP Billiton Limited \[2019\]](#). In this case, the Full Court found for the Commissioner of Taxation and held that BHP Billiton Plc’s Australian subsidiaries were “associates” of a controlled foreign company (CFC) under the “sufficient influence” test in section 318 of the Income Tax Assessment Act 1936 (ITAA 1936). For further details on the issues raised by this case, refer to our [TaxTalk Alert](#).

## ATO guidance on similar business test for accessing losses

The Australian Taxation Office (ATO) released Law Companion Ruling [LCR 2019/1](#) which provides guidance on the application of the new similar business test which is relevant to companies (and certain widely held trusts) seeking to deduct losses following a majority change of ownership. The ruling is substantially similar as the previous draft Law Companion Guideline LCR 2017/D6.

Under the similar business test, a company will be able to utilise tax losses made from carrying on a business against income derived from carrying on a similar business following a change in ownership or control. The Ruling provides guidance on what carrying on a similar business means and includes various examples to demonstrate the approach the ATO will take in assessing whether a company satisfies the similar business test and by reference to the four legislative factors that must be taken into account.

In summary, the Ruling indicates that it will be more difficult to satisfy the similar business test if substantial new business activities and transactions do not evolve from, and complement, the business carried on before the test time. This is contrasted with the case where a company might develop a new product or function from the business activities already carried on, and this development opens up a new business opportunity or allows the company to fill an existing gap in the market. For further information refer to our [TaxTalk Alert](#) which discussed the draft ruling.

## ATO’s 2019 RTP Schedule

The ATO has released the [2019 Reportable Tax Position \(RTP\) Schedule](#) and [instructions](#) including the [guide](#) to reportable tax positions. It is critical to

note that the ATO will no longer notify every taxpayer who is required to lodge an RTP schedule. A taxpayer will need to self-assess whether it meets the following criteria which mean it will be required to complete and lodge the RTP schedule:

- a tax return for the year ending 30 June 2019 or later is required to be lodged, and
- the taxpayer is a public company or a foreign-owned company and its total business income is:
  - AUD250 million or more in the current year, or
  - AUD25 million or more in the current year and the taxpayer is part of a public or foreign owned economic group whose total business income is AUD250 million or more in the current year or the immediate prior year.

## ATO approved forms for certain stapled structures

As a result of the changes under [Treasury Laws Amendment \(Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures\) Act 2019 \(Cth\)](#), the ATO has released the following forms for foreign investors in a stapled structure:

- [Choice to apply transitional provisions](#) – Transitional relief is available in respect of fund payments that are attributable to managed investment trust (MIT) cross staple arrangement income arising from cross staple arrangements covered by section 12-440 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)* (TAA 1953) where the relevant entities have made a valid choice to apply the transitional provisions. Where transitional relief applies to a cross staple arrangement, a withholding tax rate of 15 per cent will continue to apply to relevant fund payments during the transition period, subject to integrity rules.
- [Approved economic infrastructure facility exception](#) – An exception applies in respect of MIT cross staple arrangement income arising from cross staple arrangements that are covered by the approved economic infrastructure facility exception under section 12-439 of Schedule 1 of the TAA 1953. The approved economic infrastructure facility exception applies to an economic infrastructure facility or an improvement to such a facility approved by the Treasurer for this purpose.

## Junior Minerals Exploration Incentive

Applications to participate in the [Junior Minerals Exploration Incentive \(JMEI\)](#) for the 2019–20 income year need to be lodged with the ATO

between 3 June 2019 and 30 June 2019. The JMEI applies to provide a tax concession to investors in small minerals exploration companies that carry out greenfields mineral exploration in Australia. In simple terms, the JMEI allows eligible companies to 'give up' their exploration tax losses to investors in the form of a tax offset.

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# Employment Taxes Update

## 2019-20 State Budgets

A number of State Budgets were handed down during the month, with a range of Payroll Tax measures being announced, including:

### Victoria

From 1 July 2019, the payroll tax exemption for wages paid to employees on maternity leave will be extended to all types of parental leave. The exemption will apply for up to 14 weeks of wages paid to employees taking parental leave.

The regional payroll tax rate paid by eligible businesses will be reduced to 1.2125 per cent, or 25 per cent of the metropolitan rate by 2022/23. The reduction will be phased in over three years from 1 July 2020, with reductions of around 0.4 percentage points each year in 2020/21, 2021/22 and 2022/23.

From 1 July 2021, the current payroll tax-free threshold of \$650,000 will be increased to \$675,000, with a further increase of \$25,000 to \$700,000 in 2022/23.

### Western Australia

The payroll tax exemption for new worker trainees earning up to \$100,000 per annum will be removed

from 1 July 2019. The exemption will, however, continue to apply for the nominal duration of training contracts registered with the Department of Training and Workforce Development before 1 July 2019. A payroll tax exemption will also continue to apply for all apprentices.

In addition, a new Employer Incentive Scheme will provide financial assistance to Western Australian businesses who take on an apprentice or new entrant trainee. Under the scheme, businesses will receive a base payment of up to \$8,500 for employing an apprentice or trainee. The scheme will be effective from 1 July 2019.

The scheme will be funded through the redirection of payroll tax, once legislation is passed to remove the remaining payroll tax exemption for trainees. The payroll tax exemption for apprentices will be retained.

For larger businesses, the new scheme will replace the payroll tax exemption for new entrant trainees.

### Northern Territory

The previously announced payroll tax local employment package will continue, which provides an exemption for up to two years for businesses that

increase their employee numbers or replace interstate fly-in fly-out jobs with local jobs.

## NSW payroll tax debt applies to all payroll group members

The High Court has dismissed the taxpayer's application for [special leave to appeal](#) against the decision of the Supreme Court of NSW – Court of Appeal in [Fyna Projects Pty Ltd v Chief Commissioner of State Revenue \[2018\] NSWCA 331](#), on the grounds that there was no reason to doubt the earlier decision of the Court of Appeal. In the original case, the Court of Appeal held that every member of a payroll tax group, by reason of an employer's default, was a person who is liable to pay the amount of payroll tax that the defaulting taxpayer had failed to pay under the *Payroll Tax Act 2007* (NSW).

## No SG liability on payments made to jockeys

The Federal Court found for the taxpayer in [Racing Queensland Board v Commissioner of Taxation](#) which considered the question of the taxpayer's liability to superannuation guarantee (SG) in relation to jockeys participating in thoroughbred racing. The taxpayer had adopted a Centralised Prizemoney System (CPS) with effect from 1 July 2000 under which it made prize money percentage payments and riding fee payments to jockeys, on behalf of race clubs, for all race meetings conducted in Queensland. However, pursuant to the employment contracts, the owner or trainer of the horse employed or engaged the jockey to ride in a race or barrier trial and was liable, under that contract, to pay that riding fee. This remained the case after the introduction of the CPS, except that the taxpayer agreed to pay the riding fee to the jockey on behalf of that owner or trainer.

The Court found that although the jockey was a person who was paid to participate in a sport, the person legally liable to pay the riding fee to the jockey was always the owner or trainer who had employed or engaged that jockey. Accordingly, the taxpayer (or one of its predecessors) was not the person who, in terms of s 12(8) of the *Superannuation Guarantee (Administration)*

*Act 1992* (SGAA) was “the person liable to make the payment” to jockeys.

## Employee's claim for PAYG withholding credits dismissed

The Federal Court in [Price v Commissioner of Taxation \[2019\] FCA 543](#) has dismissed an employee's application that he was entitled to claim tax credits against his income tax liabilities for amounts said to be withheld from salary or wages paid to him. The taxpayer had submitted that the relevant PAYG amounts were withheld by the employers, but they did not remit the amounts to the Commissioner of Taxation. The Court found that taxpayer had not discharged the onus of establishing that amounts were actually withheld by any of the four employers with the consequence that the declaration should not be made.

It is important to note that if amounts actually had been withheld, the taxpayer would have been entitled to a credit irrespective of whether they were remitted to the Commissioner.

## Single Touch Payroll end of financial year

The first year of single touch payroll (STP) for employers with 20 or more employees is soon to end.

This means that those employers are not required to provide payment summaries to their employees or lodge with the ATO the PAYG annual payment summary for information they report and finalise through STP. In addition, their employees are not required to be issued with an annual payment summary – instead employees can access their income statements via myGov.

An employer who started reporting in the 2018–19 financial year also has until 31 July 2019 to make the finalisation declaration to state that you have completed your reporting for the financial year.

Employee payment summaries and PAYG payment summary annual reports will still be required for all payments not reported and finalised through STP – due 14 July 2019 and 14 August 2019 respectively.

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# Global Tax Update

## Latest news from international tax and transfer pricing

### Synthesised text of Australia and Singapore tax treaty under MLI

The Australian Taxation Office (ATO) has released the [synthesised text](#) of Australia's tax treaty with Singapore, as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI has effect for the Australia-Singapore treaty from as early as 1 April 2019. 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 IDS questions for 2019

The ATO has released the details of the [new or modified questions](#) that will apply to the 2019 International Dealings Schedule (IDS) which is required to be completed as part of the annual tax return compliance obligations by a business that is engaged in international dealings with related parties, and has related-party dealings of more than AUD2 million.

Of particular note is that there are approximately 28 new questions relating to the new hybrid mismatch rules (which broadly apply to income years commencing on or after 1 January 2019) and 23 questions relating to Controlled Foreign Companies (CFCs). At the time of writing the ATO has not issued the 2019 IDS form or instructions.

### CFC rules and money lending

The ATO has released Taxation Determination [TD 2019/8](#) which clarifies what is meant by the term 'a business whose income is principally derived from the lending of money' in the definition of 'financial intermediary business' which is relevant for applying the CFC rules. Specifically, in applying the "active income test" under the CFC rules, Australian financial institution subsidiaries are able to exclude their 'tainted interest income' from their 'passive income' if their sole or principal business is a financial intermediary business.

According to the determination:

- the concept of 'a business whose income is principally derived from the lending of money' is concerned with the character of the business that is being conducted and contemplates a commercial or profit-making operation that involves scale, repetition and continuity of money-lending
- it requires a qualitative, rather than merely quantitative, analysis of how the business earns its income. Such analysis involves consideration of the extent to which the assets and activities of the company are concerned with lending money, and
- while the actual proportion of income earned from money-lending is relevant, a mere mathematical comparison of types of income at a particular point in time is not in itself decisive.

## High Court may consider taxation of foreign corporate limited partnership's Australian investment gains

The taxpayer has applied for [special leave](#) to appeal to the High Court of Australia against the Full Federal Court's decision in [Commissioner of Taxation v Resource Capital Fund IV LP \[2019\] FCAFC 51](#). In this case the Court held that gains made by a foreign corporate limited partnership on the sale of shares in an Australian company should be taxable in Australia as the gain was Australian sourced and there was no treaty relief. For further insights on the Full Court's decision, refer to our [TaxTalk Alert](#).

## ATO to participate in OECD ICAP

The ATO is [participating](#) in the International Compliance Assurance Programme (ICAP) launched by the Organisation for Economic Cooperation and Development (OECD). ICAP involves various tax administrations undertaking cooperative multilateral risk assessments on multinational enterprises using Country-by-Country (CbC) reports and other information to assess transfer pricing and permanent establishment risks.

The second ICAP pilot, announced in March 2019, will include 17 participating jurisdictions (Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Poland, Spain, United Kingdom and United States).

ICAP complements the ATO's Top 100 risk categorisation approach and Top 1,000 tax performance program, as well as other initiatives, such as its advance pricing arrangement and advice and guidance programs.

## OECD developments

The OECD has published the [tenth edition](#) of the full version of the OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017, which includes the Articles, Commentaries, non-member economies' positions, the Recommendation of the OECD Council, the historical notes and the background reports.

In other developments, Dominica has signed the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#).

## New Zealand: Non-resident directors' fees

The New Zealand (NZ) Inland Revenue has changed the way it treats fees paid to non-resident

directors. In general, such fees will have a NZ source and be taxable, even if the director does not attend meetings in NZ. In addition, director fees paid to an entity that is not a NZ resident are likely to have a NZ source to the extent that they are attributable to a permanent establishment in NZ or duties are performed in NZ. For further information including a discussion on other NZ tax developments refer to PwC [NZ Tax Tips](#).

## New tax rules for disposal of interests in UK property

From 6 April 2019 non-residents of the United Kingdom (UK) are subject to UK tax on gains on direct and certain indirect disposals of interests in UK immovable property. Broadly, the indirect disposal rules will apply where a person makes a disposal of an entity in which it has at least a 25 per cent interest (or any interest in certain collective investment vehicles), where that entity derives 75 per cent or more of its gross asset value from UK land. Disposals of interests in entities where the property is used in a trade are excluded from the charge, subject to certain conditions being satisfied. For further details, refer to this [alert](#).

## EU's 2018 proposed digital services tax

There has been some commentary about whether the European Union (EU) Digital Services Tax (DST) is consistent with both World Trade Organization (WTO) law and WTO policy. The WTO rules on services is most relevant when assessing the WTO-consistency of the EU's 2018 proposed DST and DST-type measures of countries such as the United Kingdom, Spain, etc. This PwC [Global white paper](#) explores some of the WTO aspects that the proposed DST raises.

## EC publishes decision on Luxembourg interest-free loans

The European Commission (EC) has published the non-confidential version of its opening decision in its State aid investigation into certain tax rulings granted by the Luxembourg tax authorities. These rulings related to that country's treatment of interest-free loans granted by an Irish group company to a Luxembourg group company. The decision represents the EC's preliminary arguments for opening a State aid investigation. The decision is the latest in a number of high-profile cases concerning State aid and taxation. However, it is the first case that addresses the treatment of interest-free loans. For further information refer to PwC [Global Tax Insights](#).

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## Indirect Tax Update

### GST 'Division 129' adjustments and new residential rental property

Compliance with the goods and services tax (GST) Division 129 adjustment rules is expected to be a focus of the Australian Taxation Office given increased levels of property lease activity. Input tax credits can be claimed in respect of costs that relate to taxable or GST-free supplies, including sales of new residential premises. However, input tax credits are not available in respect of costs relating to input taxed supplies, including residential rent.

Accordingly, for any business which has offered or intend to offer residential property stock for lease we recommend you review your expenditure to quantify the extent of any adjustments that may be applicable where there is intended or actual change of use of a property. For further insights refer to our [TaxTalk Alert](#).

### High Court grants special leave in customs case

The High Court has granted the Comptroller-General of Customs [special leave to appeal](#) against

the decision of the Full Federal Court in [Comptroller-General of Customs v Pharm-A-Care Laboratories Pty Ltd \[2018\] FCAFC 237](#). The Full Court had found that vitamins and weight loss products were both classifiable as medicaments (free from customs duty) and not as food supplements for the purposes of imposing customs tariffs.

### US trade developments

Since our last update, the international trade landscape continues to evolve with the Trump Administration using tariffs or the threat of tariffs as a lever to try to drive other outcomes. In particular, the following trade developments by the United States of America (US) have occurred

- The US has increased the additional duties levied against certain Chinese-origin products. For further information refer to PwC's [Global Tax Insights](#).
- The US has identified the European Union (EU) as a new object of tariffs, releasing a list of proposed products that may be subjected to additional tariffs in light of the EU's subsidisation of civil aircraft. For further information refer to PwC's [Global Tax Insights](#).

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## Personal Tax Update

### Taxpayer fails to establish tax residency outside of Australia

The Administrative Appeals Tribunal in [Handsley and Commissioner of Taxation \[2019\] AATA 917](#) held that the taxpayer, an aircraft mechanic, was a tax resident of Australia during the relevant year as he retained his Australian domicile and did not establish a permanent place of abode outside Australia. The Tribunal in reaching its decision had regard to the fact that the taxpayer had shifted between a number of countries and as such, he did not have a permanent place of abode in any of them.

The Tribunal said that its decision was the product of legal principles under which a person in transition between places of residence, having

abandoned one but not yet done enough to take up another, is deemed to have retained his or her Australian domicile and unless a permanent place of abode outside Australia has been established, the Australian domicile will dictate Australian tax residency.

### Australian Government funded volunteers abroad

The Australian Taxation Office has released a [fact sheet](#) which provides guidance on the taxation implications of payments an individual receives as a volunteer in the Australian Government funded Australian Volunteers Program. The fact sheet does not apply to volunteers employed in any capacity by the Department of Foreign Affairs and Trade or Australian Volunteers International.

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# State Taxes Update

## Victorian Budget

The [2019-20 Victorian State Budget](#) was delivered on 27 May 2019 by the Victorian State Treasurer the Honorable Tim Pallas. A number of key stamp duty, land tax and payroll tax measures were announced in this Budget. In summary, the Budget the principal measures included the following:

- increase the foreign purchaser additional duty “surcharge” rate from 7 per cent to 8 per cent, for contracts entered into on or after 1 July 2019.
- expand the qualifying provisions for corporate reconstruction relief under the *Duties Act 2000* (Vic) and replacing the corporate reconstruction exemption with a concessional duty rate of 10 per cent of the duty otherwise payable
- introduce a land transfer duty concession for commercial and industrial property transactions in regional Victoria. The concession will start at 10 per cent for contracts signed from 1 July 2019, increasing by 10 per cent each year to provide a full 50 per cent discount from 1 July 2023
- from 1 July 2019, make changes to the motor vehicle registration duty rate
- in relation to land taxes, from the 2020 land tax year, increase the absentee owner surcharge rate from 1.5 per cent to 2 per cent and remove the land tax exemption for land in metropolitan Melbourne that is contiguous with a principal place of residence but on a separate title and without a separate residence.
- from 1 July 2019, expand the payroll tax exemption for wages paid to employees on maternity leave to include all types of parental leave
- reduce the regional payroll tax rate paid by eligible businesses to 1.2125 per cent, or 25 per cent of the metropolitan rate, by 2022-23 and simplify the rules for eligibility for the regional rate
- increase the payroll tax-free threshold of AUD650,000 to AUD700,000 by 2022-23 with increases of AUD25,000 from 1 July 2021 and a further AUD25,000 from 1 July 2022
- from 1 January 2020, broaden the royalties regime by removing the exemption for gold and introducing a royalty rate at 2.75 per cent of the net market value of gold production, and
- provide additional funding (AUD\$13.8 million annually) to the State Revenue Office until 2022-23 to continue and expand the administration of its compliance programs, including the implementation of new technologies to enhance compliance.

The Bill introducing the changes was tabled in Parliament on 28 May 2019. A separate alert regarding the bill will be published shortly.

## Northern Territory Budget

The [2019-20 Northern Territory Budget](#) was delivered on 7 May 2019 by the Northern Territory (NT) Treasurer the Honorable Nicole Manison. Key taxation measures announced in the Budget include:

- Changes to the home owner assistance schemes (as previously announced on 8 February 2019) including:
  - A ‘BuildBonus’ grant of up to AUD20,000 for the first 600 eligible applicants who purchase or build a new home.
  - A stamp duty discount of up to AUD18,601 is also available for home buyers purchasing new or established homes valued up to AUD650,000 who have not owned a home in NT in the previous 24 months.
  - The First Home Owner Grant is still available, but reduced from AUD26,000 to AUD10,000 from 7 May 2019 in recognition of BuildBonus and the NT home owner discount.
  - From 30 November 2020, all stamp duty Home Owner Assistance Schemes will cease, with only the First Home Owner Grant continuing.
- As announced in the 2018 Budget, the hybrid royalty scheme that requires mining companies to pay a minimum royalty based on the gross value of mineral production will come into effect from 1 July 2019
- As announced in the 2018 Budget, the levy on vacant and unactivated properties in Darwin CBD will come into effect from 1 July 2019
- Future community gaming machine tax increases for hotels will no longer proceed, and will be removed from legislation.

## Western Australia Budget

The [2019-20 Western Australia State Budget](#) was delivered on 9 May 2019 by the Western Australian (WA) State Treasurer, the Honorable Ben Wyatt. There were no significant new or higher taxes that could impact local residents and industry. Taxation measures announced in the Budget include:

- The payroll tax exemption for new worker trainees earning up to AUD100,000 will be removed from 1 July 2019.
- The Government made minor changes to payroll tax and the Metropolitan Region Improvement Tax (MRIT).
- The proposed extension of the MRIT to the Peel and Greater Bunbury regions will now not proceed.

## Tasmanian Budget

The [2019-20 Tasmania State Budget](#) was delivered on 23 May 2019 by the Tasmanian Treasurer, the Honorable Peter Gutwein. Key taxation measures announced in the Budget include:

- Increases to the Foreign Investor Duty Surcharge from 3 per cent to 7 per cent for the purchase of residential property by foreign persons, and from 0.5 per cent to 1.5 per cent for foreign persons acquiring primary production land. These increases will apply from 1 January 2020.
- A land tax surcharge to apply to foreign ownership of residential and primary production land from 1 July 2020.
- A point of consumption tax on wagering at a rate up to 15 per cent to apply to the net wagering revenue of betting companies offering services to Tasmania from 1 January 2020.

## Duty decisions

The following duty decisions were handed down since our last update:

- The High Court has granted the WA Commissioner of State Revenue's application for [special leave to appeal](#) against the decision of the Supreme Court of WA – Court of Appeal in [Rojoda Pty Ltd V Commissioner of State Revenue \[2018\] WASCA 224](#). The Court of Appeal had upheld the taxpayer's appeal against the decision of the Western Australia State Administrative Tribunal finding that contrary to the Tribunal's findings, deeds executed in relation to the winding up of two partnerships merely acknowledged or recorded an existing obligation of the registered proprietor of the

properties that had arisen under the general law, and as such, no duty was payable.

- The NSW Supreme Court of Appeal in [Winston-Smith v Chief Commissioner of State Revenue \[2019\] NSWCA 75](#) has held that a taxpayer was not entitled to an exemption from landholder duty under section 163H of the *Duties Act 1997* (NSW) in respect of a transfer of shares in a landholding company as a result of the liquidation of another company which held a 50 per cent interest in the landholding company. The acquisition produced a change in the appellant's underlying practical and economic ownership in the relevant land since his 50 per cent indirect interest previously held via the liquidated company was foregone for a further 50 per cent direct interest, ensuring that the appellant would retain a 100 per cent practical and economic interest in the underlying land.

## Land tax decisions

The following land tax decisions were handed down since our last update:

- The Victorian Civil and Administrative Tribunal in [J.D.S. Paris Constructions Pty Ltd v Commissioner of State Revenue \(Review and Regulation\) \[2019\] VCAT 615](#) has affirmed the decision of the Commissioner of State Revenue and held that the taxpayer was not exempt from land tax as notification of unit holders was not provided in accordance with section 46C of the *Land Tax Act 2005* (VIC). Under section 46C if land is held by the trustee of a unit trust, there is an ability to nominate a unitholder to be taxed on that land instead of the trustee.
- The NSW Civil and Administrative Tribunal in [Giammarco and Giammarco v Chief Commissioner of State Revenue \[2019\] NSWCATAD 77](#) has confirmed the decision of the Chief Commissioner of State Revenue and held that the taxpayer was not exempt from land tax under *Land Tax Management Act 1956* (NSW) as the taxpayers' actual use of the land did not come within the legislative requirements to apply the primary production exemption (under section 10AA) or the biobanking agreement exemption (under section 10(1)(p)).

## Tasmania – Meaning of foreign person for duty surcharge purposes

The Tasmanian State Revenue Office has released a new Foreign Investor Duty Surcharge (FIDS) [Guideline](#) on the meaning of a foreign person. The guideline is designed to provide information about

what constitutes a foreign person (individuals, corporations, or trustees of a trust) for the purposes of the [FIDS](#) which is an additional amount of duty

charged when residential or primary production property is acquired (either directly or indirectly) by a foreign person.

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## Superannuation Update

### Annual SMSFs statistical report

The Australian Taxation Office (ATO) has released the [annual statistical report](#) on self-managed superannuation funds (SMSFs). It provides high-level observations and commentary on 2016–17 statistics gathered from SMSF annual returns, SMSF registrations and auditor contravention reports. Some reported highlights include:

- 596,000 SMSFs hold AUD750 billion in assets, with more than 1.1 million SMSF members as at 30 June 2018
- in 2016–17, the average assets of an SMSF were just over AUD1.2 million
- 48 per cent of SMSFs had assets between AUD200,001 and AUD1 million.

### SMSF reporting obligations

All SMSFs must report events that affect a member's transfer balance, including details of:

- pre-existing income streams (including value and type) being received on 30 June 2017 that
  - continued to be paid to them on or after 1 July 2017
  - were in retirement phase on or after 1 July 2017
- new retirement phase and death benefit income streams including value and type

- limited recourse borrowing arrangement payments

Refer to this convenient [ATO summary](#) of the various reporting obligations.

### Superannuation contribution splitting

All accumulation style super funds, including SMSFs, approved deposit funds (ADFs) and RSAs can choose to offer contributions splitting to their members. A member of a fund may seek to split certain contributions with their spouse, enabling them to boost their spouse's super savings with some of their own.

Accepting an application to contribution split is at the trustee's discretion. This [ATO document](#) summarises the issues relevant to a fund regarding contributions splitting.

### Valuation guidelines for SMSFs

The ATO has issued a [guide](#) that is designed to help a SMSF trustee when valuing assets for superannuation purposes. Asset valuation is a key component in preparing meaningful SMSF financial reports and it also has an impact on the returns for members and ultimately, SMSF performance as a whole.

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## Legislative Update

Federal Parliament has not yet resumed sittings following the Federal election. Accordingly, there has been no progress on any Commonwealth legislation since our last TaxTalk. Federal Parliament will not commence sittings until after the return of writs to the Governor-General.

Income tax return season for the 2019 income year is soon to start as we draw close to the end of the current financial year. In this respect, the following legislative instruments, registered on 13 May 2019, require the lodgement of income tax returns for the 2019 income year:

- [Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2019](#). This instrument sets out which persons are required to lodge an income tax return or a self-managed

superannuation fund annual return, franking return, venture capital deficit tax return or ancillary fund return for the year of income ended 30 June 2019, and the required due date, subject to any extensions. It also sets out which persons are exempt from the requirement to lodge a 2019 income tax return.

- [Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2019](#). This instrument requires liable and recipient parents under a child support assessment to lodge an income tax return for the 2019 income year, by the due date specified in the instrument.

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# Other News

## ATO data matching – Cryptocurrency

The Australian Taxation Office (ATO) will collect data from [cryptocurrency](#) designated service providers, under notice, to identify individuals or businesses who have or may be engaged in buying, selling or transferring cryptocurrency during the 2014-15 to 2019-20 financial years. The purpose of the data matching program is to ensure that taxpayers are correctly meeting their taxation and superannuation obligations in relation to cryptocurrency transactions and ownership. These obligations may include registration, lodgement, reporting and payment responsibilities.

## Deductibility of penalty interest

The ATO has released Taxation Ruling [TR 2019/2](#) which explains when ‘penalty interest’ is deductible. The Ruling also considers whether penalty interest is included in the cost base or reduced cost base of a capital gains tax (CGT) asset as an incidental cost or the cost of a depreciating asset. Surprisingly, this Ruling does not address the implications that might apply if the relevant borrowing is a financial arrangement to which the taxation of financial arrangements (TOFA) rules in Division 230 of the *Income Tax Assessment Act 1997* (Cth) might apply.

According to the Ruling, penalty interest is generally deductible under section 8-1 of the *Income Tax Assessment Act 1997* (Cth) where the borrowings are used for gaining or producing assessable income or in a business carried on for that purpose, and it is incurred to rid the taxpayer of a recurring interest liability that would itself have been deductible if incurred. However, penalty interest is not deductible to the extent that it is a loss or outgoing of capital, or of a capital, private or domestic nature. Penalty interest is not incurred for borrowing money so is not deductible under section 25-25.

## ATO reviewing trustee obligations

The ATO is [reviewing](#) adherence to certain trustee obligations including the lodgement of Tax File Number (TFN) reports for TFN withholding for closely held trusts. The TFN withholding rules require trustees to withhold amounts from distributions made to beneficiaries who have not quoted their TFN to the trustee. Failure by a trustee to withhold tax from a distribution may result in the trustee becoming liable for a failure to withhold

penalty equal to the amount that they failed to withhold.

## ATO’s debt recovery action

The Australian Small Business and Family Enterprise Ombudsman has issued a [report](#) that found that garnishee notices were issued by the ATO in a sizeable number of cases where tax disputes were before Administrative Appeals Tribunal (AAT). The ombudsman has called for the ATO to immediately cease debt recovery action against any small business with a dispute before the AAT in response to the finding in its report on early debt recovery action by the ATO.

The Commissioner of Taxation has released a [statement](#) in response to the release of the report. He has indicated that the ATO will consider the recommendations made in the report in the context of its role in finding the balance between ensuring it supports honest businesses exercising their dispute rights, while not rewarding deliberate non-compliance. The Commissioner also reminds any small business taxpayer who is struggling to meet their payment obligations that they can contact the ATO to negotiate a payment plan.

## Film producer offset

The AAT in [Seven Network \(Operations\) Limited and Screen Australia \[2019\] AATA 798](#) has affirmed the decision of Screen Australia not to issue the applicant with a certificate for the producer offset in respect of a television series. The Tribunal held that the “Bride and Prejudice” television series was not a documentary for the purposes of the producer offset as it was not a creative treatment of actuality.

## Electricity post-tax revenue models

The Australian Energy Regulator (AER) has [published](#) new versions of the post-tax revenue models (PTRMs) that apply to future electricity distribution and transmission determinations. The new versions give effect to the changes set out in AER’s final report on the review of the regulatory tax approach. The main changes are that the new PTRMs allow for the recognition of immediate expensing of certain capex for tax purposes and apply the diminishing value method for tax depreciation to new depreciable assets.

## Review of effective lives for funeral, crematorium and cemetery services industry assets

The ATO has started a [review](#) of the depreciating assets used in the funeral, crematorium and

cemetery services industries with a view to making new effective life determinations to take effect from 1 July 2019.

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