www.pwc.com.au

TaxTalk Monthly

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

October 2019

pwc

Corporate Tax Update

ATO to publish corporate tax transparency data later this year

The Commissioner of Taxation is required to annually publish certain tax information for all corporate tax entities (companies and other entities taxed in a similar manner to companies) with total income of at least AUD 100 million (as disclosed in its income tax return), except Australian-owned private companies with total income of less than AUD200 million. In addition, information will also be reported for an entity reporting petroleum resource rent tax (PRRT) payable.

The Australian Taxation Office (ATO) is preparing to publish the corporate tax transparency data of relevant entities later this year. Specifically, all identified entities should have received a letter in September 2019 advising of the details to be published for the 2017-18 income year, including entities whose tax returns were either lodged or processed after 1 September 2018 for the 2015–16 and/or 2016–167years, if the information had not been published previously.

ATO draft guidance on early stage test for ESIC

The ATO has issued draft taxation determination TD 2019/D5 which provides the Commissioner of Taxation's preliminary view on what is an 'expense' that is 'incurred' for the early stage test which applies for purposes of determining if a company is an early stage innovation company (ESIC). The early stage test includes a requirement that the company issuing the shares, and any of its 100 percent subsidiaries, "incurred total expenses" of AUD1 million or less in the income year preceding the issue of the shares. The draft determination states that expenses are amounts recognised as expenses under general accounting concepts, but the concept of incurred has the same meaning as applicable under the general deduction provisions in s8-1. The relevant test time means the time immediately after the company has issued shares to the investor.

As a practical matter, the draft determination indicates that the Commissioner would not ordinarily devote compliance resources to query or adjust the company's incurred total expenses that use the reported amount of total expenses in the company's tax return, without separately identifying whether those expenses have been 'incurred' in the tax sense. However, compliance action may be taken to verify that the amount of total expenses reported in the tax return is correct.

Comments were due on 11 September 2019.

Proposed amendment to company loss recoupment rules

Treasury has released exposure draft law which deals with and proposes to correct an issue that arises in the context of the current company loss recoupment rules which apply to a listed or widely held company. The proposed amendments modify the continuity of ownership test so that the interposition of a holding company between the tested company and a less than 10 percent direct stakeholder does not cause a failure of the continuity of ownership test. Under current law, a problem arises if, during the test period, a holding company is interposed between the tested loss company and a less than 10 percent direct stakeholder who effectively becomes a less than 10 percent indirect stakeholder. The proposed amendments will operate to ensure that in such a case, the interposition of the holding company does not, of itself, cause a failure of the continuity of ownership test. The amendments are proposed to apply to the interposition of an entity that occurs on or after 1 July 2018. Comments were due on 27 September 2019.

Small Business Ombudsman investigating ATO administration of R&D

The Australian Small Business and Family Enterprise Ombudsman has announced that she is investigating the impact of the ATO's policy and practices on small businesses as it relates to the administration of the Research and Development (R&D) tax incentive. The investigation comes in light of a number of complaints from small businesses about unfair treatment in relation to their R&D tax incentive claims by the ATO and AusIndustry. The Ombudsman will deliver the findings of its investigation in a report to be published shortly.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

David Ireland, Sydney
Sydney Tax Leader
+61 (2) 8266 2883
david.ireland@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

James O'Reilly, Brisbane
Brisbane Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Rob Bentley, Perth
Perth Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Rebecca Cohen, Sydney
IUR Tax Leader
+61 (2) 8266 8476
rebecca.cohen@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Jason Karametos, Melbourne
Industries Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Employment Taxes Update

FBT and ridesharing – a proposed legislative solution

Treasury has released exposure draft law which proposes to amend the *Fringe Benefits Tax Assessment Act 1986* (Cth) to ensure that rideshare arrangements qualify for the fringe benefits tax (FBT) exemption that currently applies to taxi travel.

The Australian Taxation Office (ATO) has stated that the FBT taxi travel exemption currently only applies to travel undertaken in vehicles licensed to operate as a taxi by the relevant state or territory. Subject to consultation on the draft law, once this proposal is finalised and enacted into law, employers will no longer need to pay FBT on any employee rideshare expenses (other than for travel in a limousine) they incur for employees travelling between home and work in the same way as the current law exempts travel in a taxi. The proposed date of effect of the proposed amendment is only in respect of fringe benefits provided on or after the day the measure is enacted. Comments were due on the draft law by 27 September 2019.

SG amnesty reintroduced

On 18 September 2019, the Federal Government introduced the Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019 into Parliament that re-introduces the once-off amnesty to encourage employers to voluntarily disclose historical superannuation guarantee (SG) non-compliance. Employers who take advantage of the re-proposed SG amnesty which will cover SG contribution entitlements referable to the period from 1 July 1992 through to 31 March 2018 will receive the following:

- the removal of the administrative penalty of the SG charge of AUD20 per employee per quarter
- the ability to claim a tax deduction for the payment of underpaid SG during the amnesty period
- a full reduction of penalties that may otherwise apply (up to 200 percent of the SG Charge).

The amnesty period is proposed to be backdated to commence from the start date of the original amnesty proposal (24 May 2018), but it is now extended to run up to six months after enactment of the legislation. Given the time-restricted opportunity for disclosure under this amnesty, employers should take steps to immediately initiate a superannuation review.

For further information refer to our TaxTalk alert.

Remission of additional SG charge

The ATO has issued draft Practice Statement Law Administration PS LA 2019/D1 which provides guidance for ATO staff on the remission of additional SG charge imposed under s59(1) of the *Superannuation Guarantee (Administration) Act 1992* (Cth). It also sets out when penalty relief is appropriate to be applied in limited circumstances where it is considered education is a more effective option to positively influence behaviour. This guidance will be particularly relevant for employers who fail to take advantage of the proposed SG amnesty as noted above and for those SG shortalls

which arise in respect of periods that are not covered by the amnesty, ie after 31 March 2018.

When finalised, it will replace the current PS LA 2011/28 Superannuation guarantee – remission of additional superannuation guarantee charge imposed under s59(1) of the Act.

Comments are due on 4 October 2019.

Productivity Commission's Draft Report on Remote Area Tax Concessions and Payments

The Productivity Commission has released its draft report which assesses remote area tax concessions and payments which include the zone tax offset (ZTO), the remote area allowance (RAA) and the FBT remote area concessions. Some of the key points raised in the report include:

- Remote area tax concessions and payments are outdated, inequitable and poorly designed. They should be rationalised and reconfigured to reflect contemporary Australia.
- The ZTO is ineffective. There is no evidence to suggest that the ZTO currently affects where people choose to live or work. Some areas are no longer isolated, but remain eligible. If the ZTO were to be retained, it needs to be overhauled.
- FBT remote area concessions should be redesigned to be consistent with the fundamental principle of equitable tax treatment while reducing the cost burden on taxpayers. Concessions on employer-provided housing should change such that the current exemption should be reverted to a 50 percent concession and provisions allowing employers to claim housing exemptions solely because it is 'customary' to do so should be removed.

Comments on the draft report are due by 11 October 2019.

Superannuation system integrity and SG compliance Bill

Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2019 has now completed its passage through Parliament. The measures included in this Bill introduces safeguards to ensure the integrity of the superannuation system and streamline compliance with the SG by amending the *Superannuation Guarantee (Administration) Act 1992* to allow individuals to avoid unintentionally breaching their concessional contributions cap when they receive superannuation contributions from multiple employers.

ATO guidance on employee share trusts

The ATO has released draft tax determination TD 2019/D8 which sets out the Commissioner's interpretation of s130-85(4) of the *Income Tax Assessment Act 1997* (Cth) on when a trust is an employee share trust for the purpose of an employee share scheme (ESS). Certain tax concessions are available to the trustee and beneficiaries of such trusts, and the employer company, but only where the trust meets the definition of an 'employee share trust'.

The draft tax determination considers practical issues in applying the definition and in determining whether the sole activities of a trust are for:

- obtaining share or rights in a company
- ensuring that the beneficial interests in those shares or rights are provided to participating employees or their associates
- whether other activities are merely incidental to the above.

Although the views in the determination are proposed to apply to arrangements both before and after its date of issue (18 September 2019), Appendix 2 of the draft determination sets out the ATO's compliance approach in relation to certain pre-existing arrangements that have dividend waiver entitlements. In such cases, the Commissioner will not apply compliance resources to investigate for periods prior to 1 January 2020.

Comments are due 18 October 2019.

Skilled migration occupation list review

The Federal Government has commenced a review of the skilled migration occupation lists to ensure it is responsive to genuine skill needs and regional variations across Australia. This review will inform the next update to the lists, in March 2020.

Payments under facility and administration style arrangements

The Supreme Court of Victoria – Court of Appeal in Commissioner of State Revenue v The Optical Superstore Pty Ltd [2019] VSCA 197 has granted the Commissioner of State Revenue's leave to appeal in relation to certain grounds and ordered the Victorian Civil and Administrative Tribunal's orders to be set aside. The Court of Appeal found that net consultation fees paid to optometrists were 'payments' for payroll tax purposes, notwithstanding the taxpayer had collected and held the monies 'on trust' for the optometrists. This finding is likely to be

of significant interest to many organisations in the health industry.

The Court found that the learned appeal judge misconstrued the words 'amounts paid or payable' in s35(1) of the *Payroll Tax Act 2007* (VIC) and s3C(2)(c) of the *Pay-roll Tax Act 1971* (VIC) by deciding that the expression was not apt to describe the transfer of legal title in money to satisfy a beneficiary's equitable entitlement to that money. The Court also found that the words 'amounts paid or payable' in s35(1) and s3C(2)(c) should have been construed broadly, to capture the provision, giving or transfer of moneys from a bank account of one entity to another entity irrespective of the existence of an express trust.

NSW payroll tax cases

The following NSW payroll tax judgments were recently handed down:

- the Supreme Court of NSW in Winlina Pty Ltd v Commissioner of State Revenue [2019] NSWSC 1080 has held that the taxpayer, member of a payroll tax group, was carrying on a business in NSW for the purposes of Part 5 of the *Payroll Tax Act 2007* (NSW), as such, they were jointly and severally liable for another member company's unpaid payroll tax liabilities, even though that particular company did not employ any person to perform work in NSW or pay wages for work performed in NSW
- the Supreme Court of NSW in Banfirn Pty Ltd v Chief Commissioner of State Revenue [2019] NSWSC 1058 has held that the taxpayer, a member of a payroll tax group, was liable to pay payroll tax for payments made under Labour Hire & Sub-Contract Agreements and Management Labour Agreements, as the agreements were found to result in payments being made by reference to results and accordingly they were found to be "employment agency contracts" within the meaning of s37 of the *Payroll Tax Act 2007* (NSW).

QLD payroll tax ruling on fringe benefits

The Queensland Commissioner of State Revenue has issued Public Ruling PTA003.5 which provides guidance on the treatment of fringe benefits (as defined in the *Fringe Benefits Tax Assessment Act 1986* (Cth)), for the purposes of determining wages under the *Payroll Tax Act 1971* (QLD). The definition of 'wages' in the Payroll Tax Act includes fringe benefits, other than tax-exempt body entertainment fringe benefits and car parking fringe benefits. The ruling addresses the following:

- calculating the value of fringe benefits for payroll tax purposes
- clarifying the treatment of fringe benefits with a nil taxable value and exempt benefits where such benefits also fall within another part of the definition of wages
- explaining the requirements of the alternative method of declaring fringe benefits
- explaining the method of calculating the Queensland component of fringe benefits when they are not readily identifiable
- the adoption of the ATO's FBT rulings.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Katie Lin, Sydney
Partner
+61 (2) 8266 1186
katie.f.lin@pwc.com

Rohan Geddes, Sydney
Partner
+61 (2) 8266 7261
rohan.geddes@pwc.com

Greg Kent, Melbourne
Partner
+61 (3) 8603 3149
greg.kent@pwc.com

Anne Bailey, Melbourne
Partner
+61 (3) 8603 6818
anne.m.bailey@pwc.com

Stephanie Males, Canberra
Partner
+61 (2) 6271 3414
stephanie.males@pwc.com

Maria Ravese, Adelaide
Partner
+61 (8) 8218 7494
maria.a.ravese@pwc.com

Paula Shannon, Brisbane
Partner
+61 (7) 3257 5751
paula.shannon@pwc.com

Lisa Hando, Perth
Partner
+61 (8) 9238 5116
lisa.hando@pwc.com

Global Tax Update

Latest news from international tax and transfer pricing

Federal Court overturns ATO transfer pricing position

The Federal Court in Glencore Investment Pty Ltd v Commissioner of Taxation [2019] FCA 1432 has held that the taxpayer successfully established that the prices it was paid for the supply of copper concentrate were within an arm's length range and rejected the assessments issued by the Commissioner of Taxation. Specifically, the Court held that amended assessment were excessive and not supported by former Division 13 of the *Income Tax Assessment Act 1936* (Cth) and Division 815-A of the *Income Tax Assessment Act 1997* (Cth), as the consideration received for the concentrate fell within the range of consideration that might reasonably be expected to have been paid between independent parties dealing at arm's length. Subject to the outcome of any appeal, this latest transfer pricing decision is expected to have a significant impact on a broad range of outstanding transfer pricing disputes. For further insights refer to our TaxTalk Alert.

In response, the ATO issued a media release stating that it will consider the decision and whether an appeal is appropriate.

High Court dismisses Commissioner's appeal concerning foreign corporate limited partnership's gains

The High Court of Australia has dismissed the Commissioner of Taxation's application for special leave to appeal against the decision of the Full Federal Court in Commissioner of Taxation v Resource Capital Fund IV LP [2019] FCAFC 51. The Full Federal Court had 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. Specifically, the Full Federal Court confirmed that a corporate limited partnership is a taxable entity and that unpaid tax can be collected from individual partners in the event of non-payment by the partnership. Although the Full Court agreed that the underlying partners were able to claim the protection of the Australia-United States tax treaty, it concluded that RCF IV itself was not. For further insights on the Full Federal Court's refer to our TaxTalk Alert.

Board of Taxation review corporate tax residency rules

The Board of Taxation has released its consultation guide on its review of corporate tax residency. The purpose of the review is to ensure that the residency rules are operating appropriately in light of modern, international and commercial board practices and international tax integrity rules. The consultation paper sets out some observations on the current corporate residency rules, and poses a number of questions about the ongoing viability of these rules for stakeholder consideration. Submissions are due on 4 October 2019.

ATO's compliance approach on thin capitalisation arm's length debt test

The Australian Taxation Office (ATO) has issued draft Practical Compliance Guideline PCG 2019/D3 which sets out its draft views on practical aspects of the arm's length debt test which is relevant for Australia's thin capitalisation purposes. The draft guideline also provides a risk assessment framework that outlines the ATO's compliance approach to an application of the arm's length debt test in certain circumstances that are identified as low risk. The ATO is of the view that Australian businesses are not commonly geared in excess of the safe harbour debt amount, and therefore the 'choice' to apply the arm's length debt test carries the weight of undertaking a more robust analysis to demonstrate the commerciality of the quantum of debt capital in the entity as the maximum allowable debt under Australia's thin capitalisation provisions.

The draft guideline is proposed to have effect from 1 July 2019 and will apply where the arm's length debt test has been used to establish an entity's maximum allowable debt from this date. Comments on the draft are due by 9 October 2019. For further insights refer to our TaxTalk Alert.

Distributions of foreign sourced capital gains to non-resident trust beneficiaries

The ATO released the following draft tax determinations which provides its preliminary views on the treatment of distributions of foreign sourced capital gains distributed to non-resident beneficiaries of a discretionary trust:

- TD 2019/D6 which sets out the Commissioner's preliminary view that Subdivision 855-A (or s768-915(1)) of the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997) does not disregard a capital gain that a foreign resident (or temporary resident) beneficiary of a resident non-fixed trust makes because of s115-215(3). The Commissioner rejects an alternative view that a capital gain or loss that a foreign resident beneficiary makes indirectly from a non-'taxable Australian property' (TAP) asset of a non-fixed trust can be disregarded.
- TD 2019/D7 which sets out the Commissioner's preliminary view that the source concept in Division 6 of Part III of the *Income Tax Assessment Act 1936* (Cth) (ITAA 1936) is not relevant in determining whether a non-resident beneficiary of a resident trust (or trustee for them) is assessed on an amount of a trust capital gain. The same view applies in relation to a non-resident beneficiary's share of TAP gains of a non-resident trust and a trustee's share of a capital gain. The ATO has acknowledged that prior to the trust streaming amendments in 2011, for the 2011 and earlier income years, source was relevant in determining whether a non-resident beneficiary was subject to tax on capital gains. The determination, once finalised, is to apply for the 2019-20 income year and later income years. For the 2018-19 and earlier income years, the Commissioner will not seek to disturb approaches taken for capital gains from non-TAP assets of the trust which are consistent with the source principles present in the pre-2011 streaming legislation. This is provided that such approaches are not artificial or contrived to manipulate the source of the gain or otherwise have a dominant purpose of tax avoidance, and that the non-resident beneficiary has a genuine entitlement to, and is intended to benefit from, the capital gain.

Comments were due on 27 September 2019.

Simplified transfer pricing record keeping options

The ATO has published an update to Practical Compliance Guideline PCG 2017/2 which sets out simplified transfer pricing record keeping options that reflect the types of transactions or activities the ATO believe are low-risk in the context of international related party dealings. This update provides that in working out eligibility for the simplified transfer pricing record keeping options for the 2020 income year for a combined cross-border loan balance of AUD50 million or less for the Australian economic group:

- the minimum interest rate for a small related party *outbound* loan
- the maximum interest rate for a small related party *inbound* loan

is 2.33 per cent.

New thin capitalisation valuation rules now law

The 2018-19 Federal Budget measure to amend the thin capitalisation rules to require the alignment of the value of assets for thin capitalisation purposes with the value included in financial statements (Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019) is now law and effective for all purposes for any income year commencing on or after 1 July 2019. Companies that previously accessed the thin capitalisation valuation concessions will need to consider the effect of the changes and whether previously relied on 'notional' revaluations to fair value used only for thin capitalisation purposes are appropriate to be reflected in their actual statutory financial statements. For an outline of the accounting limitations and rules for valuing assets, refer to this PwC IFRS Spotlight.

It should also be noted that this Bill also included amendments to 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 for income years beginning on or after 1 July 2019.

MLI update

Canada has deposited its instrument of ratification of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI) which means that the MLI enters into force in relation to the Australia-Canada tax treaty on 1 December 2019. Switzerland has also deposited its instrument of ratification, but has not listed their treaty with Australia as a treaty that would be covered by the ML.

Tax treaty between Australia and Israel

The Australian Government has introduced legislation into Federal Parliament for the implementation of the tax treaty between Australia and Israel which was signed on 28 March 2019. The Australia-Israel tax treaty will enter into force once both countries have completed their domestic requirements to bring the new tax treaty into force, including amending Australia's domestic law. See also the Government's media release.

Key features of the treaty include reduced withholding tax rates including a maximum five per cent rate for royalties that arise in Australia or Israel that are beneficially owned by a resident of the other country and rules to reduce potential double taxation. The treaty also includes various G20/Organisation for Economic Cooperation and Development (OECD) Base Erosion and Profit Shifting (BEPS) treaty-related recommendations which are identified below.

Australia-Israel treaty provisions	BEPS 2015 Final Reports
Title	Action 6
Preamble	Action 6
Article 1 (Persons covered), paragraph 2	Action 2
Article 5 (Permanent establishment), paragraphs 5, 6, 7, 9, 10 and subparagraph 8(a)	Action 7
Article 7 (Business profits), paragraph 9	Action 14
Article 9 (Associated enterprises), paragraph 4	Action 14
Article 10 (Dividends), subparagraph 2(a)	Action 6
Article 13 (Alienation of property), paragraph 2	Action 6
Article 22 (Limitation on Benefits)	Action 6
Article 25 (Mutual agreement procedures), paragraphs 1, 2 and 3	Action 14

The legislation also introduces a new deemed source of income rule that ensures Australia can exercise its taxing rights under international tax agreements that are made on or after 28 March 2019. The effect of the deemed source rule is consistent with the specific source rules that apply for each of Australia's existing tax treaties.

Proposed technical corrections impacting foreign equity distribution

Treasury has released exposure draft law which proposes technical amendments to correct an error with the meaning of foreign equity distribution in the context of the exemption that may apply under Subdivision 768-A of the ITAA 1997. The proposed amendment which will replace the term 'a foreign resident' with 'not a Part X Australian resident (within the meaning of Part X of the ITAA 1936)' ensures that certain dividends paid by dual resident companies to Australian corporate tax residents can potentially qualify as non-assessable non-exempt income with retrospective application from 17 October 2014. Comments on the draft law were due on 27 September 2019.

Global Tax Policy Reforms

The OECD has released the Tax Policy Reforms 2019 publication which describes the latest tax reforms across 35 OECD members, as well as in Argentina, Indonesia and South Africa. The report identifies major tax policy trends and highlights that fewer countries have introduced comprehensive tax reform packages in 2019 compared to previous years.

The most comprehensive tax reform was introduced in the Netherlands. Other significant tax changes have been implemented in Lithuania (labour taxes), Australia (personal income taxes), Italy (corporate income tax) and Poland (personal and corporate income taxes). In other countries, tax reforms in 2019 have been less significant and often undertaken in a piecemeal fashion.

The report observes that as countries are facing many significant challenges, such as weakening economic growth, ageing populations, income and wealth inequality, the changing nature of work and climate change, the appetite for structural tax reforms seems to be waning and bolder tax reforms will be needed to address future challenges.

OECD releases 2018 mutual agreement procedure statistics

The OECD has released the mutual agreement procedure (MAP) statistics for 2018. Key highlights include:

- in comparison with 2017, new transfer pricing cases are up by almost 20 per cent and other cases by more than 10 per cent
- on average, transfer pricing cases continue to take more time
- more than 80 per cent of MAPs concluded in 2018 resolved the issue for transfer pricing cases and more than 75 per cent for other cases.

For the first time, the 2018 MAP statistics compare the reporting jurisdictions' performance with respect to key indicators such as the time taken to close MAP cases and the number of MAP cases closed compared to a jurisdiction's caseload, for each type of cases.

Other OECD developments

The OECD has released the outcomes of the second phase of peer reviews of the BEPS Action 13 Country-by-Country (CbC) reporting initiative, demonstrating strong progress in continuing efforts to improve the taxation of multinational enterprises (MNEs) worldwide. Highlights include:

- practically all large MNEs are now covered where over 80 jurisdictions have already introduced legislation to impose a filing obligation on MNE groups, covering almost all MNE groups with consolidated group revenue at or above the threshold of EUR750m (USD828m)
- implementation of the CbC reporting is largely consistent with BEPS Action 13
- over 2,200 exchange relationships are now in place, with the first exchanges of CbC reports having taken place in June 2018.

In other OECD developments:

- Ecuador and Serbia deposited their instruments of ratification for the multilateral Convention on Mutual Administrative Assistance in Tax Matters
- the OECD has also released a report on tax morale across developing countries– what drives people and business to pay tax? The report builds on previous OECD research to identify some of the key socio-economic and institutional drivers of tax morale, and seeks to test for evidence of the social contract by examining the impact of public services on tax morale.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

Peter Collins, Melbourne
International Tax Leader
+61 (3) 8603 6247
peter.collins@pwc.com

Michael Taylor, Melbourne
Partner
+61 (3) 8603 4091
michael.taylor@pwc.com

Greg Weickhardt, Melbourne
Partner
+61 (3) 8603 2547
greg.weickhardt@pwc.com

Nick Houseman, Sydney
Australian Transfer Pricing Leader
+61 (2) 8266 4647
nick.p.houseman@pwc.com

Angela Danieletto, Sydney
Partner
+61 (2) 8266 0973
angela.danieletto@pwc.com

Eddy Moussa, Sydney
Partner
+61 (2) 8266 9156
eddy.moussa@pwc.com

Jonathan Malone, Sydney
Partner
+61 (2) 8266 4770
jonathan.r.malone@pwc.com

Indirect Tax Update

Ruling on supplies of intangibles connected with Australia

The Australian Taxation Office (ATO) has issued draft GST Ruling GSTR 2019/D2 which provides the Commissioner of Taxation's preliminary view as to when a supply of anything other than goods or real property (ie an intangible) is connected with the indirect tax zone for purposes of the goods and services tax (GST) (specifically under paragraphs 9-25(5)(a), (b) and (c) and Division 85 of *A New Tax System (Goods and Services Tax) Act* 1999 (Cth)). By way of background for a supplier to be liable for GST on a taxable supply, one of the requirements is that the supply must be connected with the indirect tax zone (Australia).

According to the ruling, a non-resident entity with an Australian GST presence will be treated in the same way as a domestic entity. Where a non-resident entity does not have an Australian GST presence, they will generally only be subject to GST on supplies of intangibles to unregistered entities in Australia. The draft ruling also explains exclusions to the 'connected with Australia' rules, where some supplies of intangibles made by non-residents are treated as being not connected with Australia.

Comments are due on 16 October 2019.

Offshore suppliers of Australian accommodation now subject to GST

The 2018-19 Federal Budget measure to require offshore suppliers of rights or options to use commercial accommodation in Australia to include these supplies in working out their GST turnover.(Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019) is now law and effective for relevant supplies where consideration is first received, or before

consideration is received an invoice is issued, on or after 1 July 2019. This means that an offshore entity that sells taxable accommodation and has turnover over the GST threshold (AUD75,000) is required to charge GST on the supply.

The ATO has issued guidance on the application of this new law, which may require an affected offshore supplier to register for GST within 21 days if current or projected GST turnover totals AUD75,000 or more. However, the ATO recognises the administrative difficulty in transitioning into the Australian GST and allows an entity to apply to the ATO for concessional arrangements for sales made within the first 12 months of the measure which can result in lodgment or payment deferrals and remission of any penalties or interest.

In addition, this Bill also includes amendments to remove liability for luxury car tax from cars that are re-imported following service, repair or refurbishment overseas which apply retrospectively to importations made on or after 1 January 2019.

Expansion of estimates regime to GST, LCT and WET

The ATO has issued draft practical compliance guideline PCG 2019/D4 which explains how the Commissioner of Taxation intends to administer changes proposed by Schedule 3 to the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 which brings GST, luxury car tax (LCT) and wine equalisation tax (WET) within the existing estimates and director penalty regimes. This Guideline focuses on the expansion to estimates. The estimates regime enables the Commissioner to make an estimate of certain unpaid and overdue tax-related liabilities and recover the amount of the estimate. Comments are due on 4 October 2019.

Update to forms for paying GST at settlement

On or after 1 July 2018, an entity that purchases new residential premises or potential residential land may be required to withhold an amount from the price of the supply and pay it to the ATO. In relation to this obligation, the ATO has updated the following GST at settlement forms:

- GST property settlement withholding notification form which advises the ATO that a contract has been entered into and there is a withholding obligation. It also advises the supplier details, which is where GST property credits are allocated.
- GST property settlement date confirmation form that confirms that settlement has occurred or when the first instalment under an instalment contract is made.

No entitlement to decreasing adjustments to LCT and input tax credits

The Federal Court in Stallion (NSW) Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia [2019] FCA 1306 held that the taxpayer, a company with a motor vehicle dealer's license which was incorporated and registered for GST, was not entitled to input tax credits under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and luxury car tax (LCT) adjustments under the *A New Tax System (Luxury Car Tax) Act 1999* (Cth) in relation to GST it paid on various luxury cars it purportedly sold to another party. The Court found that the taxpayer did not establish that there was a genuine on-sale of luxury cars to the other party that would have entitled it to claim decreasing LCT adjustments or input tax credits. The Court also found that the taxpayer had not established that it acquired the luxury cars beneficially, but rather it had acquired them pursuant to an arrangement but pursuant to which the parties intended that beneficial title to the vehicles rested with the other party on acquisition from the relevant dealers.

Customs tariff classifications of imported aluminium extrusions in profile form

The Administrative Appeals Tribunal in Solu Pty Ltd v Comptroller-General of Customs [2019] AATA 2584 has set aside the decisions of the Comptroller-General of Customs and found various types of imported aluminium extrusions in profile form to be classified as either "base metal mountings, fittings and similar articles for furniture etc" or "other furniture and parts thereof" under the *Customs Tariff Act 1985* (Cth). The Tribunal remitted to the Comptroller-General for the appropriate calculation of duty and/or refund payable for the subject goods.

ANAO reports on management of Tourist Refund Scheme

The Australian National Audit Office (ANAO) has released its report on the audit of the management of the tourist refund scheme (TRS). Under the TRS, travellers leaving Australia can claim a refund of the GST and WET that they have paid on goods that they have purchased in Australia within the previous 60 days. The objective of this audit was to examine whether the TRS is being effectively administered, with the appropriate management of risks. Department of Home Affairs (DHS), Treasury and the ATO. The ANAO found that the administration of the TRS by DHS and the ATO has been partly effective, and that DHS and ATO governance processes and procedures largely support effective

administration. The ANAO noted that while governance arrangements are in place, procedural guidance and performance information could be improved. The DHS, Treasury and the ATO have agreed to all the recommendations made by the ANAO.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Michelle Tremain, Perth
Indirect Tax Leader
+61 (8) 9238 3403
michelle.tremain@pwc.com

Jeff Pfaff, Brisbane
Partner
+61 (7) 3257 8729
jeff.pfaff@pwc.com

Ross Thorpe, Perth
Partner
+61 (8) 9238 3117
ross.thorpe@pwc.com

Adrian Abbott, Sydney
Partner
+61 (2) 8266 5140
adrian.abbott@pwc.com

Brady Dever, Sydney
Partner
+61 (2) 8266 3467
brady.dever@pwc.com

Matt Strauch, Melbourne
Partner
+61 (3) 8603 6952
matthew.strauch@pwc.com

Gary Dutton, Brisbane & Sydney
Partner
+61 (7) 3257 8783
gary.dutton@pwc.com

Mark Simpson, Sydney
Partner
+61 (2) 8266 2654
mark.simpson@pwc.com

Personal Tax Update

Taxpayer wins in High Court special leave proceedings to resolve the meaning of "permanent place of abode"

The High Court of Australia has dismissed the Commissioner of Taxation's application for special leave to appeal against the decision of the Full Federal Court in Harding v Commissioner of Taxation [2019] FCAFC 29 which held that the taxpayer, who was an Australian citizen living outside of Australia in a temporary and furnished apartment overseas, was not an Australian tax resident. The decision to dismiss the special leave application confirms that, for the purposes of determining whether an individual is a resident of Australia, the phrase "permanent place of abode" should not be determined by reference to a specific house or dwelling, but should be determined more broadly by reference to a particular "country or state". For further detail, refer to our TaxTalk Alert.

Personal services income

The Administrative Appeals Tribunal (AAT) in Ariss v Commissioner of Taxation [2019] AATA 2958 has held that the taxpayer, an information technology specialist, was assessable on amounts paid to clients for services provided as they were found to be ordinary income as well as personal services income (PSI). The AAT found that the taxpayer did not pass the PSI "results test" because he was paid for performing work and providing services rather than producing a result and he did not satisfy any of the other personal services business tests, being the unrelated clients test, employment test, or the business premises test. The Tribunal also found that the taxpayer was not entitled to deductions for amounts paid for clerical duties provided by the taxpayer's spouse since the claim for the share of income nominally attributed for that work was unreasonable. Further deductions claimed for superannuation and travel expenses were also found to not be deductible.

Taxpayer assessable on compensation payment

The AAT in Zaghloul v Commissioner of Taxation [2019] AATA 3351 has held that the taxpayer who received a compensation payment from his employer, was assessable on the payment as ordinary income. The Tribunal found that the payment represented the taxpayer's entitlement to weekly payments to compensate him for lost income. The Tribunal rejected the taxpayer's argument that the payment should be treated as a capital payment and therefore not assessable income, as they payment received by the taxpayer did not relate to the disposal of their right to receive compensation.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Bruce Ellis, Melbourne
Partner
+61 (3) 8603 3303
bruce.ellis@pwc.com

Glen Frost, Sydney
Partner
+61 (2) 8266 2266
glen.frost@pwc.com

Martina Crowley, Perth
Partner
+61 (8) 9238 3222
martina.crowley@pwc.com

Amy Etherton, Newcastle
Partner
+61 (2) 4925 1175
amy.etherton@pwc.com

Samantha Vidler
Partner
+61 (7) 3257 8813
samantha.vidler@pwc.com

State Taxes Update

Tasmania – Foreign investor proposed changes

The Tasmanian Government has announced that it has been consulting on various state tax changes affecting foreign investors, including proposed changes to the definition of 'foreign person' in the *Duties Act 2001*. This includes the following:

- legislation proposed to be introduced in the current session of Parliament to ensure the definition of a 'foreign person' remains consistent with the Government's original policy intent
- THE rate of the Foreign Investor Duty Surcharge (FIDS) on the purchase of residential property will now be increased from 7 percent announced in the State Budget to 8 percent, bringing Tasmania into line with Victoria and NSW. The increase in the FIDS on the purchase of primary production land will remain at the same level (1.5 percent) as announced in the 2019-20 State Budget
- the Government has decided not to proceed with the introduction of a foreign investor land tax surcharge as was proposed.

NSW – Federal Financial Relations Review

The New South Wales (NSW) Treasury has released the terms of reference of its Federal Financial Relations Review which was announced by the NSW Government as part of the 2019-20 NSW Budget, with the aim to deliver a roadmap to more sustainable funding arrangements and greater financial autonomy for NSW.

The Review will, among other things, consider the interactions between different levels of government in regards to state funding arrangements and examine the NSW revenue system with a focus on Commonwealth funding arrangements including the design, complexity and number of funding agreements with the Commonwealth. The Review Panel will be publishing a Discussion Paper ahead of broad consultations later this year. A Final Report with recommendations will be delivered in the first half of 2020.

SA – Land tax reforms

The South Australian (SA) Government has announced a land tax reform package to reduce total revenue collected from land tax and to implement a fairer, more competitive land tax system. The proposed changes are identified in draft Land Tax (Miscellaneous) Amendment Bill 2019 and cover a number of measures relating to land tax commencing 1 July 2020 including:

- an increase in the tax-free threshold to AUD450,000
- a reduction in the top land tax rate from 3.7 to 2.4 percent
- the introduction of improved aggregation of ownerships for land tax purposes (including a surcharge on land held in certain trusts).

Comments are due on 2 October 2019.

Duty decisions

The following duty cases were issued since our last update:

The New South Wales Civil and Administrative Tribunal in Racing NSW v Chief Commissioner of State Revenue [2019] NSWCATAD 172 has affirmed the decision of the Chief Commissioner and held that Racing NSW was not exempt from duty under s275 and s275A of the *Duties Act 1997* (NSW) as the taxpayer was not a body corporate of a charitable or benevolent nature.

The Victorian Civil and Administrative Tribunal in GJ Grantham Pty Ltd v Commissioner of State Revenue (Review and Regulation) [2019] VCAT 1275 has held that the applicants, partners in a

partnership, who undertook share acquisitions relating to the unwinding of the partnership and the effective division of nine freehold properties between entities was not exempt from duty by virtue of s89D and s89E of the *Duties Act 2000* (VIC).

The State Administrative Tribunal of Western Australia in Freedom Willetton Pty Ltd and Anor v Commissioner of State Revenue [2019] WASAT 69 has confirmed the duties assessment which issued to the taxpayers who were parties of a joint venture arrangement which was entered into with the intention to amalgamate a portion of land to create a single lot. There was an agreement for the transfer of dutiable property that was chargeable with duty at the general rate. The Tribunal rejected the taxpayer's argument that only nominal duty was chargeable pursuant to s118(2)(a) of the *Duties Act 2008* (WA) as there had been a change in the beneficial ownership of the dutiable property. The Tribunal also found that for s118 to apply, the transfer of dutiable property must be made by a transferor to a trustee to be held solely as trustee for the transferor without any change in the beneficial ownership of the dutiable property and in this case, the applicable property was not found to be held solely as trustee for the transferor.

Land tax decisions

The following land tax cases were issued since our last update:

- The High Court of Australia in Australian Investment and Development Pty Ltd v Commissioner of State Revenue [2019] HCASL 293 has dismissed the taxpayer's special leave to appeal against the decision of the Supreme Court of Victoria – Court of Appeal. The Court of Appeal had found that the taxpayer was not entitled to the primary production exemption from land tax and even if the relevant land was 'outside greater Melbourne', the requirements of s65 of the *Land Tax Act 2005* (Vic) could not be satisfied.
- The Victorian Civil and Administrative Tribunal in Pitt v Commissioner of State Revenue [2019] VCAT 1310 has held that the taxpayer was not entitled to the principal place of residence exemption under s54 of the *Land Tax Act 2005* (VIC) as the relevant properties were not 'used solely for the private benefit and enjoyment' of the taxpayer, and as such was liable to land tax. The Tribunal found that the other residents had 'free and unrestricted' access to the relevant properties.
- The Victorian Civil and Administrative Tribunal in Bansal v Commissioner of State Revenue [2019] VCAT 1451 has held that the taxpayer was not exempt from land tax as they were not entitled to the principal place of residence exemption. The Tribunal found that the taxpayer did not continuously use and occupy the relevant property as their principal place of residence throughout the period from 1 July to 31 December, as such, they were not entitled to access the exemption from land tax for the following calendar year. The temporary absence rule only applies to subsequent land tax years if a person first establishes the principal place of residence exemption for a given land tax year.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Costa Koutsis, Sydney
Partner
+61 (2) 8266 3981
costa.koutsis@pwc.com

Rachael Cullen, Sydney
Partner
+61 (2) 8266 1035
rachael.cullen@pwc.com

Barry Diamond, Melbourne
Partner
+61 (3) 8603 1118
barry.diamond@pwc.com

Stefan DeBellis, Brisbane
Partner
+61 (7) 3257 8781
stefan.debellis@pwc.com

Rachael Munro, Perth
Partner
+61 (8) 9238 3001
rachael.munro@pwc.com

Cherie Mulyono, Sydney
Partner
+61 (2) 8266 1055
cherie.mulyono@pwc.com

Superannuation Update

Proposed technical corrections to downsizer contributions rules

Treasury released exposure draft law which proposes technical amendments relating to the superannuation downsizer contributions rules to ensure that the law operates as intended. In broad terms, the downsizer rules operate from 1 July 2018 to allow an individual who is at least 65 years old and meets the eligibility requirements to choose to make a downsizer contribution into superannuation of up to AUD300,000 from the proceeds of selling their home.

Specifically, the proposed amendments include ensuring the following:

- an individual can make a downsizer contribution in respect of the proceeds from a property that was held by their spouse where the property is a pre-Capital Gains Tax (CGT) asset that would have been subject to the main residence exemption if it had been acquired after 19 September 1985
- the cap on the amount of downsizer contributions that an individual can make is calculated correctly where their spouse has previously made a downsizer contribution in relation to another property
- when working out the maximum amount of downsizer contributions that an individual can make, the market value substitution rule (which applies generally in working out an amount of capital proceeds for CGT purposes) cannot increase the amount of capital proceeds received in relation to the disposal of their ownership interests in a dwelling.

Comments on the draft law were due on 27 September 2019.

New super measures passed

Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2019 which proposes a number of measures to deal with superannuation has now completed its passage through Parliament. The measures in this package take effect from 1 July 2018 and include:

- the 2018-19 Federal Budget measure to allow individuals to avoid unintentionally breaching their superannuation concessional contributions cap (AUD 25,000) when they receive superannuation contributions from multiple employers. This measure provides a framework for individuals to apply to the Commissioner of Taxation for an employer shortfall exemption certificate, which prevents their employer from having a superannuation guarantee shortfall if they do not make superannuation contributions for a period
- ensuring that the non-arm's length income rules for superannuation entities apply in situations where a superannuation entity incurs non arm's length expenses in gaining or producing the income
- amending the total superannuation balance test so that, in certain circumstances, it takes into account the outstanding balance of a limited recourse borrowing arrangement that is entered into by the trustee of a regulated superannuation fund that is an SMSF or that has less than five members.

ATO focus on SMSF investment strategy

The ATO recently contacted about 17,700 self-managed super funds (SMSFs) and their auditors where 2018 SMSF annual return data indicated these SMSFs may be holding 90 percent or more of their retirement savings in one asset or a single asset class. The ATO's concern is that that these SMSF trustees may not have given due consideration to diversification of the fund's investments when formulating and reviewing their investment strategy which is a requirement under the *Superannuation Industry (Supervision) Regulations 1994*. Trustees of such funds are reminded to review their investment strategy and clearly document the reasons behind the investment decisions.

Consequences for failing to lodge SMSF return on time

The ATO has advised that from 1 October 2019, if a SMSF's annual return is more than two weeks overdue and is not otherwise subject to lodgment deferral, it will change the fund's status to 'Regulation details removed' which means APRA funds will not roll over any member benefits to the SMSF and employers will not make any superannuation guarantee (SG) contribution payments for members of the SMSF.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Marco Feltrin, Melbourne
Partner
+ 61 (3) 8603 6796
marco.feltrin@pwc.com

Abhi Aggarwal, Brisbane
Partner
+ 61 (7) 3257 5193
abhi.aggarwal@pwc.com

Alice Kase, Sydney
Partner
+ 61 (2) 8266 5506
alice.kase@pwc.com

Mark Edmonds, Sydney
Partner
+ 61 (2) 8266 1339
mark.edmonds@pwc.com

Matthew Strauch, Melbourne
Partner
+ 61 (3) 8603 6952
matthew.strauch@pwc.com

Ken Woo, Sydney
Partner
+ 61 (2) 8266 2948
ken.woo@pwc.com

Naree Brooks, Melbourne
Partner
+ 61 (3) 8603 1200
naree.brooks@pwc.com

Legislative Update

Federal Parliament resumed for the spring sitting on 9 September 2019. Commonwealth tax and superannuation Bills introduced into Parliament in September 2019 contain measures that were previously contained in previously lapsed Bills as well as some new measures:

- Treasury Laws Amendment (International Tax Agreements) Bill 2019, which was introduced into the House of Representatives on 19 September 2019, proposes to give the force of law to the double tax agreement between the Government of Australia and the Government of the State of Israel and also introduces a domestic source of income rule to ensure that Australia can exercise its taxing rights under the Convention and future international tax agreements. See also the Government's media release.
- Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019, which was introduced into the House of Representatives on 18 September 2019, proposes a one-off amnesty to encourage employers to self-correct historical Superannuation Guarantee (SG) non-compliance. The amendments will also limit the Commissioner's ability to remit penalties for historical SG non-compliance, where an employer fails to disclose information relevant to their historical SG shortfall. See also the Government's media release.
- Treasury Laws Amendment (2019 Measures No. 2) Bill 2019, which was introduced into the House of Representatives on 18 September 2019, proposes (amongst other things) amendments to extend the application of the concessional tax treatment for genuine redundancy and early retirement scheme payments to amounts paid to individuals who are at least 65 years of age provided the dismissal or retirement occurs before they reach pension age, Luxury Car Tax (LCT) refund entitlements for eligible primary producers and tourism operators, and allow for regulations to be made to prescribe a rate of interest which is payable on amounts held by the Commissioner of Taxation which are proactively reunified into a person's superannuation account.
- The Currency (Restrictions on the Use of Cash) Bill 2019, which was introduced into the House of Representatives on 19 September 2019, proposes to establish a cash payment limit and introduce offences for entities that make or accept cash payments of AUD10,000 or more from 1 January 2020.

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

- A New Tax System (Luxury Car Tax) Regulations 2019 remake and improve the operation of the A New Tax System (Luxury Car Tax) Regulations 2000 (the Sunsetting Regulations) before they sunset on 1 October 2019. The New Regulations support the operation of the Luxury Car Tax by defining when a vehicle is an emergency vehicle which is exempt from the luxury car tax, and defining the term 'refund eligible car' to provide a tax refund for certain cars used in primary production and tourism industries.
- A New Tax System (Wine Equalisation Tax) Regulations 2019 remakes and improves the operation of the A New Tax System (Wine Equalisation Tax) Regulations 2000 before they

sunset on 1 October 2019. The New Regulations support the operation of the Wine Equalisation Tax by permitting, under the Tourist Refund Scheme, refunds of the tax to travellers leaving the indirect tax zone and clarifying the meaning of different wine categories for the purposes of the tax.

- Customs By-Law No. 1900564 prescribes goods that are for use in an activity that is one of the Petroleum Activities, within the meaning of the new Timor Sea Maritime Boundaries Treaty that will be free from duty. By way of background, the new Treaty delimits permanent maritime boundaries, both continental shelf and Exclusive Economic Zone, and establishes a framework for the Greater Sunrise Special Regime Area, to jointly manage and develop the Greater Sunrise resources and to share revenue for the benefit of Australia and Timor-Leste.
- Income Tax Assessment Amendment (Kiribati Phoenix Islands Protected Area Conservation Trust) Regulations 2019 amends the Income Tax Assessment Regulations 1997 (Cth) to allow the Kiribati Phoenix Islands Protected Area Conservation Trust to be exempt from income tax from 1 July 2015 to 30 June 2023.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

David Ireland, Sydney
Sydney Tax Leader
+61 (2) 8266 2883
david.ireland@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

James O'Reilly, Brisbane
Brisbane Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Rob Bentley, Perth
Perth Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Rebecca Cohen, Sydney
IUR Tax Leader
+61 (2) 8266 8476
rebecca.cohen@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

Jason Karametos, Melbourne
Industries Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Other News

Small business tax gap

The Australian Taxation Office (ATO) has released the 2015-16 small business tax gap which is an estimate of the difference between the amount the ATO collects and what it would have collected if every taxpayer was fully compliant with tax law. The ATO estimates the 2015-16 income tax gap for the small business sector to be approximately 12.5 percent, or AUD11.1 billion, with over AUD7 billion (or over 64 percent of the total value of the gap) being attributed to black economy behaviour. Small business tax gaps that have been released overseas range from 9 percent to 30 percent.

ATO ruling on expenditure to collect and process multi-client seismic data

The ATO has released Tax Ruling TR 2019/4, which considers how the capital allowance provisions in Division 40 of the ITAA 1997 apply to the expenditure incurred by a service provider in collecting and processing seismic data licensed on a non-exclusive basis to multiple clients. According to the ruling, such expenditure (including labour costs incurred in creating or augmenting data, leave payments and repairs and maintenance) is capital in nature and cannot be deducted under s8-1 of the ITAA 1997, with some limited exceptions.

However, the ruling states that seismic data is a depreciating asset, and expenditure incurred to create it forms part of the cost of the data for

depreciation purposes. The ruling acknowledges that a data provider's entire data library is a composite item which is not itself a depreciating asset, but it can be dissected into separate, identifiable components, each with commercial or economic value in itself that is the applicable depreciating asset

The ruling also considers the effective life of the seismic data, how to work out the decline in value of the data, and the application of the balancing adjustment provisions.

The ruling also sets out a practical administration approach to assist taxpayers in complying with the relevant tax law, including practical issues such as the identification of the depreciating asset, the time of its use, splitting and merging data, reprocessing a data component and resurveying an area.

Fund carrying on insurance business

The Administrative Appeal Tribunal (AAT) in Firefighters Benefit Fund of WA Inc and Commissioner of Taxation (Taxation) [2019] AATA 2775 has held that the taxpayer, a fund, was formed for the purpose of insuring its members against loss and damage and was taken for the purposes of s121 of the *Income Tax Assessment Act 1936* (Cth) to be a company carrying on the business of insurance such that the member contributions were assessable income.

IGTO-ATO operational guidelines

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has published the following guidelines between the IGTO and the ATO for handling tax complaints lodged with the IGTO and the conduct of the IGTO reviews:

- the IGTO-ATO Complaints Handling Guidelines deal with the tax complaints lodged with the IGTO. They explain the IGTO complaints handling framework and process, and agreed business improvements
- the IGTO-ATO Review Operational Guidelines deal with the conduct of the IGTO reviews. They explain the review framework, the IGTO and the ATO's roles and responsibilities, and the review process.

IGTO corporate plan

The IGTO has released its Corporate Plan 2020–2023. According to the plan, the IGTO's vision is to assure and ensure that there is fair, equitable and transparent administration of the tax system consistent with community expectations. The IGTO is developing a principled framework through community consultation to better:

- understand and capture the community's expectations regarding improved administration
- inform and direct its allocation of resources for investigations, reviews and reports
- inform and direct the scope of its investigations, reviews and reports
- measure, reflect and report on its performance.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
warren.dick@pwc.com

David Ireland, Sydney
Sydney Tax Market Leader
+61 (2) 8266 2883
david.ireland@pwc.com

James O'Reilly, Brisbane
Brisbane Corporate Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Jason Karametos, Melbourne
Industries Corporate Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Market Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Rob Bentley, Perth
Perth Corporate Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Alistair Hutson, Adelaide
Partner
+61 (8) 8218 7467
alistair.hutson@pwc.com

Contacts

To discuss how recent updates in the areas of corporate tax, employment tax, international tax, indirect tax, personal tax, state taxes, superannuation or legislation might affect you, please contact:

Pete Calleja, Sydney
Australian Tax Leader
+61 (2) 8266 8837
pete.calleja@pwc.com

Michael Bona, Brisbane
Global Tax Leader
+61 (7) 3257 5015
michael.bona@pwc.com

David Ireland, Sydney
Sydney Tax Leader
+61 (2) 8266 2883
david.ireland@pwc.com

James O'Reilly, Brisbane
Brisbane Tax Leader
+61 (7) 3257 8057
james.oreilly@pwc.com

Liam Collins, Melbourne
Financial Services Tax Leader
+61 (3) 8603 3119
liam.collins@pwc.com

Kirsten Arblaster, Melbourne
Melbourne Tax Leader
+61 (3) 8603 6120
kirsten.arblaster@pwc.com

Jason Karametos, Melbourne
Industries Tax Leader
+61 (3) 8603 6233
jason.karametos@pwc.com

Hayden Scott, Brisbane
Tax Controversy Leader
+61 (7) 3257 8678
hayden.scott@pwc.com

Rob Bentley, Perth
Perth Tax Leader
+61 (8) 9238 5202
robert.k.bentley@pwc.com

Rebecca Cohen, Sydney
IUR Tax Leader
+61 (2) 8266 8476
rebecca.cohen@pwc.com

Warren Dick, Sydney
Tax Reporting & Strategy Leader
+61 (2) 8266 2935
robert.k.bentley@pwc.com

Norah Seddon, Sydney
People & Organisation Tax Leader
+61 (2) 8266 5864
norah.seddon@pwc.com

Chris Morris, Sydney
Deals & Stamp Duty Tax Leader
+61 (2) 8266 3040
chris.j.morris@pwc.com

Michelle Tremain, Perth
Indirect Tax Leader
+61 (8) 9238 3403
michelle.tremain@pwc.com

Editorial

TaxTalk Monthly is produced by the PwC's Financial Advisory Marketing and Communications team, with technical oversight provided by PwC's Tax Markets & Knowledge team.

Editorial

Kate Fawcett
Manager, Communications
+61 (3) 8603 0986
kate.a.fawcett@pwc.com

Lynda Brumm
Principal, Tax Markets & Knowledge
+61 (7) 3257 5471
lynda.brumm@pwc.com

Abdur Mohamed
Manager, Tax Markets & Knowledge
+61 (2) 8266 2176
abdur.mohamed@pwc.com

TaxTalk Monthly

WL 127073330