

Australian Tax Insights & International trends

Edition 4 | November 2024

Your essential source for staying informed on Australia's dynamic tax landscape.

Welcome to the November 2024 edition of our international tax insights newsletter where we look to summarise for you the key Australian tax developments over the last 3 - 4 months.

Since the last edition of our newsletter, we have seen the release of a number of important public advice and guidance resources by the ATO to assist taxpayers in relation to the introduction of new legislative changes, namely on the thin capitalisation rules and debt deduction creation rules.

A raft of tax reforms by the Government including the Bill to the OECD Pillar Two rules, changes to Australia's foreign resident capital gains tax regime and country-by-country (CbC) reporting as at the date of this newsletter have been passed or are progressively making its passage through Parliament.

On 7 November 2024 the High Court of Australia (HCA) granted the Commissioner special leave to appeal the FFC's decision in the PepsiCo Inc case concerning embedded royalties and the application of the diverted profits tax (DPT), whereas on 24 October 2024 the HCA refused to grant SingTel special leave to appeal its transfer pricing dispute with the ATO.

In September 2024, the ATO published its findings on the Top 100 and Top 1000 justified trust assurance programs undertaken in the year ended 30 June 2024. Broadly the findings suggest a trend in increased tax compliance amongst large corporate taxpayers and greater assurance obtained by the ATO that the 'right amount of tax' is being paid within this taxpayer population.

Please read on for further insights on the latest international tax developments from the Grant Thornton tax team including key ATO announcements and a summary of the status of important tax legislation.

Should you have any questions or would like to find out more on the content in this newsletter please feel free to reach out the tax contacts at Grant Thornton listed in this publication.



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Our cross-border expertise at GT



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Our corporate tax services delivers deep knowledge of Australian tax law and statutory requirements to help clients meet all tax obligations.



International tax

Our international tax team provide a comprehensive range of inbound and outbound tax services to help multinational companies execute their tax strategy.



M&A taxes

Our M&A tax services offers solutions to help companies identify M&A opportunities, assess risks and exposures, and support companies through the deal cycle.



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Our global employment taxes team provide cross-border mobility tax, payroll, and immigration support to assist our clients wherever they do business.



Transfer pricing

Our transfer pricing team provide pricing and documentation for your intercompany transactions to comply with various countries' rules and legislation that is imperative in managing tax risk.



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PepsiCo Inc: ATO granted special leave to appeal to the High Court

International tax – Transfer pricing – Embedded royalties – Diverted Profits Tax

On 7 November 2024 the High Court of Australia granted the Commissioner's special leave to appeal against the Full Federal Court decision in the PepsiCo case concerning embedded royalties and the application of Diverted Profits Tax.

The outcome is significant as it demonstrates the ATO's continued focus on the taxation of intangibles as they seek important precedence relating to these matters.

[Read more.](#)

Consultation on foreign resident CGT rules commences

Foreign residents – CGT – Exemption – Cross-border investments

On 23 July 2024, Treasury released a consultation paper proposing changes to enhance the integrity and certainty of the foreign resident CGT rules, ensuring foreign investors pay their fair share of tax in Australia. The measures are expected to apply to CGT events starting on or after 1 July 2025.

In the 2024-25 Federal Budget, the Government announced measures to strengthen the foreign resident CGT regime. Division 855 of the ITAA 1997 currently states that foreign residents are liable for Australian CGT only when disposing of assets that are considered Taxable Australian Property (TAP), including Taxable Australian Real Property (TARP) and indirect non-portfolio interests if over 50 per cent of the market value is in TARP.

[Read more.](#)

Singtel – High Court refuse special leave application

Transfer pricing – Related party financing – Arm's length interest rate – Debt funding

On 25 October 2024, the High Court of Australia refused SingTel's application for special leave to appeal against the Full Federal Court (FFC) decision.

The FFC held that SingTel claimed a transfer pricing benefit for deductions based on interest paid on loans between two of its subsidiaries regarding its acquisition of Optus in 2002.

The case provides important guidance on implicit support when setting the terms and conditions of debt financing agreements and for taxpayers to frequently review their funding arrangements to ensure the terms and conditions documented reflect their commercial substance.

[Read more.](#)

Australian "Pillar Two" Rules passed

OECD – Pillar Two – Domestic Minimum Tax

On 27 November 2024, the Global and Domestic Minimum Tax bills, introducing the Pillar Two rules into Australia, passed both the houses of Parliament. The Bills now await royal assent before being enacted as law.

The Pillar Two rules in Australia will broadly align with the OECD rules and introduces a global minimum tax requirement set at a 15% effective tax rate (ETR). This is achieved by imposing a top-up tax on profits where the ETR is below the minimum 15% rate, in the form of either the Income Inclusion Rule (IIR) or Domestic Minimum Tax Rule (DMT) or Undertaxed Profits Rule (UTPR).



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ATO's first R&D Tax Transparency Report

Innovation Incentives - R&D Tax Transparency - Reporting

On 4 October 2024, the Australian Taxation Office (ATO) released its first annual R&D Tax Transparency Report, detailing the R&D expenditure of over 11,500 entities for the 2021-22 financial year. The report highlights significant disparities in R&D spending, with expenditures ranging from \$0 to over \$200 million. The average R&D expenditure recorded is just below \$1 million, while the median is slightly above \$300,000. The report underscores the importance of robust compliance and governance frameworks, emphasising that businesses must ensure proper documentation and processes are in place to support any RDTI claims made.

[Read more.](#)

Foreign buyers of property in Australia to review eligibility for refunds

Foreign Nationals to review their positions retrospectively where Surcharge is Discriminatory

All Australian states as well as the ACT impose higher costs on foreign buyers and owners of residential property in the form of either one or both of foreign surcharge purchase duty or foreign surcharge land tax. Similar to the previous Addy tax residency case, eight of the Double Tax Agreements contain non-discrimination clauses which essentially obligate both treaty partners to ensure parity between nationals of both countries from a tax standpoint. Therefore, the imposition of the surcharges are discriminatory in nature and the enacted Foreign Investment Act has stated its objective in resolving these inconsistencies with potential retrospective application on or after 1 January 2018 (earlier surcharge rectification could be available dependent on the relevant state jurisdiction and facts). Considering these developments, nationals of specified countries who have paid foreign surcharges in connection with the purchase of real property in Australia should consider their position and potential entitlement to refunds.

New Supplementary Annual GST Return

GST Compliance – Tax Governance - Justified Trust Program

On 30 October 2024, the Australian Taxation Office (ATO) introduced the Supplementary Annual GST Return (SAGR) as part of its 'Justified Trust' program. This new requirement mandates large public and multinational businesses operating in Australia, specifically those in the Top 100 or Top 1,000 programs, to disclose how they have addressed issues raised in previous ATO assurance reviews. The SAGR also aims to enhance GST governance by requiring detailed reporting on GST positions, material BAS (i.e. GST return) or GST errors, and reconciliation of BAS reporting to financial statements. Businesses notified by the ATO must lodge the SAGR annually, with significant penalties for non-compliance, which includes the inclusion of false or misleading statements.

[Read more.](#)

New Rules for Payday Super

New Payment timing rules to apply from 1 July 2026

Treasury released details regarding the design of new rules in respect to employer's requirement to pay employees' superannuation guarantee (SG) entitlements at the same time as salary and wages, instead of the current quarterly obligation. Employers should review their current payroll processes and ensure that their systems and processes are ready for the implementation of payday super on 1 July 2026.

Whilst the changes will impact all businesses, this will significantly impact the flexibility for foreign headquartered businesses or businesses who have globally mobile employees. Globally mobile employees who remain on home payroll will need to ensure that the process of information sharing and subsequent reporting through a shadow payroll can be implemented within the required time limits. This may cause businesses to rethink their shadow payroll approach and broader mobility structure.

[Read more.](#)

ATO – Tax Policy updates

PCG 2024 /D3 - Restructures and the new thin capitalisation and debt deduction creation rules - ATO compliance approach

Thin capitalisation – Debt deduction creation rules – ATO – Practical Compliance Guideline

On 9 October 2024 the ATO published Draft Practical Compliance Guideline PCG 2024/D3 Restructures and the new thin capitalisation and debt deduction creation rules.

The PCG follows the enactment of the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Act 2024* on 8 April 2024, which introduced new debt deduction creation rules (DDCR).

The draft guideline sets out the Commissioner’s practical compliance approach to restructures carried out in response to the DDCR. It provides a risk assessment framework for impacted taxpayers. The ATO has prioritised this guidance based on the feedback received during our public consultation earlier in 2024.

The draft guidance closed for public comment on 8 November 2024.

[Read more.](#)

ATO Top 100 and Top 1,000 taxpayers report

ATO assurance program – tax governance – findings report

On 18 September 2024, the Australian Taxation Office (ATO) published its findings reports from the Top 100 and Top 1000 justified trust assurance programs undertaken in the year ended 30 June 2024. The findings reports allow large businesses to objectively benchmark their ratings to their peers, and also provide insights into ATO focus areas to assist businesses to prepare for an upcoming review.

Read more – [Top 100 report](#) – [Top 1000 report](#)

OECD Pillar Two – Subject to tax rule (STTR)

Pillar Two – Australia – Subject to Tax - MLI

On 19 September 2024, the OECD [announced](#) 19 members of the inclusive framework on BEPS signed or signalled their intention to sign, a new multilateral treaty—the Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI)—that will allow early adopters to swiftly implement the STTR into existing bilateral tax treaties. A [list](#) of signatories has been published.

On 20 September 2024, the Australian government announced it had signed a statement of support for the STTR.

[Read more.](#)

Treasury proposes to clarify residency disclosure requirements in the consolidated entity disclosure statement

Financial reporting – residency – disclosure requirements

On 27 September 2024, Treasury released exposure draft legislation of miscellaneous amendments to Treasury portfolio laws. The ED proposes to amend the consolidated entity disclosure statement (CEDDS) requirement for public companies in the Corporations Act 2001 to address technical issues.

[Read more.](#)

Foreign resident capital gains withholding – New bill introduced

Foreign resident withholding – Capital gains

On 12 September 2024, the Australian government introduced a new bill into parliament: [Treasury Laws Amendment \(2024 Tax and Other Measures No. 1\) Bill 2024](#).

This measure essentially modifies the foreign resident capital gains withholding (FRCGW) regime to:

- Increase the withholding rate to 15% (from 12.5%); and
- Remove the threshold (from AUD 750,000 to nil) before which withholding applies so that disposals of relevant CGT assets by a foreign resident are subject to FRCGW requirements regardless of the market value of the CGT asset.



Summary key Australian law changes

| Legislation | Description | Start date | Status |
|--|--|--|---|
| Thin capitalisation rules | <p>Existing thin capitalization tests including the safe harbor debt test, arm's length debt test and worldwide gearing test to be repealed and replaced with:</p> <ul style="list-style-type: none"> ▪ fixed ratio test (limit debt deduction to 30% of EBITDA), ▪ group ratio test (limit debt deductions to the level of the worldwide group's net interest expense as a share of earnings) ▪ third party debt test (allows all debt deductions that are attributable to genuine third party debt, which is used to fund Australian business operations). | Income years commencing on or after 1 July 2023. | ○○● Law enacted |
| Debt deduction creation rules | <p>Rules propose to deny debt deductions where:</p> <ul style="list-style-type: none"> ▪ An entity acquires an asset (or an obligation) from its associate and the entity, or one of its associates, and incurs debt deductions in relation to the acquisition of that asset. ▪ An entity borrowing from its associate to fund a payment to that, or another, associate, and the entity incurs debt deductions in relation to the borrowing. | Income years commencing on or after 1 July 2024. | ○○● Law enacted |
| BEPS Pillar Two in Australia | <p>The Government announced it will implement key aspects of Pillar Two of the OECD/G20 Two-Pillar Solution to address the tax challenges arising from digitalisation of the economy. Proposed changes include:</p> <ul style="list-style-type: none"> ▪ 15% global minimum tax for large multinational enterprises with the <ul style="list-style-type: none"> ○ Income Inclusion Rule applying to income years starting on or after 1 January 2024, and ○ Undertaxed Profits Rule applying to income years starting on or after 1 January 2025. ▪ 15% global domestic minimum tax applying to income years starting on or after 1 January 2024. | Income years starting on or after 1 January 2024 | ○○○ Passed both Houses of Parliament, awaiting Royal Assent. |
| Denying deductions for payments relating to intangibles held in low or no-tax jurisdictions | <p>Anti-avoidance rule to prevent significant global entities (with global revenue of at least \$1 billion) from claiming tax deductions for payments made directly or indirectly to related parties in relation to intangibles held in low or no-tax jurisdictions.</p> <p>These payments include royalties and payments in relation to other intangibles such as customers' databases and advertising algorithms. The measure will apply to payments made on or after 1 July 2023.</p> | Income years commencing on or after 1 July 2023. | ●○○ Bill revoked |
| Public country-by-country (CbC) Reporting | <p>Rules requiring large multinationals to publicly disclose certain tax information on a CBC basis and a statement on their approach to taxation, refined measures to more closely align with the EU's public CBC regime, including proposed policy changes on a de-minimis A\$10m turnover threshold and approach to aggregated reporting.</p> | Income years commencing on or after 1 July 2024. | ○○○ Bill currently before Parliament |

Summary key Australian law changes

| Legislation | Description | Start date | Status |
|--|--|---|--|
| Consolidated entity disclosure statement | <p>The Exposure Draft Bill aims to clarify the tax residency disclosures required in the annual financial report.</p> <p>The key proposed amendments cover:</p> <ul style="list-style-type: none"> tax residency disclosures where entities are resident in more than one jurisdiction; and inserting a definition of 'Australian resident' for Partnerships and Trusts. | Income years commencing on or after 1 July 2024. | <p>○●○</p> <p>Exposure Draft Bill released for consultation</p> |
| CbC reporting - Changes to short form local file | <p>The ATO has proposed significant changes to the short form local file for CBC reporting obligations for periods starting on or after 1 January 2024. This included, among other things:</p> <ul style="list-style-type: none"> Transitioning to a message structure table (MST) from the current free text format Increased disclosures in relation to effective reporting lines from Australian employees to overseas personnel; and Additional disclosures in relation to significant business restructures. | Income years commencing on or after 1 January 2024. | <p>○●○</p> <p>In progress, finalisation expected by December 2024</p> |
| Foreign resident capital gains | <p>The consultation paper addresses the Budget proposal to strengthen the foreign resident CGT regime in relation to CGT events commencing on or after 1 July 2025 by way of:</p> <ul style="list-style-type: none"> clarifying and broadening the types of assets on which foreign residents are subject to CGT to ensure assets with a close economic connection to Australian land and/or natural resources are appropriately captured within the tax law amending the point-in-time principal asset test to a 365-day testing period (applicable to IARPI) so as to address an integrity risk preventing a CGT-free sale of membership interests at a time when the underlying entity does not derive more than 50 per cent of its market value from taxable Australian real property, and requiring foreign residents disposing of shares and other membership interests exceeding \$20 million in value to notify the Australian Taxation Office (ATO) prior to the transaction being executed. | Income years commencing on or after 1 January 2025. | <p>○●○</p> <p>In consultation</p> |
| Foreign resident capital gains withholding tax rate | <p>The Bill proposes the following changes:</p> <ul style="list-style-type: none"> increase the rate at which withholding applies for relevant CGT assets from 12.5 per cent to 15 per cent, and removing the current \$750,000 threshold before which withholding applies for transactions involving either taxable Australian real property or an indirect Australian real property interest that provides company title interests. | Income years commencing on or after 1 January 2025. | <p>○●○</p> <p>Passed both Houses of Parliament, awaiting Royal Assent.</p> |

Summary key Australian law changes

| ATO public advice and guidance | Content | Application date | Status |
|--|---|--|--|
| Draft Practical Compliance Guideline (PCG) 2024/D3 Restructures and the new thin capitalisation and debt deduction creation rules | <p>This draft PCG sets out the Commissioner’s public guidance on Australia’s new thin capitalisation rules and compliance approach to the restructures carried out by taxpayers in response to the introduction of the debt deduction creation rules (DDCR).</p> <p>The draft PCG provides a risk assessment framework which categorises restructures into a certain risk zone in relation to the application of certain anti-avoidance provisions.</p> | When finalised, this PCG applies to restructures entered into on or after 22 June 2023 | <p>○●○</p> <p>In draft closed to public comment on 8 November 2024</p> |

| Case | Summary | Decision date | Status |
|---|--|---------------|--|
| PepsiCo, Inc v Commissioner of Taxation [2024] FCAFC 86 | On 26 June 2024, in PepsiCo, Inc v Commissioner of Taxation [2024] FCAFC 86, the Full Federal Court reversed the Federal Court single judge decision by deciding PepsiCo Inc.: 1. was not liable to pay royalty withholding tax under section 128 (2B) of the Income Tax Assessment Act, 1936 (ITAA 1936), and 2. was not liable to pay diverted profit tax under section 177J of Part IVA of ITAA 1936. | 26 June 2024 | <p>○○●</p> <p>Special leave appeal to HCA granted on 7 November 2024</p> |
| Singapore Telecom Australia Investments Pty Ltd v Commissioner of Taxation [2024] FCAFC 29 | The case concerned a dispute between Singapore Telecom Australia Investments Pty Ltd (STAI) and the Commissioner of Taxation regarding disallowed deductions claimed by STAI for interest paid on a related party cross-border loan from its parent company, Singapore Telecom Australia Investments Limited (SAI). The Full Federal Court dismissed STAI's appeal. | 8 March 2024 | <p>○○●</p> <p>Special leave appeal to HCA refused on 24 October 2024</p> |

** This list is not exhaustive, please reach out if you have any questions.*

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