

# TaxTalk Monthly

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

August 2019



# Corporate Tax Update

## Draft ruling on non-concessional MIT income

The Australian Taxation Office (ATO) has issued draft Law Companion Ruling [LCR 2019/D2](#) on the concept of “non-concessional MIT income” on which a withholding tax rate of 30 per cent applies to fund payments made by a Managed Investment Trust (MIT) from 1 July 2019 unless transitional rules apply. The draft LCR addresses various aspects of the new stapled structure law as they relate to non-concessional MIT income, including:

- MIT cross staple arrangement income and the transitional rules
- integrity rules, particularly in relation to concessional cross staple rent
- MIT trading trust income
- MIT residential housing income, and
- MIT agricultural income.

Comments can be made on the draft by 9 August 2019. For further insights on the key issues raised in the draft Ruling refer to our [TaxTalk Alert](#).

## ATO's final ruling on the consolidation anti-churn measure

The ATO has finalised Law Companion Ruling [LCR 2019/2](#) which provides guidance on the tax consolidation “anti-churn” integrity measure which has the effect of switching off the entry tax cost setting rules when a joining entity becomes a subsidiary member of a consolidated or multiple entry consolidated (MEC) group in certain circumstances when a foreign resident ceases to hold certain membership interests in the joining entity, and other joining entities with linked membership interests.

The ruling provides examples of the application of the relevant provisions, a practical example of the ‘associate-inclusive’ total participation interests requirement, and a warning on the potential application of the general anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* (Cth) in relation to artificial or contrived arrangements designed to exploit the 12-month test period.

The anti-churn rules apply in relation to an income year in respect of an entity that becomes a subsidiary member of a group under an arrangement that commenced on or after 7.30pm (legal time in the Australian Capital Territory) on

14 May 2013. The extension of the control test to cover participation interests of associates, which is also discussed in the Ruling, will only apply to an arrangement that commences on or after the start of the day on 15 February 2018

The anti-churn rules are complex in their application and is also subject to disclosure as a Category C reportable tax position on the 2019 Reportable Tax Position Schedule.

## ATO releases Top 1,000 findings report

The ATO has published its [Top 1,000 Tax Performance Program Findings Report](#) based on over 280 streamlined assurance reviews covering the taxpayers’ last four income years that the ATO has conducted up to January 2019. The Top 1,000 tax performance program was established by the ATO to obtain greater assurance that large public and multinational economic groups with an annual turnover above AUD250 million are reporting the right amount of income tax or identify areas of tax risk for further action.

In summary, the report shows that most taxpayers reviewed obtained overall medium assurance ratings which means the ATO need to do more work to obtain overall high assurance. Taxpayers that obtained an overall low assurance rating can expect that the ATO will follow up with them to address the specific concerns identified during the review.

## Proposed expansion of the RTP Schedule to private groups

The ATO has released a [discussion paper](#) on the proposed expansion of the Reportable Tax Position (RTP) Schedule to large private companies and corporate groups. The requirement to complete the RTP was expanded in 2018 to all public and multinational companies with a total business income exceeding AUD25 million that are part of an economic group with total business income of greater than AUD250 million. From the 2019 income year, these groups were required to self-assess the need to lodge the RTP schedule.

The ATO’s intention for expanding its scope is to provide a level playing field among large corporate groups by ensuring **all** large businesses have the same obligation to disclose their most contestable and material tax positions, irrespective of whether they are a public or private business and so that the ATO can provide a consistent client experience for public and private taxpayers in the large market.

The expansion is proposed for companies within private groups only and the ATO does not intend to expand the RTP schedule to trusts or individuals at this stage. It is proposed that large private companies and corporate groups will begin completing the RTP Schedule for income years ending 30 June 2020 onwards.

Comments due on 5 August 2019.

## Recent R&D cases

The following judicial decisions relevant to the research and development (R&D) tax concession have recently been handed down:

- The Federal Court in [Moreton Resources Limited v Innovation and Science Australia \[2019\] FCAFC 120](#) has found that the decision of the Administrative Appeal Tribunal (AAT) is to be set aside and the matter remitted to the Tribunal for determination according to law. The issue under consideration was whether the taxpayer, a resources company, satisfied the definition of “core R&D activities in relation to a pilot project” to test the viability of using underground coal gasification (UCG) technology to produce UCG synthesis gas (syngas) that would then be cleaned and stabilised for production of electricity using gas turbines. The Court found the Tribunal had erred in its interpretation of the definition of “core R&D activities” in particular, the words “experimental activities” in section 355-25(1) of the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997) which had the effect of narrowing the types of activities that could qualify as “core R&D activities”.
- The AAT in [Ultimate Vision Inventions Pty Ltd and Innovation and Science Australia \[2019\] AATA 1633](#) has held that the taxpayer did not carry out R&D activities as defined in section 355-20 of the ITAA 1997 in respect of “*UV1001: Design and Development of an Integrated Health and Fitness program and Cloud based Decision Support Systems*”, as such they were not entitled to the R&D tax offset. The Tribunal found that the taxpayer did not have objective, contemporaneous evidence to support the R&D claims in relation to the activities, which the taxpayer contended, had the purpose of generating new knowledge.

## Guidance on deemed dividend rules for private companies

The ATO has issued the following in relation to the application of the deemed dividend rules (Division 7A of the *Income Tax Assessment Act 1936* (Cth)), which apply to private companies:

- The [benchmark interest rate for Division 7A](#) purposes for the income year that commenced on 1 July 2019 is 5.37 per cent per annum. This benchmark interest rate is relevant to determine if a private company loan made in the 2019-19 income year is taken to be a dividend, and to calculate the amount of the minimum yearly repayment for the 2019-income year on an amalgamated loan taken to have been made prior to 1 July 2019.
- Updated Practical Compliance Guideline [PCG 2017/13](#) which deals with the repayment of unpaid present entitlements (UPEs) owing from a trust to a private company beneficiary to extend its application to sub-trust arrangements maturing in the 2020 income year. The updated guideline extends the application of the ATO’s pre-existing guidance ([PS LA 2010/4](#) Division 7A: trust entitlements) to seven-year sub-trust arrangements so that it applies to those maturing in the 2020 income year. The ATO has confirmed that if the principal of the loan is not repaid on or before the date of maturity, a seven-year Division 7A complying loan agreement may be put in place between the trust and the private company beneficiary.

## Taxpayer assessed on deemed dividend

The AAT in [Howard v Commissioner of Taxation \[2019\] AATA 1910](#) has held that the taxpayer, the sole director and shareholder of a private company, was assessed in the 2010 year on a deemed dividend under Division 7A of the *Income Tax Assessment Act 1936* (Cth) arising in respect of a loan received from an associated Finance Trust. The taxpayer contended that the loan was made or was deemed by section 109D to have been made in the 2009 income year as at 30 June 2009 on terms subsequently set out in the loan agreement which was entered into in May 2010. The Tribunal held that the financial accommodation and obligations arose on the execution of the loan agreement in May 2010 and that there was no evidence of a loan, for any amount, made between the Finance Trust and taxpayer in the 2009 income year.

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## Employment Taxes Update

### Reasonable travel and meal allowances for 2019-20

The Australian Taxation Office (ATO) has released Taxation Determination [TD 2019/11](#) which sets out the amounts considered to be reasonable in relation to claims made by employees for the 2019-20 income year for overtime meal expenses, domestic travel expenses for accommodation, food and drink, and incidentals when travelling away from home overnight for work, and overseas travel expenses.

The reasonable amounts only provide the maximum amount that a taxpayer can claim without being required to substantiate expenditure. However, the taxpayer will still need to show that they spent the money in performing work duties.

### Draft legislation on genuine redundancy and early retirement scheme payments

Treasury has released [exposure draft legislation](#) on reforms to the tax treatment of genuine redundancy and early retirement scheme payments as announced in the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO). Specifically, under the proposed changes, from 1 July 2019, the concessional taxation treatment to amounts paid for genuine redundancy and early retirement will be extended to individuals who are 65 or more years of age provided the dismissal or retirement occurs before they reach pension age. This is intended to

address the circumstance where some older Australians who, due to their age, cannot access either the Age Pension or the tax-free component of genuine redundancy or early retirement scheme payments. Comments were due on 1 August 2019.

### Updated ATO FBT guide: home phone and internet

The ATO has updated its [Fringe benefits tax \(FBT\) – a guide for employers](#) to clarify how taxpayers should work out the taxable value of the fringe benefit related to home phone and internet expenses and the evidence required to support the claim. In brief, the ATO expects that where the employer reimburses an employee's home or internet costs, in order to reduce the taxable value of the benefit, the employee at a minimum will need to provide a declaration detailing the percentage of business use and keep documentation and records.

### Ride-sourcing travel not exempt from FBT

The ATO has [announced](#) its final views in relation to the application of FBT in relation to rideshare arrangements provided to employees.

Where an employer pays for an employee's taxi travel between their home and work, an FBT exemption is available. The ATO has confirmed that this exemption is limited to travel in a vehicle licensed by the relevant state or territory to operate as a taxi. It does not extend to ride-sourcing

services provided in a vehicle that is not licensed to operate as a taxi. As a result, employers must pay FBT on rideshare expenses paid for their employees, unless they can exclude those expenses under separate FBT concessions such as the minor benefit exemption or the 'otherwise deductible' rule.

Although this update from the ATO confirms the interpretation that it had previously released, it is important for employers to be aware of the different FBT outcomes that can arise when reimbursing rideshare expenses, in contrast to registered taxis, and also, the need to be able to distinguish between each category of expense for the year end FBT process.

## ACT payroll tax and exempt allowances

Generally, all allowances paid or payable to an employee are taxable for payroll tax purposes. However, there are specific provisions which apply to motor vehicle allowances and overnight accommodation allowances. The ACT Revenue Office has released an updated revenue circular [PTA005.1 — Exempt Allowances – Motor Vehicle and Accommodation – Payroll Tax Act 2011](#) which explains its views on exempt allowances related to motor vehicles and accommodation.

## NSW payroll tax grouping

The New South Wales Civil and Administrative Tribunal in [Integrated Construction Equipment Pty Limited v Chief Commissioner of State Revenue \[2019\] NSWCATAD 131](#) has affirmed the decision of the Commissioner of the State Revenue and held

that the taxpayer was a member of a group of commonly controlled businesses during the relevant years, and as such, they were joint and severally liable for payroll tax purposes under section 81 of the *Payroll Tax Act 2007* (NSW).

## QLD payroll tax and contractors

The Queensland Office of State Revenue has withdrawn its public ruling [PTA021.2 — Exemption for contractors ordinarily rendering services to the public](#) which provided a non-exhaustive list of factors that the Commissioner of State Revenue took into consideration in exercising the discretion to not treat certain services contracts as "relevant contracts" for payroll tax purposes. A replacement ruling will be issued. In the interim, the OSR has provided some information about [contractor services approved by the Commissioner as exempt](#) on its website.

## No liability for super guarantee shortfall

In [Scone Race Club Limited v Commissioner of Taxation \[2019\] FCA 976](#) the Federal Court has set aside assessments that were issued by the Commissioner of Taxation to the taxpayer, a racing club in NSW, in relation to a superannuation guarantee shortfall. The Court found that the riding fees paid to the jockeys were not subject to the superannuation guarantee on the basis that the club was not the employer throughout the relevant period. Longstanding custom and practice within the industry was that it was the trainer, on behalf of owners, who engaged jockeys to ride in races for reward.

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# Global Tax Update

## Latest news from international tax and transfer pricing

### ATO finalise views on cross-border debt issues

The Australian Taxation Office (ATO) has finalised the following guidance on cross-border financing that were previously released in draft:

- [TD 2019/10](#) which clarifies that the debt and equity rules in Division 974 of the *Income Tax Assessment Act 1997* does not limit the operation of the transfer pricing rules in Subdivision 815-B of the *Income Tax Assessment Act 1997*, and
- [TD 2019/12](#) which provides guidance on the type of costs that are debt deductions within the scope of subparagraph 820-40(1)(a)(iii) of the *Income Tax Assessment Act 1997* (relevant for thin capitalisation purposes).

The views expressed in TD 2019/10 mean that taxpayers will need to carefully consider the arm's length nature of all conditions of their cross-border related party financing (and not just pricing conditions), particularly for any arrangements that have less common features.

The conclusions reached in TD 2019/12 mean that taxpayers who have amounts which are classified as debt for tax purposes, but which are not included in their adjusted average debt for thin capitalisation purposes on the basis that those amounts are not debt capital which give rise to debt deductions, should carefully consider what, if any, deductible costs may relate to those instruments.

Ultimately both determinations emphasise the need for careful consideration of the tax consequences of all cross border related party financing. For further details refer to our [TaxTalk Alert](#).

### ATO finalises guidance on hybrid mismatch rules

The ATO has finalised its Law Companion Ruling ([LCR 2019/3](#)) and Practical Compliance Guideline ([PCG 2019/6](#)) on the scope of the hybrid mismatch rules in relation to certain payments that are made between related or unrelated parties under a "structured arrangement". The hybrid mismatch rules are intended to neutralise the effects of hybrid mismatches and can apply to payments between related parties, members of a control group or between related and unrelated parties under a structured arrangement.

Law Companion Ruling LCR 2019/3 seeks to set out the Commissioner's view of the hybrid mismatch law in relation to the phrase "structured arrangement" and "party to the structured arrangement" and should be read in conjunction with PCG 2019/6 which sets out the Commissioner's practical approach for taxpayers to assess their risk of the new rules applying to their circumstances.

The concept of structured arrangement is relevant for determining whether certain transactions are within the scope of the hybrid mismatch rule which can apply to income years commencing on or after 1 January 2019 (ie "structured arrangements") or if not, it is covered by the broader imported mismatch rules which generally have a deferred start date of no earlier than 1 January 2020 (to align with the EU introduction of the hybrid mismatch rules).

### MLI update

Belgium and India have [deposited their instruments of ratification](#) of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI). This means that the MLI will enter into force in relation to Australia's tax treaties with both countries on 1 October 2019.

### G20 policy priorities

The G20 world leaders have released a [declaration](#) at the close of the recent Osaka summit held on 28-29 June 2019. Among other things, the leaders welcomed recent progress on addressing the tax challenges arising from the digitalisation of the economy and said they would redouble efforts for a consensus-based solution by 2020. They also reaffirmed the importance of worldwide implementation of the G20/OECD Base Erosion and Profit Shifting (BEPS) package.

### OECD developments

To support the automatic exchange of information collected under the [OECD's Model Mandatory Disclosure Rules](#) (MDRs) on Common Reporting Standard (CRS) Avoidance Arrangements and Opaque Offshore Structures, the OECD has [released the international administrative and operational framework for the exchange of information collected under the MDRs](#). Separately it has released updated XML schemas for exchanges of information under the CRS, Country-by-Country (CbC) and tax ruling (ETR) information. The CRS and CbC-related schemas will become effective for

all exchanges on or after 1 January 2021, whereas the ETR-related schemas will take effect as from 1 April 2020.

The OECD is seeking [input](#) for the stage 1 Mutual Agreement Procedure (MAP) peer reviews of Andorra, Anguilla, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Faroe Islands, Macau (China), Morocco and Tunisia, and invites taxpayers to submit input on specific issues relating to access to MAP, clarity and availability of MAP guidance and the timely implementation of MAP agreements. Comments due 12 August 2019.

In other OECD developments, Bosnia and Herzegovina, Gibraltar and Morocco has [joined](#) the Inclusive Framework on BEPS.

## Global update on digital taxes

There have been several global digital tax developments since our last update.

The United Kingdom (UK) HM Revenue & Customs (HMRC) has released a [policy paper](#) on the introduction of a 2 per cent digital services tax from 1 April 2020. The proposal is that it will apply to businesses that provide a social media platform, search engine or an online marketplace when the group's worldwide revenues from these digital activities are more than GBP 500 million and more than GBP 25 million of these revenues are derived from UK users. For further information refer to PwC Global [Tax Insights](#).

In addition, France has approved a 3 per cent digital services tax which will be levied on sales generated

in France by digital companies with a revenue of more than Euro 750 million of which at least Euro 25 million is generated in France. The tax will be retrospectively applied to turnover realised in France since 1 January 2019.

## Dutch hybrid mismatch proposal presented to Parliament

A Bill implementing the EU Anti-Tax Avoidance Directive II (ATAD II) has been introduced into the Dutch Parliament and plans to introduce measures addressing the tax effects of 'hybrid mismatches' including mismatches that may result from a difference in tax characterisation of an entity or a financial instrument between two countries. The new legislation is intended to be effective 1 January 2020, with the exception of the 'reverse hybrid rule' which is intended to be effective 1 January 2022. For further information refer to PwC Global [Tax Insights](#).

## Indian Budget impacts foreign investors and multinationals

The Indian Union Budget for 2019 was delivered on 5 July 2019 and includes various proposals affecting foreign investors and multinational enterprises doing business in India. Of particular note is the extension of the reduced corporate tax rate of 25 per cent which applies to certain companies and the introduction of a new regime for tax on the buyback of listed shares. For further information refer to PwC Global [Tax Insights](#).

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# Indirect Tax Update

## Draft GST ruling on creditable acquisitions in a transaction accounts business

The Australian Taxation Office (ATO) has released a draft determination, [GSTR 2019/D1](#), which provides guidance on determining the creditable purpose of acquisitions in relation to transaction accounts (including everyday, savings, cheque, deposit, accounts that also have overdraft facilities, online savings and term deposit accounts) provided by a financial supply provider such as a bank, credit union or building society. Specifically, the draft determination indicates that in the absence of any other potential supplies, an acquisition that has a relevant connection to the supply of a transaction account will either:

- only have a relevant connection to the financial supply of the transaction account (and if so, the acquisition is for a creditable purpose only to the extent the supply of the transaction account is GST-free), or
- have a relevant connection to both the financial supply of the transaction account and the taxable supply of interchange services, ie an acquisition partly for a creditable purpose. This includes acquisitions that have a direct connection to making both supplies, as well as acquisitions that have an indirect connection to all supplies made in the transaction accounts business.

The draft ruling contains various examples to illustrate the Commissioner's views.

Comments on the draft determination are due on 9 August 2019.

## Luxury car tax threshold for 2019/20

The ATO has advised that the luxury car tax (LCT) threshold for the 2019/20 financial year is AUD67,525

up from AUD66,331 for 2018/19. The fuel-efficient car limit for the 2019/20 financial year is AUD75,526, unchanged from the 2018/19 financial year.

Note the ATO is no longer issued Luxury Car Tax Determinations setting out the relevant thresholds.

## Trustee eligible to apply margin scheme

The Administrative Appeals Tribunal (AAT) in [The Trustee for the Seabreeze Estate Unit Trust and Commissioner of Taxation \[2019\] AATA 1395](#) has held that the taxpayer, a trustee for a unit trust, was eligible to apply the margin scheme in calculating the GST payable in relation to the sale of two newly constructed townhouses. The Tribunal found the taxpayer was eligible as it acquired the freehold interest in the property through a taxable supply that was not ineligible for the margin scheme in accordance with Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## AAT refuses custom tariff concession order

The AAT in [Alstom Transport Australia Pty Ltd v Comptroller-General of Customs \[2019\] AATA 1308](#) has affirmed the Comptroller-General's decision and refused the taxpayer's application for a tariff concession order for the import of driverless trains. The Tribunal was satisfied that substitutable goods were produced in Australia at the time the application was lodged, as such, the application did not meet the tariff concession order criteria. The Tribunal observed that the applicable legislation makes no reference to context or environment in relation to the substitutable goods and that what is important is that the substitutable goods are manufactured in Australia and their purpose or object.

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# Personal Tax Update

## Personal income tax plan now law

The Government has passed its [personal income tax plan](#) which was announced in the 2019-20 Federal Budget. The legislated changes include:

- increase to the base and maximum amounts of the low and middle income tax offset (LMITO) to AUD255 and AUD1080, respectively, for the 2018-19, 2019-20, 2020-21 and 2021-22 financial years
- increase to the maximum amount of the low income tax offset from AUD645 to AUD700 from the 2022-23 financial year, and
- reduction in the tax payable by individuals from the 2022-23 financial year by increasing the top threshold of the 19 per cent income tax bracket from AUD41 000 to AUD45 000, and from the 2024-25 financial year by reducing the 32.5 per cent income tax rate to 30 per cent.

The ATO has [announced](#) that it will implement the personal income tax changes retrospectively for taxpayers who had lodged their 2018-19 tax return before the relevant law was enacted so that any affected taxpayers will automatically receive any increase to the LMITO to which they are entitled and that taxpayers will not need to request an amendment.

A summary of these new personal tax changes are outlined in our [Australian Federal Budget 2019-20](#) publication.

## ATO focus on work-related expense claims

The Australian Taxation Office (ATO) has [announced](#) that it is making work-related car expenses a key focus again during Tax Time 2019. This follows warnings by the ATO last year that work-related car expenses would face greater scrutiny.

The ATO has also released a detailed [employees' guide](#) to claiming work expenses to help employees decide whether their expenses are deductible and what records they need to keep to substantiate them.

## ATO rental property toolkit

In a recent review of individual tax returns, the ATO found that nine out of 10 taxpayers with a rental property made mistakes in their tax return. To help taxpayers lodge correctly, the ATO has developed a new [toolkit for rental property owners](#) that focuses on areas where mistakes are commonly made, including:

- interest on a loan taken out to purchase a rental property
- borrowing expenses incurred when taking out a rental property loan
- repairs, maintenance and capital expenditure
- renting out a room, a unit or a whole house on an occasional basis through the sharing economy.

## ATO data matching program – HELP, VSL or TSL debts

The ATO is conducting a [data matching program](#) for individuals with an existing Higher Education Loan Program (HELP), Vocational Education and Training Student Loan (VSL) or Trade Support Loans (TSL) debt by acquiring overseas movement data from the Department of Home Affairs (DHA). The data matching program will be conducted for the 2019-20, 2020-21 and 2021-22 financial years. It will identify HELP, VSL and TSL debtors to whom the HELP, VSL and TSL overseas obligations apply. Their status will be assessed against the ATO records and other data to identify debtors that may not be meeting their registration, lodgement and/or payment obligations.

## Guidance on deceased estates and main residence exemption

On disposal of an ownership interest in a dwelling that passed to an individual beneficiary or the trustee of the deceased's estate within two years of the deceased's death, any capital gain or loss made on the disposal is disregarded. The Commissioner has the discretion to extend the two year period.

The ATO's Practical Compliance Guideline [PCG 2019/5](#) identifies the factors the ATO will consider when deciding whether to exercise the discretion to extend the two year period for purposes of applying the capital gains tax exemption. The PCG also sets out a safe harbour compliance approach that applies as if the ATO had exercised the discretion to allow the longer period. An application for a private ruling should be made where circumstances fall outside of the safe harbour but the Commissioner's discretion to extend the period is sought.

## Taxpayer share trading activities not a business

The Administrative Appeals Tribunal (AAT) in [Hill v Commissioner of Taxation](#) [2019] AATA 1723 has held that the taxpayer, a retired licensed aircraft maintenance engineer, was not carrying on a business of share trading as the activities that were not carried out in a business-like manner. The Tribunal restated the general considerations that are relevant in determining whether a business is being carried on, and noted that a significant investment in the share market was not indicative of a business being carried on. There was no established system and the taxpayer's share trading was infrequent and irregular which pointed to the taxpayer being involved in a series of individual transactions on a speculative basis rather than as a share trader conducting a business.

## Continuance insurance claim assessable

The AAT in [YCNM v Commissioner of Taxation](#) [2019] AATA 1592 has set aside the Commissioner of Taxation's decision and held that the taxpayer was partly assessable on a settlement sum received from an insurer under a deed of release as ordinary income. The fact that the payment of monthly benefits was made in one lump sum did not change its revenue nature if it was essentially designed to compensate income replacement claims or was a payment in substitution of those claims. The Tribunal apportioned the settlement sum between the taxpayer's claim for future Salary Continuance Insurance and future Superannuation Contributions Insurance, and found that the taxpayer was not assessable on the settlement sum to the extent it related to a superannuation continuance benefit.

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## State Taxes Update

### RevenueNSW ruling on aggregation of dutiable transactions

RevenueNSW has released a revenue ruling [DUT 036v3](#) which considers the application of section 25 of the *Duties Act 1997* (NSW) which is to ensure that duty is assessed on a transaction, even where parts of that transaction are comprised in separate documents or presented as apparently distinct transactions. The legislation gives effect to this by aggregating multiple "dutiable transactions" that are essentially one larger transaction, or a series of transactions constituting one arrangement. The ruling primarily refers to transactions over real property, but the general principles would apply to all types of dutiable property.

### Qld land tax and foreign companies and trusts

Recent amendments were made to the QLD land tax law to broaden the application of the absentee land tax surcharge so that it applies to any foreign companies or trustees of foreign trusts holding any land in QLD. The effect of this means that any foreign companies or trustees of foreign trusts (as defined) holding any land in QLD will be subject to:

- the 2 per cent Absentee Surcharge, in respect of the portion of taxable value of taxable land that is equal to or greater than AUD50,000
- an increased rate of land tax, to the extent they have QLD land with a taxable value of more than AUD5M.

In this regard, the Queensland Office of State Revenue (QOSR) has released [LTA000.3.1 – Foreign companies and foreign trusts – Interests of](#)

[foreign persons and related persons](#) which clarifies how interests of foreign persons and related persons will be considered when determining whether foreign persons have a controlling interest in a corporation or at least 50 per cent of the trust interests in a trust.

Companies and trusts that hold QLD land will be sent a letter from the QSOR requiring them to confirm their details, including whether they are “foreign” for the purposes of the provisions, through a new online portal. This is intended to occur prior to the issue of any assessment notices to companies or trusts. It is important that due consideration be given to this issue as the consequences are significant.

## WA duty and property transfers with a bare trustee

The WA Commissioner of State Revenue has updated [Commissioner’s Practice \(DA 3.1\)](#) which explains the factors the Commissioner will consider when determining if there has been a change in beneficial interest between the transfer of property to and from a bare trustee.

## ACT determinations and circulars

The ACT Revenue Office has issued the following determinations to give effect to the measures announced in the 2019-20 ACT Budget:

- [Taxation Administration \(Amounts Payable – Duty\) Determination 2019 \(No 2\)](#) which corrects

errors in the stated duty amounts for a residential property transactions in Table 1 Part 2 of the Taxation Administration (Amounts Payable – Duty) Determination 2019 (No 1).

- [Taxation Administration \(Amounts Payable – Home Buyer Concession Scheme\) Determination 2019 \(No 2\)](#) which, from 1 July 2019, further expands the Home buyer concession scheme (HBCS) by establishing that no duty will be payable on a transfer of a home or vacant land acquired by an eligible home buyer, extending the HBCS to include all types of property whether they are new homes, or established or vacant land; and removing previous property value thresholds.

In addition, the Revenue office has also updated its circulars on the imposition of [penalty tax](#) and [interest](#) applicable to various ACT tax laws.

## SA rewriting stamp duty legislation

RevenueSA is [rewriting](#) the *Stamp Duties Act 1923* (SA) with the aim of amending or abolishing parts of the Act which are redundant or counterproductive to business. It is intended to reduce complexity and facilitate improved compliance and not alter existing government policy. RevenueSA has reviewed the design and structure of the Act by comparing similar legislation in other Australian jurisdictions. Comments were due on 26 July 2019.

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# Superannuation Update

## ATO transitional approach to large APRA super funds and pension tax bonus

The Australian Taxation Office (ATO) has released draft Practical Compliance Guideline [PCG 2019/D2](#) which provides a transitional compliance approach

for large Australian Prudential Regulation Authority (APRA)-regulated superannuation funds that provide a pension tax bonus to members where the superannuation funds are facing practical difficulties in complying with certain legislative requirements. This Guideline does not apply to self-managed superannuation funds and small APRA funds.

Under the guidance, which will apply from 1 July 2017 until 30 June 2020, where a superannuation fund satisfies all of the conditions set out in the Guideline, the ATO will not allocate compliance resources to review the calculation of the superannuation fund's exempt current pension income under Subdivision 295-F of the *Income Tax Assessment Act 1997* as a result of the superannuation fund not incorporating the value of the pension tax bonus into the member's pension account balance when calculating the required minimum pension payments.

Comments are due on 14 August 2019.

## Updated ATO guidance on transition-to-retirement income streams

The ATO has released an [update](#) to Super Guidance Note GN 2019/1 which provides guidance on the changes to transition-to-retirement income streams (TRIS) that commenced from 1 July 2017. A TRIS will move into the retirement phase when the member reaches age 65, retires, becomes permanently incapacitated, or has a terminal medical condition. The conversion to retirement phase is automatic as soon as the member reaches age 65, or if the superannuation income stream starts to be paid to a reversionary beneficiary after the member's death. In all other cases, the member needs to notify their super provider for the TRIS to move into the retirement phase.

## Taxpayer liable to excess transfer balance tax

The Administrative Appeal Tribunal in [Jacobs v Commissioner of Taxation \[2019\] AATA 1726](#) has

held that a taxpayer was liable to pay excess transfer balance tax as they had exceeded the transfer balance cap, and failed to provide evidence to establish that the issued assessment was excessive.

It was not in dispute that the taxpayer's transfer balance account commenced on 1 July 2017 and he was in the retirement phase of his superannuation income stream on 30 June 2017 and that the applicable transfer balance cap was AUD1,600,000. His transfer balance on 1 July 2017 was the sum of his two transfer balance credits and totalled AUD1,630,194.53, which was AUD30,194.53 in excess of the transfer balance cap. The Tribunal also held that the Commissioner did not have discretion to waive the tax liability where a minor error had been made.

## SMSF rollovers in SuperStream to be deferred

The Government has [announced](#) the delay of Self-Managed Super Fund (SMSF) rollovers in SuperStream from November 2019 to March 2021. As part of the 2019-20 Budget measure to bring electronic release authorities into SuperStream, the extension to SMSF rollovers was deferred to March 2021. The extension of SuperStream to SMSF rollovers allows SMSF members to initiate and receive rollovers electronically between an APRA fund and their SMSF. This deferral means that system changes to update SuperStream will only need to be undertaken once, for both sets of changes.

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# Legislative Update

The 46th Federal Parliament resumed for the winter sitting on 2 July 2019.

The Government's immediate priority was the introduction and passage of the Government's personal income tax plan as announced in the 2019-20 Federal Budget:

- [Treasury Laws Amendment \(Tax Relief So Working Australians Keep More Of Their Money\) Act 2019](#) which amends the law to increase the low and middle income tax offset (LMITO), increase the low income tax offset (LITO) and change the personal income tax marginal rates. This Bill passed parliament without amendment and received royal assent on 5 July 2019 (refer to Personal Taxes section for further details).

Other Commonwealth tax and superannuation Bills introduced into Parliament in July 2019 contain measures that were previously contained in previously lapsed Bills as well as some new measures:

- [Customs Amendment \(Immediate Destruction of Illicit Tobacco\) Bill 2019](#), which was introduced into the House of Representatives on 4 July 2019, proposes to amend the *Customs Act 1901* (Cth) to empower the Comptroller-General of Customs to cause tobacco products seized as prohibited imports to be dealt with in a manner he or she considers appropriate, including the immediate destruction of the goods.
- [Treasury Laws Amendment \(2018 Measures No 2\) Bill 2019](#), which was introduced into the House of Representatives on 4 July 2019, proposes to, amongst other things, amend the venture capital and early stage investor provisions to ensure they operate as intended with respect to capital gains tax (CGT) transactions, managed investment trusts, and the early stage investor tax offset (previously included in a lapsed Bill).
- [Treasury Laws Amendment \(Combating Illegal Phoenixing\) Bill 2019](#), which was introduced into the House of Representatives on 4 July 2019, proposes to implement 2018-19 Budget measures (and previously included in a lapsed Bill) to address illegal phoenix activity, including new phoenixing offences to prohibit creditor-defeating dispositions of company property and to allow the Commissioner of Taxation to collect estimates of anticipated goods and services tax (GST) liabilities and make company directors personally liable for their company's GST liabilities.
- [Treasury Laws Amendment \(Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures\) Bill 2018](#), which was introduced into the House of Representatives on 4 July 2019, proposes a broad range of tax related amendments that were announced in the 2018-19 Federal Budget (and previously included in a lapsed Bill), including:
  - amendments to the thin capitalisation rules to require the alignment of the value of assets for thin capitalisation purposes with the value included in financial statements and ensure that foreign controlled Australian tax consolidated groups and multiple entry consolidated groups that have foreign investments or operations are treated as both outward investing and inward investing entities
  - amendments to the GST Act to ensure that offshore suppliers of rights or options to use commercial accommodation in Australia include these supplies in working out their GST turnover, and
  - removal of the liability for luxury car tax from cars that are re-imported following service, repair or refurbishment overseas.
- [Treasury Laws Amendment \(Putting Members' Interests First\) Bill 2019](#), which was introduced into the House of Representatives on 4 July 2019, proposes amendments (previously included in a lapsed Bill) to protect individuals' retirement savings from erosion by ensuring that trustees can only provide insurance to a member of a choice or MySuper product if directed by the member where the member is under 25 years old and begins to hold a new product on or after 1 October 2019 or to members who hold products with balances below AUD6,000.
- [Treasury Laws Amendment \(2018 Superannuation Measures No. 1\) Bill 2019](#), which was introduced into the House of Representatives on 24 July 2019, proposes a number of measures to deal with superannuation (and previously included in a lapsed Bill), including:
  - the 2018-19 Federal Budget measure to allow individuals to avoid unintentionally breaching their concessional contributions cap when

- they receive superannuation contributions from multiple employers, and
- measures to ensure that the cap on tax-free retirement phase assets cannot be circumvented through the use of non-arm's length expenditure or certain strategies using limited recourse borrowing arrangements.
- [Treasury Laws Amendment \(2019 Tax Integrity and Other Measures No. 1\) Bill 2019](#), which was introduced into the House of Representatives on 24 July 2019, proposes amendments to allow taxation officers to disclose the business tax debt information of a taxpayer to credit reporting bureaus when certain conditions and safeguards are satisfied and to confer on the Commissioner functions and powers to develop and/or administer a framework or system for electronic invoicing. In addition it introduced a range of integrity measures:
    - improve the integrity of the tax treatment of concessional loans between tax exempt entities
    - prevent the small business CGT concessions from being available for assignments of the income of a partner and other rights or interests in the income or capital of a partnership that are not a membership interest in the partnership
    - deny deductions for losses or outgoings incurred that relate to holding vacant land by taxpayers other than corporate tax entities, superannuation plans (other than self managed superannuation funds), managed investment trusts or public unit trusts; or unit trusts or partnerships of which all the members are entities of these types
    - extend to family trusts the anti-avoidance rule that applies to other closely held trusts that undertake circular trust distributions so as to allow income tax to be imposed on circular trust distributions at a rate of tax equal to the top marginal tax rate plus the rate of Medicare levy, and
    - improve the integrity of the superannuation system by ensuring that an individual's salary sacrifice contributions cannot be used to reduce an employer's minimum superannuation guarantee (SG) contributions.
- Commonwealth revenue measures that were registered as legislative instruments or regulations since the last edition, include:
- [Taxation Administration – Single Touch Payroll – Grace periods for correcting statements](#) establishes a grace period which allows an entity to correct an error within 14 days of the date on which the error is identified, or in their next regular Single Touch Payroll report for that person, but in all cases no later than the 14th day after the end of the relevant financial year in which the statement was made.
  - [Taxation Administration Act Withholding Schedules 2019](#) contains withholding schedules which specify the formulas and procedures to be used for working out the amount to be withheld by an entity under the pay as you go (PAYG) withholding system. These schedules facilitate the collection of income tax, Medicare levy, Higher Education Loan Program, Student Start-up Loans, Trade Support Loans and Financial Supplement repayments.

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## Other News

### Effective life of depreciating assets for 2019-20

The Australian Taxation Office (ATO) has issued Taxation ruling [TR 2019/5](#) which provides the effective life of depreciating assets applicable from 1 July 2019 which provides taxpayers in specific industries and for specific depreciating assets, the new effective life determinations made by the Commissioner of Taxation.

### Key tax thresholds for 2019-20

The ATO has provided the following thresholds to apply for the 2019-20 income year:

- [Depreciation car limit](#) is AUD57,581
- [CGT improvement threshold](#) for the 2019-20 year is AUD153,093

Note the ATO previously issued Taxation Determinations setting out these threshold but will no longer do so.

### ANAO report on Farm Management Deposits Scheme

The Australian National Audit Office (ANAO) has released its [report](#) on the ATO's administration of the Farm Management Deposits (FMD) Scheme. The ANAO found that the ATO's administration of the scheme was not fully effective. Specifically it identified that the ATO's risk identification and compliance arrangements to support the integrity of the FMD Scheme have not been fully effective. The ATO's compliance arrangements and risk assessment processes were found to have not fully captured the key elements of the Scheme's design. The Department of Agriculture and the ATO have agreed to all the recommendations made by the ANAO.

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