

# TaxTalk Monthly

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

July 2019



# Corporate Tax Update

## Tax consolidation exit issues affecting retirement village operators

The Australian Taxation Office (ATO) has finalised Practical Compliance Guideline [PCG 2019/4](#) which sets out the Commissioner's administrative approach to the treatment of certain resident liabilities on the exit of a subsidiary member of a tax consolidated group where that member had entered into a lease premium or participating loan/lease occupancy agreement to which Taxation Ruling TR 2002/14 applies.

The PCG has been issued to address concerns raised by the accounting treatment of the lease surrender liability and the increase entry price liability for retirement village operators and the difference in the treatment of these liabilities for accounting and income tax purposes in the calculation of the step 4 exit allocable cost amount (ACA) amount and specifically in the application of subsection 711-45(5) of the *Income Tax Assessment Act 1997* (Cth).

Where the Guideline applies, the Commissioner accepts the change in value of the lease surrender liability or increase entry price liability are amounts that are taken into account for income tax purposes at a later time than under accounting principles for the purposes of applying subsection 711-45(5). This

is notwithstanding that only the change in value of the lease surrender liability has been taken through the entity's profit and loss account whereas the entire lease surrender amount is deductible for income tax purposes when discharged. As for a participating loan/lease occupancy agreement, the increase entry price liability and the discharge amount in respect of it are taken into account for both accounting and income tax purposes.

## Private company loan treated as deemed dividend

The Administrative Appeals Tribunal (AAT) in [VCJN and Commissioner of Taxation \(Taxation\) \[2019\] AATA 968](#) has held that the taxpayer, a sole director and shareholder of a private company, did not satisfy certain grounds which would have prevented the Commissioner exercising discretion under section 109Q of the *Income Tax Assessment Act 1936* (ITAA 1936) to treat an amalgamated loan that was made by the company from being treated as a deemed dividend under the rules in Division 7A of the ITAA 1936. The Tribunal found that the failure by the taxpayer to make the minimum yearly repayment of the loan taken from the company was not due to circumstances beyond the taxpayer's control for the purposes of satisfying section 109Q(1)(b) of the ITAA 1936, and that the taxpayer will not suffer undue hardship if they were treated as having derived a deemed dividend.

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# Employment Taxes Update

## FBT car parking threshold

The Australian Taxation Office (ATO) has released [TD 2019/9](#) which provides that the fringe benefits tax (FBT) car parking threshold for the FBT year commencing on 1 April 2019 is AUD8.95 (replacing the amount of AUD8.83 which applied to the FBT year ended 31 March 2019). This latest Determination supplements the suite of other FBT rates and thresholds for the 2019-20 FBT year that were reported in our last TaxTalk monthly.

## The Taxable Payments Reporting System – Reporting Exemptions for Certain Entities Determination 2019

A legislative instrument has been registered to provide a de minimis exemption from complying with certain obligations under the Taxable Payments Reporting System (TPRS) which will commence on 1 July 2019. It exempts entities that meet specific criteria from having to prepare and lodge reports relating to payments to third party contractors for courier, cleaning, information technology, security, investigation, surveillance, or road freight services under s 396-55 of Sch 1 to the TAA 1953.

The exemption is for entities whose supply of the relevant services covered by the TPRS makes up only a small part of their overall business activities. Particularly, where the consideration received by the entity in a reporting period for a particular type of service, as listed in s 396-55, is less than 10% of its GST turnover for that period, the exemption is available. The TPRS in Subdiv 396-B of Sch 1 to the TAA requires certain entities to lodge an annual report with the ATO giving details about consideration provided to other entities for supplying certain types of services on their behalf.

## FBT benefits provided to religious practitioners

The ATO released [TR 2019/3](#) which provides guidance on when certain benefits provided by registered religious institutions to religious practitioners will be exempt from FBT.

## Payroll tax measures from 2019-20 State Budgets

A number of State Budgets were handed down during the month, with a range of payroll tax measures announced, including:

### *New South Wales*

In the [2019-20 New South Wales \(NSW\) Budget](#) it was announced that the payroll tax threshold will be increased to AU900,000 in 2019-20. In addition, measures were announced and since implemented (see [State Revenue and Other Legislation Amendment Bill 2019](#)) to reduce red tape. Specifically, from 1 July 2019 smaller businesses (ie those with a liability of less than \$150,000 per month) will be able to lodge a single annual payroll tax return rather than monthly returns on the basis of an estimate of the amount of payroll tax payable for the whole financial year (as an alternative to payments based on actual wages) and the period within which an employer is required to lodge a return and pay an amount of tax in respect of the month of June is extended from 21 to 28 days.

### *Queensland*

The following changes to payroll tax were announced in the [2019-20 Queensland \(QLD\) Budget](#) (and have since been [enacted](#)):

- from 1 July 2019, the payroll tax exemption will be increased to AUD1.3m and the payroll tax rate will increase to 4.95 per cent for employers with annual Australian taxable wages above AUD6.5 million
- a 1 per cent payroll tax rate reduction for regional employers up until 30 June 2023
- a temporary rebate of up to AUD20,000 to businesses taking on new employees
- extend the 50 per cent payroll tax rebate on the wages of apprentices and trainees until 30 June 2021.

### *South Australia*

It was announced in the [2019-20 South Australia \(SA\) Budget](#) that there would be an additional payroll tax compliance program to target high risk areas including the use of contractors, the grouping of businesses and those who have failed to register for payroll tax.

## Tasmanian payroll tax rebate regulations

Tasmania has issued the [Payroll Tax Rebate \(Apprentices, Trainees and Youth Employees\) Regulations 2019](#) which extends the eligible period applicable under the Payroll Tax Rebate (Apprentices, Trainees and Youth Employees) Act 2017 for certain apprentices or trainees who are

employed or engaged in the manufacturing; construction; accommodation and food services industries.

## NSW payroll tax cases

The following NSW payroll tax judgments were recently handed down:

- The Supreme Court of NSW in [Bayton Cleaning Company Pty Ltd v Chief Commissioner of State Revenue; International Hotel Services Pty Ltd v Chief Commissioner of State Revenue \[2019\] NSWSC 657](#) has held that arrangements that were entered into by the taxpayer and subcontractors for specialised cleaning/housekeeping services were employment agency contracts within the meaning of section 37(1) of the *Payroll Tax Act 2007* (NSW). Accordingly, the Court found that payroll tax was correctly imposed on the amounts paid to the subcontractors “in relation to” the procurement of the staff
- The Supreme Court of NSW in [Southern Cross Group Services Pty Ltd v Chief Commissioner of State Revenue \[2019\] NSWSC 666](#) has held that arrangements between taxpayers who operated businesses as private security contractors were “employment agency contracts” within the meaning of section 37(1) of the *Payroll Tax Act 2007* (NSW) and accordingly was subject to payroll tax. The Court found that they arrangements were “employment agency contracts” as there was a requisite connection between the contractual arrangements and the provision of services “in and for the conduct of” the taxpayer’s business
- The Supreme Court of NSW ruled in *Downer EDI Engineering Pty Ltd v Chief Commissioner of State Revenue 2019 ATC, [2019] NSWSC 743*, that the taxpayer was not liable for payroll tax on payments made to subcontractors engaged by them to deliver and install equipment for

customers of subscription television. The Court found that the installation services supplied under the taxpayer’s subcontract were supplemental, auxiliary or accessory to the supply of goods under the subcontract. The court held that subcontracts were excluded from being “relevant contracts” by s 32(2)(a) and 32(2)(d)(i) of the *Payroll Tax Act 2007* (NSW), with the court revoking in full the Commissioner’s payroll tax assessments of the taxpayer and exempting the payments from payroll tax.

## WA removes payroll tax exemption for new worker trainees

The [Pay-roll Tax Assessment Amendment Bill 2019 \(WA\)](#) which seeks to give effect to the Western Australian (WA) Budget proposals in relation to payroll tax has been enacted. The measures in this Bill remove the payroll tax exemption for new worker trainees earning up to AUD100,000 from 1 July 2019. However, 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.

## SG contributions not payable for additional hours or public holidays

The Full Federal Court in [Bluescope Steel \(AIS\) Pty Ltd v Australian Workers’ Union \[2019\] FCAFC 84](#) as allowed the taxpayer’s appeal and held that having regard to the particular industrial instruments and agreements, superannuation guarantee (SG) contributions were not payable by the taxpayer in respect of the “additional hours” and “public holidays” components of employees’ salaries since these components did not form part of “ordinary time earnings”.

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# Global Tax Update

## Latest news from international tax and transfer pricing

### Australia and New Zealand approach to dual resident entities

The Organisation for Economic Cooperation and Development (OECD) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (the Multilateral Instrument), which impacts the operation of many double tax treaties, has now been in effect from as early as 1 January 2019 for Australia and New Zealand. The Australian Taxation Office (ATO) and the New Zealand (NZ) Inland Revenue (IR) have released their [joint administrative approach](#) to interpreting the 'dual resident' provisions in the Multilateral Instrument.

This is a significant development because an entity that is a tax resident of both Australia and New Zealand – ie a 'dual resident' in the absence of competent authority agreement – is not entitled to any relief or exemption from tax provided by the Australian-New Zealand treaty. The administrative approach will be particularly beneficial in reducing taxpayer compliance costs and potential uncertainty, particularly for smaller groups. For further information see our [TaxTalk Alert](#).

### J5's results in first year of operation

Leaders of tax authorities from Australia, Canada, the Netherlands, the United Kingdom (UK) and the United States (US) as part of the joint operational alliance known as the Joint Chiefs of Global Tax Enforcement (J5) have [announced](#) their results from the first year of operation. The organisation specifically focuses on shared areas of concern and cross-national tax crime threats including cyber-crime and crypto-currency as well as enablers of global tax evasion, and also focuses on platforms that enable countries to share information in a more organised manner.

### G20 update on international tax agenda

The [report](#) of the Secretary General to the OECD has been released to the G20 Finance Ministers and Central Bank Governors. The report contains two parts. Part I reports on the activities and achievements in the OECD's international tax agenda. Part II reports on the activities and achievements of the Global Forum on Transparency and Exchange of Information for Tax Purposes. In

addition, the following reports were published as annexures:

- [Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy](#) which explores the technical issues to be resolved through the two main pillars. The first pillar will explore potential solutions for determining where tax should be paid and on what basis ("nexus"), as well as what portion of profits could or should be taxed in the jurisdictions where clients or users are located ("profit allocation"). For further insights refer to PwC Global [Tax Policy Bulletin](#)
- [OECD/G20 Inclusive Framework on BEPS: Progress Report July 2018-May 2019](#) outlines major developments in dealing with the tax challenges of the digitalised economy and the entry into force of the Multilateral Instrument and shows how countries are progressing in the implementation of the OECD/G20 BEPS package
- [OECD/IMF Report on Tax Certainty – 2019 Update](#) identifies a set of practical approaches and solutions to enhance tax certainty. It also discusses initiatives that aim to improve tax certainty in developing countries.

### OECD developments

The OECD has released a [note](#) which presents a summary of ongoing work to assess the impact of increasing tax transparency and exchange of information (AEOI) on cross-border financial activity using international investment data. Preliminary analysis shows the very substantial impact AEOI is having on bank deposits in international financial centres.

In addition, the OECD has launched a new [handbook](#) to strengthen tax administrations' capacity to support the fight against money laundering and terrorist financing.

In other OECD developments:

- The Republic of Serbia has [signed](#) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters
- Albania has [signed](#) the OECD Multilateral Instrument
- The United Arab Emirates and Russia have each deposited their instrument of [ratification](#) of the

Multilateral instrument. This means that the Multilateral Instrument enters into force in relation to the Australia-Russia tax treaty on 1 October 2019.

## New Zealand Budget

The 2019-20 [New Zealand \(NZ\) Budget](#) was delivered by the NZ Treasurer on 30 May 2019. For further information on the NZ Budget, see [PwC NZ's commentary](#).

## Update on US tax reform and 'GILTI'

US Treasury and the IRS have released regulations which provide guidance relating to a US

shareholder's pro rata share of its global intangible low-tax income (GILTI). For further insights refer to PwC Global [Tax Insights](#).

## UK's offshore receipts rule

The UK's Her Majesty's Revenue & Customs (HMRC) has published further draft regulations and guidance on the 'Offshore Receipts' rules which seek to subject UK-derived income with respect to intangible property (IP) to UK tax at 20% on the gross receipts, where the IP is held offshore in a 'low-tax' jurisdiction. For further insights refer to PwC Global [Tax Insights](#).

 [Explore PwC's global tax research and insights](#)

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# Indirect Tax Update

## No entitlement to input tax credits on precious metals

The Administrative Appeal Tribunal (AAT) in [Very Important Business Pty Ltd and Commissioner of Taxation \(Taxation\) \[2019\] AATA 1120](#) has affirmed the decision of the Commissioner of Taxation and held that a taxpayer was not entitled to input tax credits for acquisitions of scrap precious metal it claimed to have made in the course of its business of refining precious metals. The taxpayer had claimed that its subsequent supplies of precious metal to dealers in precious metal were GST-free supplies which meant that it was entitled to claim full

input tax credits. The Tribunal found that as the taxpayer was not a refiner of precious metal, it was not able to make GST-free supplies.

## US trade developments

Since our last update, the United States of America (US) has indicated that it intends to impose tariffs on all goods imported from Mexico and that those tariffs will remain in place until Mexico takes certain unspecified actions to alleviate the 'illegal migration crisis... through effective actions... to be determined in [the United States's] sole discretion and judgment.' For further information refer to PwC's [Global Tax Insights](#).

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## Personal Tax Update

### CGT assessed on sale of property

The Federal Court in [Mingos v Commissioner of Taxation \[2019\] FCA 834](#) held that the taxpayer, a beneficiary of a discretionary trust, did not have an ownership interest in the trust property at the time it was sold, as such, was not entitled to the capital gains tax (CGT) main residence exemption in relation to the capital gain that was made on the disposal of the property. The Court found that the taxpayer did not have beneficial ownership in the property and was not able to establish an absolute entitlement to the property as against the trustee. In relation to the amount of the capital gain, the taxpayer failed to prove that the capital gain on which they were assessed was excessive due to the absence of any source documents

substantiating the land tax, selling and holding costs.

### ATO data matching – lifestyle assets

The Australian Taxation Office (ATO) is conducting a [lifestyle assets data matching program](#) to obtain information on insurance policies for marine vessels, enthusiast motor vehicles, thoroughbred race horses, fine art and aircraft. The ATO will obtain information from data providers for the 2013-14 and 2014-15 financial years to identify tax risks including asset betterment, income tax, goods and services tax (GST), fringe benefits tax (FBT) and superannuation funds.

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# State Taxes Update

Since our last issue of TaxTalk, the remaining State and Territory Budgets for the 2019-20 financial year were delivered. We summarise below the key tax-related measures announced in these Budgets – New South Wales (NSW), South Australia (SA), Queensland (QLD) and the Australian Capital Territory (ACT) and also note other State tax developments.

## New South Wales Budget

The [2019-20 NSW Budget](#) was delivered on 18 June 2019 by Treasurer, the Honourable Dominic Perrottet MP. General government revenue is estimated to be AUD81.1 billion in 2018-19, which is AUD137.6 million lower than forecast in the 2019 Pre-election Budget Update. Amongst other things, this is due to a softening of the housing market, contributing towards a reduction in land tax and transfer duty revenue and a reduction in revenue from the goods and services (GST).

Although no new taxes were introduced, the following changes were announced:

- From 1 July 2019, transfer duty (including premium property duty) thresholds will be indexed to the Sydney Consumer Price Index
- An exemption from surcharge purchaser duty (effective 1 July 2019) and surcharge land tax (effective for the 2020 land tax year) will apply to permanent residents who hold certain retirement visas (subclass 410 and 405) for their principal place of residence
- The payroll tax threshold will be increased to AUD900,000 in 2019-20
- An expert panel has been appointed to review federal financial relations from a NSW perspective with the aim to improve the current system and make it more reliable.

## South Australian Budget

The [2019-20 SA Budget](#) was delivered on 18 June 2019 by South Australian Treasurer, the Honourable Rob Lucas MLC. The SA Government's taxation revenue for 2018-19 is estimated to be AUD4,565 million and is expected to increase to AUD5,178 million by 2022-23.

The SA Government is continuing its land tax reforms launched in last year's 2018-19 Budget by now committing to further reductions. The land tax measures announced this year include the following:

- From 1 July 2020, the top land tax rate for the value of ownerships above AUD\$5 million will be

progressively reduced by 0.1 percentage point each year from 3.7 per cent in 2019-20 to 2.9 per cent from 1 July 2027 (this reduced rate is closer to the top land tax rates in the other States, excluding any absentee owner surcharges)

- a new approach to the aggregation of land for land tax purposes will be introduced from 1 July 2020 to look through separate legal structures to determine the true owner of land including introduction of provisions to allow related companies to be grouped for land tax purposes and the introduction of a surcharge on land owned in trusts where the interests in land of trust beneficiaries are not disclosed or cannot be identified.

An additional payroll tax compliance program to target high risk areas such as businesses which have failed to register for payroll tax, the use of contractors, and the grouping of businesses was also announced.

## Queensland Budget

The [2019-20 QLD Budget](#) was delivered on 11 June 2019 by Treasurer, the Honourable Jackie Trad MP. Total general Government sector revenue for 2018-19 is estimated to be AUD60.068 billion, which is AUD2.330 billion higher than estimated in the 2018-19 Budget, and is expected to grow at an average rate of 2.2 per cent over the next four years.

A number of tax measures were announced, including (amongst other things):

- an increase in the absentee land tax surcharge rate from 1.5 per cent to 2 per cent
- an extension of the application of the absentee land tax surcharge to foreign companies and foreign trusts for the 2019-20 assessment year
- an increase in the land tax rate of 0.25 per cent for companies and trusts with aggregated landholdings with a taxable value above AUD5 million from the 2019-20 assessment year (ie a rate of 2.25 per cent where the aggregated land tax value is greater than AUD5 million, and 2.75 per cent where the aggregated land tax value is greater than AUD10 million)
- an increase to resourcing for Treasury to undertake a program of additional targeted tax compliance activities



- amendments to the Duties Act 2001 (Qld) to ensure that land-holdings held for a partnership are considered land-holdings for the purposes of calculating landholder duty, and to clarify that references to consideration for transfer duty purposes includes both monetary and non-monetary consideration
- an increase in the petroleum royalty rate from 10 per cent to 12.5 per cent of wellhead value from 2019-20
- the introduction of various payroll tax measures, including an increase in the tax-free threshold, discounts for regional businesses and the introduction of new rebates.

The Queensland [Revenue and Other Legislation Amendment Bill 2019](#) amends the Land Tax Act 2010 (QLD), Payroll Tax Act 1971 (QLD), Petroleum and Gas (Production and Safety) Act 2004 (QLD) and Petroleum and Gas (Royalty) Regulation 2004 (QLD) to implement the 2019-20 QLD Budget has been enacted.

In relation to the land tax changes, QLD had initially introduced a 1.5% absentee surcharge on 1 July 2017 but it only applied to absentee individuals and did not apply to foreign companies or trusts. The effect of broadening the application of the surcharge means that any foreign companies or trustees of foreign trusts (as defined) holding any land in QLD will be subject to:

- the 2% Absentee Surcharge, in respect of the portion of taxable value of taxable land that is equal to or greater than \$350,000
- an increased rate of land tax, to the extent they have QLD land with a taxable value of more than \$5M.

The Budget Papers note that the Office of State Revenue intends to commence consultation with property industry bodies over the next few weeks to discuss in what circumstances ex gratia relief from the new Absentee Surcharge may be available to foreign companies or foreign trusts.

## ACT Budget

The [2019-20 ACT Budget](#) was handed down by the Honorable Andrew Barr, Chief Minister and Treasurer of the ACT on 4 June 2019. The ACT's taxation revenue for 2018-19 was AUD1.9 billion and is expected to increase to AUD2.4 billion by 2022-23. The ACT continues with its 20-year tax reform program with new significant revenue related measures announced in this budget.

Specifically, the Budget included a number of tax reform measures which have already been implemented including (amongst other things):

- from 1 July 2019, conveyance duty abolished for eligible first home buyers of newly-built homes and existing homes in an established suburb
- from 1 July 2019, conveyance duty reduced for all home buyers
- abolition of insurance duty in full
- abolition of stamp duty on commercial transactions where value is AUD1.5 million or less and a flat rate of 5 per cent applying where value is greater than AUD\$1.5 million.

The Government will propose amendments in the second half of 2019 to address some unintended consequences for newly built properties as a result of changes to land tax which came into effect on 1 July 2018. The ACT Government plans to release the settings for the next five-year phase of tax reform as part of its 2020-21 Budget.

## Victorian Budget measures enacted

As reported in our last TaxTalk, the [State Taxation Acts Amendment Bill 2019 \(Vic\)](#) to implement the 2019-20 Victorian Budget was tabled in Parliament on 28 May 2019. This Bill, which amends the *Duties Act 2000* (Vic), the *Land Tax Act 2005* (Vic), the *Payroll Tax Act 2007* (Vic) and the *Valuation of Land Act 1960* (Vic) has now been enacted. Refer to our [Stamp Duty and Land Taxes Alert](#) for a summary of the key changes made by this new law.

## Land tax in Victoria: current state of play and future directions

Land tax has been a hot topic in Victoria recently with considerable spikes in 2019 land tax assessment amounts. Refer to our [recent publication](#) for a useful outline of the application of Victorian taxes on Victorian land holdings.

## Changes to WA duties now law

The following WA Bills containing key tax changes received assent:

- [Revenue Laws Amendment Bill 2018](#) which seeks to address significant duty leakage, ensure certain taxpayer exemptions and concessions apply correctly, and improve the efficiency of the State's taxation legislation
- [Taxation Administration Amendment Bill 2018](#) which aims to improve the administrative and enforcement arrangements in the Taxation Administration Act 2003 (WA).

The measures to address duty leakage are very comprehensive and include new linked entity and grouping provisions for landholder duty, introducing a fixed to land model, expanding the types of

infrastructure assets that can be subject to duty and restoring duty on contractual mining rights. Additionally, the duties family farm exemption has been modernised, and the conditions for nominal duty to apply to a transfer to and from a bare trustee and transfers to facilitate a subdivision have been prescribed. Importantly for any (direct or indirect) holders of Pastoral Leases, these will now be treated as “land” with retrospective effect to the commencement of the Duties Act on 1 July 2008, meaning that historic transactions may also become subject to duty.

## Tasmanian tax developments

The following Tasmanian tax developments have occurred since our last update:

- The eligible periods that apply in respect of land tax exemptions have been [extended](#) for certain newly constructed properties from 7 February 2021 to 30 June 2023, and former short-stay accommodation premises from 30 June 2019 to 30 June 2023
- The eligible periods that apply in respect of the first home buyer duty concession and the pensioner duty concession in Tasmania have been [extended](#) from 30 June 2019 to 30 June 2020.

## Changes to Revenue SA reporting

RevenueSA has [announced](#) the following changes relating to the reporting of data (relevant to its obligations for Commonwealth reporting) and the imposition of stamp duty that will take effect from 1 July 2019:

- Commonwealth reporting – Both vendors and purchasers of land will be required to provide additional information including date of birth, country of tax residence, additional information for non-Australian citizens (passport number, visa number, visa subclass and visa expiry date) and additional information for overseas organisations (country of incorporation) from 1 July 2019 for the purposes of Commonwealth reporting
- Stamp duty – A Certificate of Stamp Duty is replacing the manual stamp from 1 July 2019, whether a document is completed in RevenueSA Online or submitted directly to RevenueSA for assessment.

## ACT conveyance duty and HBCS determinations

The ACT Revenue Office has released the following determinations to give effect to the measures announced in the 2019-20 ACT Budget relating to conveyance duties and the Home Buyer Concession Scheme (HBCS):

- [Taxation Administration \(Amounts Payable — Duty\) Determination 2019 \(No 1\)](#) reduces conveyance duty rates for transactions of dutiable property used, or that will be used, wholly for purposes other than a commercial purpose (eg residential or primary production) for the 2019-20 financial year. This is part of the government’s reform program to reduce ACT conveyance duty rates each year. The instrument maintains a flat 5 per cent duty rate for commercial transactions above AUD1.5 million
- [Taxation Administration \(Amounts Payable — Home Buyer Concession Scheme\) Determination 2019 \(No 1\)](#) extends the HBCS for the period from 5 June 2019 to 30 June 2019. From 1 July 2019, the HBCS will be expanded as announced in the 2018-19 ACT Budget.

## NT guidance on new Property Activation Levy

The Northern Territory has released an [information booklet](#) on the new [Property Activation Levy](#) which is a 1 per cent levy on the unimproved capital value of buildings which have a more than 50 per cent vacancy rate and a 2 per cent levy on the unimproved capital value of vacant land, applicable from 1 July 2019. The information booklet provides activation and beautification information to assist owners in activating their property and ensuring the levy does not apply to them.

## Land tax decisions

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

- The Queensland Civil and Administrative Tribunal in [Rowan v Commissioner of State Revenue \[2019\] QCAT 151](#) has confirmed the Commissioner of State Revenue’s decision and held that the taxpayer was subject to land tax on the basis that they were an ‘absentee’ in accordance with s31 of the *Land Tax Act 2010* (Qld). The Tribunal found that the taxpayer did not ordinarily reside in Australia and having regard to the facts the Commissioner could not be satisfied that the taxpayer ordinarily resided in Australia
- The Queensland Civil and Administrative Tribunal in [O’Neill v Commissioner for State Revenue \[2019\] QCAT 132](#) has confirmed the Commissioner of State Revenue’s decision and held that the taxpayer was not entitled to the primary production exemption from land tax as they did not carry on a business relating to cattle raising and bee keeping, rather this found to be a hobby.

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## Superannuation Update

### ATO update on Top 1000 program for APRA funds

In a recent [speech](#) by James O'Halloran, Deputy Commissioner, Superannuation and Employer Obligations and Graham Whyte, Assistant Commissioner, Superannuation and Employer Obligations, among other matters raised, an update on the Australian Taxation Office's (ATO's) Top 1000 Tax Performance Program in relation to large APRA funds was provided. Since the program commenced in February 2019, the ATO has tailored its streamlined reviews to take account of the unique business profiles of APRA funds and their reliance on automated systems and third-party service providers such as custodians.

It was reported that the areas that the ATO is paying particular attention include:

- inconsistencies in reporting contributions information to the ATO and APRA
- tax risks flagged to market including whether funds have entered into arrangements that provide imputation benefits such as those described in [Taxpayer Alert TA 2018/1](#)
- investments in limited partnerships and characterisation of income from these investments.

### New tax return disclosures on 2019 SMSF annual return

The ATO has released [guidance](#) on new questions that have been added to the [2019 Self-managed super fund \(SMSF\) annual return](#). The guidance covers new questions that relate to:

- outstanding limited recourse borrowing arrangement (LRBA) amounts

- crypto-currency now to be reported at a dedicated Crypto-currency label
- Part A audit qualifications, given where an auditor forms an opinion that the financial statements are not fairly represented, now need to be reported regardless of the reasons for the qualification. A qualification of Part A could occur where an auditor cannot verify the value of an unlisted investment
- downsizer contributions now to be reported in the Member sections on the return, including the total value of all downsizer contributions made by the member in 2018-19 (reported at the 'Proceeds from primary residence disposal' label) and the date the downsizer contribution was received by the fund (reported at the receipt date label).

### Taxpayer disqualified from acting as a responsible officer of super entity

In the case of [Brooks v Commissioner of Taxation \[2019\] AATA 1236](#), the Administrative Appeals Tribunal (AAT) has affirmed the Commissioner's decision to disqualify a taxpayer from acting as a trustee or a responsible officer of a SMSF. The Tribunal found that the taxpayer had breached various requirements of the *Superannuation Industry (Supervision) Act 1993* by withdrawing funds from the SMSF to loan to members, making investment decisions that were contrary to the purpose of the fund, including exposing the fund to significant financial risk.

As well as the number and nature of these breaches, the Tribunal was concerned that there was a risk of future non-compliance and that the taxpayer did not appear to understand his role and duties as a corporate trustee.

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## Legislative Update

Since our last monthly 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 update. Federal Parliament will resume for the winter sittings from Tuesday 2 July 2019, where it is expected that legislation to progress the Government's proposed 2019-20 Federal Budget reforms to individual tax rates will be a priority. For a summary of the current forward tax agenda refer our [TaxTalk Alert](#) which details the Government's announced and outstanding key tax and superannuation policies.

Commonwealth revenue measures that were registered as legislative instruments or regulations since the June edition of TaxTalk Monthly, include:

- [Income Tax \(Effective Life of Depreciating Assets\) Amendment Determination 2019 \(No 1\)](#) which provides updates for taxpayers in specific industries and for specific depreciating assets with effective lives as a basis to calculate the decline in value (depreciation) of a depreciating asset for income tax purposes, effective from 1 July 2019
- [TPRE 2019/D1 – Exemption of Eligible Community Housing Providers from Providing Third Party Reports for the 2018/19 and 2019/20 Years Determination 2019](#) – this draft instrument proposes to exempt eligible community housing providers from having to provide information to the Commissioner of Taxation in relation to affordable housing certificates issued before 1 July 2020. Comments were due on 20 June 2019.

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# Other News

## ATO review of effective lives of assets in certain industries

The Australian Taxation Office (ATO) has started a review of the depreciating assets used in the [aircraft manufacturing and service industry](#) and the [supermarket and grocery stores industry](#) with a view to making new effective life determinations to take effect from 1 July 2020.

## ATO's focus in the small business market

The ATO's Deputy Commissioner for Small Businesses, Deborah Jenkins, in a recent [speech](#) discussed various topics related to the ATO's current focus in the small business market. Topics discussed include the key tax changes such as single touch payroll tax, instant asset write-off and the taxable payments reporting system, and the tax gap program.

In relation to the small business tax gap, the key behaviours the ATO is seeing include:

- omitting income

- failing to account for private use of business assets or funds
- claiming private expenses as a business expense or not having the necessary records to substantiate business expenses.

## ANAO report on management of small business tax debt

The Australian National Audit Office (ANAO) has released its [report](#) on its audit on the effectiveness of the ATO's management of small business tax debt arising from compliance activities. The report concluded that the ATO's organisational structure and processes in relation to the management of small business tax debt has been largely effective and noted that the ATO has introduced a number of initiatives to improve coordination between small business compliance, dispute and debt activities. The report noted that there are limitations on the effectiveness of the ATO's processes that support consistent management of small business tax debt, including in connection with its quality assurance processes.

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