

# PwC's Monthly Tax Update

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

**November 2021**



# Corporate Tax Update

## ASIC guidance on requirement to disclose JobKeeper receipts

The Australian Securities and Investments Commission (ASIC) had [published](#) guidance including a [template notice](#) that listed entities may use to satisfy the requirement to disclose JobKeeper receipts as was recently enacted ([Treasury Laws Amendment \(2021 Measures No. 2\) Act 2021](#)). Listed entities that have lodged their annual financial reports for the relevant financial year with ASIC on or before 14 September 2021 have until 13 November 2021 to notify the market. Listed entities that lodge their annual financial reports after 14 September 2021 will have 60 days from the date their annual financial report was lodged with ASIC to notify the market.

## Proposed amendments to deal with cessation of LIBOR

Treasury released for consultation, [exposure draft law](#) which proposes amendments to various laws to correct technical or drafting defects, removing anomalies and addressing unintended outcomes. Among other things, amendments are proposed to the income tax law to replace the London inter-bank offer rate (LIBOR) with a qualified rate to act as a ceiling for certain intra-bank loans by a foreign bank to an Australian branch. Since the LIBOR will no longer be published from 31 December 2021, the Commissioner will be empowered to determine the qualified rate for a particular currency by legislative instrument.

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# Employment Taxes Update

## Draft determination on ESS genuine disposal restrictions

The Australian Taxation Office (ATO) has published Draft Taxation Determination [TD 2021/D5](#) setting out its preliminary views on when interests received under an employee share scheme (ESS) are subject to genuine disposal restrictions. The genuine disposal restrictions apply for the purposes of determining the ESS deferred taxing point. TD 2021/D5 does not consider the 'real risk of forfeiture

test' which may give rise to another deferred taxing point.

When determining whether an interest is subject to genuine disposal restrictions TD 2021/D5 provides that:

- the disposal restriction must be sufficiently certain, identifiable and legally enforceable
- a requirement to make an application to the company for approval to dispose of the interest may not constitute a genuine restriction,

particularly where these applications are routinely approved

- however where clear, objective criteria are required to be satisfied as part of the application, there is more likely to be a genuine disposal restriction; and
- allowing a restriction to be lifted in exceptional circumstances, such as severe financial hardship, does not mean that a genuine disposal restriction does not exist.

TD 2021/D5 also discusses how genuine disposal restrictions may be documented and restrictions relating to price sensitive information.

Once finalised the determination is proposed to apply both before and after its date of issue. The last day for submitting comments is 12 November 2021.

## Transitional relief from SG shortfalls under new stapled fund choice rules

The ATO has provided transitional administrative relief to reduce an employer's shortfall arising from non-compliance with the new choice of superannuation fund rules concerning the single default account (stapled fund) requirements that apply from 1 November 2021 affecting superannuation guarantee (SG) contributions. Specifically, the following legislative determinations have been made:

- [Superannuation Guarantee \(Administration\) – Choice of Fund – Written Guidelines for the Reduction of an Increase in an Employer's Individual Superannuation Guarantee Shortfall Determination 2021](#) – specify the written guidelines the Commissioner must have regard to when deciding whether or not to reduce an employer's shortfall where late superannuation guarantee contributions were made to a fund for an employee, where the issue arose because the employee's most recently notified stapled fund did not accept the superannuation guarantee contributions from the employer.
- [Superannuation Guarantee \(Administration\) – Stapled Fund – Guidelines for the Reduction of an Employer's Individual Superannuation Guarantee Shortfall for Late Contributions Due to Non-acceptance by Notified Stapled Fund Determination 2021](#) – for the period from 1 November 2021 to 31 October 2022 the Commissioner can reduce the choice shortfall to nil if it is the employer's first occasion of non-compliance with the stapled fund requirements and that non-compliance was due to the employer's lack of knowledge of those requirements. The general guidelines will apply

when the Commissioner considers any reduction of the choice shortfall for the existing choice requirements or for any non-compliance with stapled fund requirements after the first instance of non-compliance, and from 1 November 2022.

The Commissioner will adopt a 'business as usual' approach to the administration of the stapled fund requirements under the choice of fund rules from the quarter beginning 1 November 2022.

## NSW payroll tax waiver

The [Payroll Tax Amendment \(Payroll Tax Waiver\) Bill 2021](#) (NSW) has been introduced into the New South Wales (NSW) Parliament to amend the *Payroll Tax Act 2007* (NSW) to provide a 50 per cent payroll tax waiver for the 2021-22 financial year to eligible employers with annual Australian wages of AUD 10 million or less that either:

- qualified for the 2021 COVID-19 JobSaver Payment scheme or the 2021 COVID-19 Business Grant scheme, or
- otherwise met the 30 per cent decline in turnover test for either of the schemes, regardless of whether the employer had applied for the schemes or met other scheme eligibility criteria.

## NSW payroll tax guidance on superannuation contributions

Revenue NSW has issued the [Commissioner's Practice Note CPN 021 Employer Superannuation Contributions – Payroll Tax Act 2007 including Division 3 of Part 3](#). This guidance is designed to assist employers in determining their liability for payroll tax on superannuation contributions and the Commonwealth superannuation guarantee charge (SGC). It explains the Chief Commissioner's application of payroll tax law to superannuation benefits paid or payable in respect of persons who are taken to be employees under a relevant contract or an employment agency contract, directors of companies and members of a board of management of an incorporated or unincorporated association.

## NSW payroll tax on support worker aged care services arrangement

The NSW Supreme Court has found in [Southern Cross Community Healthcare Pty Ltd v Chief Commissioner of State Revenue](#) [2021] NSWSC 1317 that the taxpayer was liable to pay payroll tax in relation to payments made to support workers under an aged care services arrangement.

The taxpayer was engaged in the business of arranging for the provision of in-home attendant care services for the disabled, frail and aged by arranging for the provision of care services by

support workers or attendant care workers under contractual arrangements between the taxpayer and various authorities (the funders). The taxpayer remunerated the support workers, who have no contractual arrangement with the funders or the ultimate consumer or end user of the services provided by a support worker.

The Court found that none of the arrangements between the taxpayer and its support workers constituted employment agency contracts within the meaning of section 37(1) of the *Payroll Tax Act 2007* (NSW). In the alternative, even if they did, the Court found that the exemption in clause 8 of Schedule 2 to the Act which can apply in respect to work performed in public hospitals or local health districts would not have applied and nor would have the requirements of section 40(2) insofar as it required a declaration from the funders.

The Court also concluded, having regard to the arrangements in place, that the support workers are not common law employees of the taxpayer. The support workers were in a unique position, in that they provided highly personal and health-regulated care in the environment of the home or residence of the ultimate consumer. The bespoke nature of the engagement between the support worker and the taxpayer and between the taxpayer and the consumer strongly supported the conclusion that a support worker could fairly be characterised as an independent contractor. The mutuality of obligation and continuity that is typical of common law employment was lacking. That, combined with the fact that support workers were not controlled by the taxpayer led to the conclusion that the workers were not common law employees of the taxpayer.

## ACT payroll exemption for apprentices

The Australian Capital Territory (ACT) Government has extended its payroll tax exemption for new apprentices or trainees until 30 June 2022. The exemption is available for apprentices and trainees who commence an approved training contract on or after 1 August 2020 and satisfy other criteria.

## QLD payroll tax grouping and penalties

The Queensland (QLD) Civil and Administrative Tribunal held in *Aurizon Operations Limited v Commissioner of State Revenue; Australian Eastern Railroad Pty Ltd v Commissioner of State Revenue*; Aurizon Network Pty Ltd v Commissioner of State Revenue [2021] QCAT 338 that the Commissioner's payroll tax notices of reassessment were confirmed save that unpaid tax interest be remitted in full.

In this case, the taxpayer companies are members of a group of companies that had requested a reassessment of its payroll tax liability and a refund of payroll tax paid on the basis of a net overpayment of payroll tax by the group over a number of years. Separate reassessment notices were issued to each member of the group which resulted in some members having overpaid their payroll tax liability and receiving a refund, while others were found to have underpaid. Those that were found to have underpaid were assessed as liable for interest on the unpaid tax pursuant to section 54(1) of the *Taxation Administration Act 2001* (Qld). The taxpayers objected that there was never any payroll tax owed by the group as a whole, and therefore there should be no interest payable by the taxpayers who were all members of the group though they had individually underpaid.

Having regard to the Commissioner's Public Ruling regarding the remission of unpaid tax interest and the taxpayer's circumstances, the Tribunal agreed the interest should be remitted in full.

## Tasmanian payroll tax waiver and grant

The Tasmanian Government has provided a waiver for payroll tax for certain employees in the tourism or hospitality industry or in connection with those industries. The waiver is for a six month period commencing on 1 July 2021 until 31 December 2021.

SRO Tasmania has also released guidance on the payroll tax waiver and also the grant which also applies to those employers who are eligible for the waiver. The grant amount is calculated by multiplying the total payroll tax waiver for the September quarter 2021 by a factor of 2.5. The guidance includes examples as well as discussion on the key definitions relevant to eligibility.

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# Global Tax Update

## Major reform of the international tax system

Following years of negotiations to reform the international tax system, 136 jurisdictions (out of the 140 members of the Organisation for Economic Cooperation and Development (OECD)/Group of 20 (G20) Inclusive Framework on Base Erosion and Profit Shifting (BEPS)) [joined the Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy](#).

Under Pillar 1 reforms, taxing rights over 25 per cent of the residual profit of the largest and most profitable multinationals would be re-allocated to the jurisdictions where the customers and users are located, along with removal and standstill of Digital Services Taxes and other relevant similar measures, mandatory and binding dispute resolution and establishment of a simplified and streamlined approach to the application of the arm's length principle in specific circumstances.

Under Pillar 2 reforms, multinationals with annual revenue over 750 million euros will be subject to a minimum 15 per cent tax rate from 2023.

The OECD has released a [brochure](#) providing summary highlights of the two pillar solution with proposed next steps. See also the Australian Government's [response](#) to the agreement.

Refer to PwC's [Tax Policy Alert](#) for further information.

## OECD Updates

The OECD has published the [OECD Secretary General Tax Report to the meeting of the G20 Finance Ministers and Central Bank Governors](#)

providing an overview of the latest developments in the OECD's international tax agenda. The report discusses the Two Pillar Solution as noted above, implementation of tax transparency measures and attached the following reports:

- [Tax Policy and Climate Change](#) focusing on carbon pricing, climate change mitigation strategies and border carbon adjustments
- [Developing Countries and the OECD/G20 Inclusive Framework on BEPs](#) taking stock of the progress made through their participation in the Inclusive Framework on BEPs, considering priorities and capability and identifies recommendations to support domestic resource mobilisation efforts; and
- [Tax and Fiscal Policies after the COVID-19 Crisis](#) considering how tax policies can support inclusive and sustainable growth and how fiscal systems can deliver equity, growth and sustainability.

## Statement on Pandora Papers

The Forum on Tax Administration and Joint International Task Force on Shared Intelligence and Collaboration (JITSIC) have released a [statement](#) on the 'Pandora Papers' released by the International Consortium of Investigative Journalists. The statement notes that JITSIC members will continue to work together to facilitate investigations and that while the information contained in the Pandora Papers can be of value, the inclusion of information about an individual or entity does not automatically imply non-compliance.

The Australian Taxation Office (ATO) has also [responded](#) to the Pandora Papers indicating that it will be analysing the information to identify any possible Australian links. It also asserted its strong international partnerships, treaties and agreements, that enable a collaborative approach to identifying and addressing international tax evasion and crime. It also encourages those who may have undeclared offshore income to contact the ATO.

## Updates to OBU tax rulings and determinations

The ATO has updated a number of its rulings and tax determinations that address Australia's Offshore Banking Unit (OBU) provisions so as to reflect the closure of the OBU regime to new entrants from 14 September 2021 and the removal of concessional treatment of OBUs from the 2023-24 income year.

## Update to information exchange countries for MITs

To reflect the updated list of countries with which Australia has an exchange of information (EOI) agreement, the *Taxation Administration Regulations 2017* have been updated ([Taxation Administration Amendment \(Updating the List of Exchange of Information Countries No. 2\) Regulations 2021](#)) for purposes of applying the lower rate of managed investment trust (MIT) withholding tax applicable to certain fund payments made to a recipient in an 'information exchange country'. The new regulations now mean that certain distributions made by a MIT to entities in Armenia, Cabo Verde, Kenya, Mongolia, Montenegro and Oman from 1 January 2022 will be eligible for the 15 per cent withholding tax rate instead of the default withholding tax rate of 30 per cent.

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# Indirect Tax Update

## Guidance for GST assurance reviews

The Australian Taxation Office (ATO) has published new guidance for Top 100 and Top 1000 taxpayers subject to a Goods and Services Tax (GST) assurance review.

The ATO's [Guide to Independent Data Testing by Third Party Advisors](#) provides practical guidance to taxpayers on ATO expectations for third party advisors undertaking data testing to be relied upon in a GST assurance review. The purpose of the Guide is to explain the ATO's expectations and conditions for top 100 and top 1,000 taxpayers when engaging a third-party advisor to undertake the independent data testing as part of a GST assurance review. Refer to PwC's [Tax Alert](#) which explains the requirements and the ATO's expectations and what is required of taxpayers and advisors.

Furthermore, the ATO has issued the following guidance in relation to its GST Analytical Tool which is one of the tools the ATO uses to obtain greater assurance as to whether the right amount of GST has been paid. The tool applies a "top down" approach to identify and understand and, where available, verify, variances between accounting figures reported in audited financial statements and GST reported on Business Activity Statements (BAS).

- [GST Analytical Tool FAQ](#) which explains the ATO's use of the GST Analytical Tool, including its context in terms of the assurance process, the objective evidence that will be accepted and how the ATO assesses variances that are found.
- [GST Analytical Tool](#) – Top 100 example provides an example of how analysis from applying the GST Analytical Tool will be shown in the Tax Assurance Report for a Top 100 taxpayer.

- [GST Analytical Tool](#) – Top 1000 example provides an example of how analysis from applying the GST Analytical Tool will be shown in the Tax Assurance Report for a Top 1000 taxpayer.

## GST status on sale of gold

In the matter of [STNK v FC of T \[2021\] AATA 3399](#), the Administrative Appeals Tribunal has found partially for the taxpayer in finding that certain supplies of gold were GST-free. In relation to the successful claim, the Tribunal agreed that the taxpayer made GST-free supplies of scrap gold on the basis that the taxpayer was the exporter of the scrap gold regardless of whether it obtained title before the goods were sent from Australia. Furthermore, the Tribunal concluded that the general anti-avoidance provisions in the GST law could not apply to the transaction having regard to the operation of the GST law, and considering the whole of the circumstances surrounding the scheme, such that it would not be concluded that an entity had a dominant purpose of securing the taxpayer's entitlement to input tax credits. Accordingly, the taxpayer was entitled to input tax credits on its purchase of scrap gold.

The Tribunal agreed with the Commissioner in finding that the other sales were not GST-free supplies of gold bullion but rather were taxable supplies of scrap gold. There was little evidence on which it could be concluded that a principal part of the enterprise is the regular supply and acquisition of precious metal and the Tribunal was not satisfied that one of the purchasers was an entity that regularly converts or refines precious metal in carrying on its enterprise so as to qualify for the supplies to be GST-free under section 38-385 of the GST Act.

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# Personal Tax Update

## 'Shortcut' method for working from home expenses due to COVID-19 extended

The Australian Taxation Office (ATO) has extended its 'shortcut' method of a fixed rate of 80 cents per hour for individuals claiming deductions for additional running expenses incurred whilst working from home due to COVID-19 up to 30 June 2022 (see updated Practical Compliance Guideline [PCG 2020/3](#)).

## No release from tax liability on grounds of hardship

The Federal Court has held in the decision of [Wood v Commissioner of Taxation \[2021\] FCA 1236](#) that a doctor should not be granted release from tax liabilities on the basis that the taxpayer could substantially reduce his outgoings. In this case, the taxpayer was a surgeon that had accrued a tax debt following repeated failure to lodge personal income tax returns, consisting of income tax, general interest charge, pay as you go instalments and tax on concessional contributions. The Court found that

the Administrative Appeals Tribunal (AAT) did not fail to give consideration to the matters in the ATO's Law Administration Practice Statement PS LA 2011/17. It upheld the AAT's decision agreeing that the taxpayer and his family would not suffer serious hardship if required to pay the tax debt in circumstances where there was scope for him to substantially reduce the family's outgoings while maintaining a reasonable standard of living according to normal community standards.

## COVID-19 and working holiday and seasonal labour programs

Treasury released for consultation, [exposure draft law](#) which proposes amendments to various laws to correct technical or drafting defects, removing anomalies and addressing unintended outcomes. Among other things, amendments are proposed to ensure the working holiday maker regime and the seasonal labour mobility program function properly despite disruptions caused by COVID-19.

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# State Taxes Update

## ACT Budget

The Australian Capital Territory (ACT) [Budget 2021-22](#) was handed down on 6 October 2020 by Chief Minister and Treasurer, Andrew Barr. The ACT Government will invest significantly to support the ACT's economic recovery. The key tax-related Budget measures that were announced include:

- making the conveyance duty concession for owner-occupiers purchasing off the plan units less than AUD 500,000 permanent
- lowering the residential conveyance duty tax for owner occupiers purchasing properties at the bottom threshold; and

- increasing the tax free threshold for commercial transactions by AUD 100,000.

The Budget also sets residential conveyance duty rates for the 2021-22 to 2025-26 years so that estimated revenue from residential general rates that exceed the increase in the Wage Price Index will be used to reduce residential conveyance duty by an equivalent amount. In addition, the Home Buyer Concession Scheme has been capped at an amount equal to the conveyance duty on a property transferred for AUD 1 million.

The Budget also reflected the previously announced COVID-19 support measures.

## Victorian windfall gains tax and build-to-rent concessions

The Victorian Government has introduced the [Windfall Gains Tax and State Taxation and Other Acts Further Amendment Bill 2021](#) into the Victorian Parliament. The legislation proposes to introduce:

- a windfall gains tax (which was foreshadowed in the recent Victorian Budget) which is designed to capture uplifts in value above AUD 100 000 resulting from rezoning, and
- measures to provide land tax and absentee owner surcharge concessions for eligible build-to-rent developments.

The windfall gains tax, which comes into operation from 1 July 2023, will be imposed on the increase in value of land resulting from a rezoning at a rate that is as high as 62.5 per cent of the taxable value uplift, subject to certain exemptions.

The concessions for eligible build-to-rent developments will apply to developments that are completed between 1 January 2021 and 31 December 2031. These developments will receive a discount of 50 per cent on land tax as well as an exemption from absentee owner surcharge from 1 January 2022 for up to 30 years.

For further details on the windfall gains tax and build-to-rent concessions, refer to PwC's [Tax Alert](#).

The Bill also contains other tax-related amendments to:

- extend the motor vehicle duty exemption for vehicles that are specially converted for wheelchair access
- provide a point of consumption framework for keno tax
- require land to be occupied exclusively for charitable purposes in order for charities to be eligible for a land tax exemption
- remove the land tax exemption for non-racing clubs from private gender-exclusive and gender-restrictive clubs; and
- provide tax offsets for emergency relief measures.

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# Superannuation Update

## Guidance on communicating with employees about superannuation products

The Australian Securities and Investments Commission (ASIC) has published updated versions of Information Sheet 89 'Communicating with employees about superannuation fund choice: what you can and cannot do' and Information Sheet 241 'Prohibition on influencing employer's superannuation fund choice'.

The updates to the information sheets reflect changes arising from the *Your Future Your Super* reforms and other regulatory changes, including:

- obligations under the revised hawking prohibition which took effect on 5 October 2021
- design and distribution obligations which took effect on 5 October 2021
- the stapling measures that commence on 1 November 2021; and
- the removal of a specific exemption that allowed a superannuation trustee to supply goods or services to an employer on the basis the offer was available to all employees.

## SMSFs and actuarial certificates

The Australian Taxation Office (ATO) has reminded self-managed super funds (SMSFs) that recent amendments to the law mean SMSFs that are fully in retirement phase for the whole of the income year, with disregarded small fund assets, are not required to obtain an actuarial certificate for their 2022 SMSF Annual Return and later income years.

## Draft law on retirement income covenant

The Government has released exposure draft legislation that will introduce a retirement income covenant for superannuation trustees. The draft legislation will codify the obligation for superannuation trustees to have a retirement income strategy that outlines how they plan to assist fund members in retirement. The strategy must consider how the trustee will assist their members to balance maximising their retirement income, managing risks, and have some flexible access to savings.

Comments were due to be made on the draft law by 15 October 2021. The retirement income covenant will take effect from 1 July 2022.

## APRA guidance on opt-out insurance for super funds

The Australian Prudential Regulation Authority (APRA) has published an update to frequently asked questions on the *Treasury Laws Amendment (Putting Members' Interests First) Act 2019*. The updated information clarifies that fund members who were not required to elect for insurance, as a result of the historical provisions in section 68AAB and section 68AAC of the *Superannuation Industry (Supervision) Act 1993*, can have their insurance continued in a successor fund without needing to elect for insurance.

The Government intends to amend the law to give effect to this change in due course.

### Let's talk

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# Legislative Update

Since our last update, the following Commonwealth tax legislation has been introduced into Parliament:

- [Offshore Petroleum \(Laminaria and Corallina Decommissioning Cost Recovery Levy\) Bill 2021](#)

and Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021, which were introduced into the House of Representatives on 20 October 2021, propose to apply a new levy to be imposed on registered holders of petroleum production licenses for the 2021-22 to 2029-30 income years at a rate of 48 cents per barrel of oil equivalent and payable to the Commissioner of Taxation annually.

The following Commonwealth Bills have now completed its passage through Parliament and are now law:

- [Customs Amendment \(Regional Comprehensive Economic Partnership Agreement Implementation\) Bill 2021 and the Customs Tariff Amendment \(Regional Comprehensive Economic Partnership Agreement Implementation\) Bill 2021](#), which together implement the Regional Comprehensive Economic Partnership Agreement (RCEP), including measures to:

- introduce new rules of origin for goods imported from a party to the RCEP, and
- provide for new rates of duty on RCEP originating goods.

The following Commonwealth revenue measure were registered as a legislative instrument since our last monthly update:

- [Treasury Laws Amendment \(2021 Measures No. 2\) \(Deductible Gift Recipients—Extended Application Date\) Instrument 2021](#) that prescribes the criteria that must be satisfied in order for deductible gift recipients (DGRs) registered before 14 December 2021 to access an extension to the transitional period for becoming a registered charity.
- [Taxation Administration Amendment \(Updating the List of Exchange of Information Countries No. 2\) Regulations 2021](#) which includes Armenia, Cabo Verde, Kenya, Mongolia, Montenegro and Oman as “information exchange countries” for purposes of applying the lower rate of managed investment trust (MIT) withholding tax from 1 January 2022.

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# Other News

## New ATO data matching programs

The Australian Taxation Office (ATO) has provided notice of the following new data matching programs under which it will acquire information from other parties to identify and address non-compliance with tax and super obligations including registration, lodgment, reporting and payment responsibilities:

- [Australian Transaction Reports and Analysis Centre \(AUSTRAC\)](#) – data will be acquired for the period from 17 June 2021 to 30 June 2027 from the following types of transactions from information reported to AUSTRAC:
  - international funds transfer instructions
  - threshold reports (excluding gambling)
  - threshold reports (including gambling)
  - solicitor transactions reports
  - suspicious matters
  - carry mail and physical cash, or
  - bearer negotiable instruments.
- [government payments](#) – payment data will be acquired from government entities who administer government programs for the 2017-18 to the 2022-23 financial years.

## ATO guidance on aggregated turnover and the “connected with” concept

An entity's aggregated turnover for an income year is comprised of its “annual turnover”, together with the annual turnover of any entity (including foreign resident) that is “connected with” it, or is an “affiliate” of it, at any time during the income year. A taxpayer's aggregated turnover is relevant to applying a number of provisions in the income tax law including access to small business concessions, the temporary loss carry back, temporary full expensing and many other tax concessions. The ATO has issued the following draft taxation determinations relating to whether an entity is “connected with” another entity for the purposes of determining the aggregated turnover of a taxpayer:

- Draft Taxation Determination [TD 2021/D2](#) explains the ATO's preliminary view regarding the application of the connected with test to a partnership, foreign hybrid entity or non-entity joint venture. The ATO's preliminary view is that, when determining whether an entity is connected to a partnership, the partnership itself is the relevant entity to test and not the individual partners of the partnership. The ATO applies the same view to foreign hybrid limited partnerships and foreign hybrid companies as these entities are treated as partnerships for Australian income tax purposes. However, in the case of a non-entity joint venture, since it is not an entity in its own right, the relevant entities to consider are each of the parties in the joint venture. As partnerships, foreign hybrid entities and non-entity joint ventures are not individuals or companies, they are not capable of being an “affiliate” of an entity.
- Draft Taxation Determination [TD 2021/D3](#) sets out the ATO's preliminary view in relation to corporate limited partnerships. As corporate limited partnerships are treated as companies for Australian income tax purposes, the ATO considers that the same test for determining whether an entity is connected with a company should be used. A corporate limited partnership, as a company for Australian income tax purposes, is capable of being an affiliate of an entity.
- Draft Taxation Determination [TD 2021/D4](#) sets out the ATO's preliminary view on the application of the public entity exception to the indirect control test for determining when entities are connected with each other. The indirect control test provides that where an entity (the first entity) controls a second entity, and the second entity directly or indirectly controls a third entity, the first entity is taken to control the third entity. The indirect control test does not apply, however, if a public entity is interposed between the first entity and the third entity. TD 2021/D4 provides examples of the public entity exception, and highlights that the direct control test can still apply in certain circumstances, even if a public entity is interposed in the ownership structure.

Once finalised, each of the draft tax determinations are proposed to apply before and after the date of their issue. Comments can be made on each of the draft determinations by 12 November 2021.

## Draft ruling on games and sports exemption

The ATO has issued Draft Taxation Ruling [TR 2021/D6](#) which considers the key aspects of the games and sports income tax exemption that applies to societies, associations and clubs. Although the draft ruling replaces Taxation Ruling TR 97/22, which was withdrawn effective from 6 October 2021, it does not reflect a change in the Commissioner's view on the application of the games and sports exemption – rather, it refreshes the view to make it more contemporary and also takes into account relevant case law that has occurred since TR 97/22 published.

The view adopted TR 2021/D6 is that the games and sports exemption will be available to a club where it:

- is established for the main purpose of encouraging a game or sport
- is not carried on for individual members' profit or gain, and
- meets the other special conditions which are explained in Taxation Ruling TR 2015/1 and Taxation Ruling TR 2019/6.

The ATO recommends that the entitlement to an income tax exemption is reviewed annually or when there is a major change in the activities or structure of the club.

Comments on the draft ruling may be provided until 5 November 2021.

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## Finalised guidance on aggregated turnover and accounting periods

The ATO has finalised Taxation Determination [TD 2021/7](#) which provides that when calculating the aggregated turnover of a taxpayer, the annual turnovers of connected entities and affiliates of the taxpayer are determined by reference to the taxpayer's income year. This income year could be an income year ending on 30 June or on a different date where an approved substituted accounting period is in place.

## IGTO report on ATO's communication of review rights

The Inspector General of Taxation and Taxation Ombudsman (IGTO) has released a report – [An investigation into the effectiveness of the Australian Taxation Office \(ATO\) communications of taxpayer rights to complain, review and appeal](#) – which examines ATO communications in relation to a sample of its decisions and actions and how effective the ATO is in communicating these rights. Six recommendations were made by IGTO in the report focusing on improving the practical implementation and governance of internal instructions and all recommendations have been agreed or agreed in principle by the ATO.

## Editorial

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

### Editorial

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