

# THE ROUND UP

The important details for accountants & advisers to January 2026.

## What did I miss?



### Final ATO guidelines for PSI entities, Payday Super and Div 296 update

This month, we take a look at the ATO's finalised practical compliance guidance on applying the general anti-avoidance rules in Part IVA to companies and trusts that pass the personal services income tests and the ATO's compliance approach for the new Payday Super measures for the 2027 income year.

The recent Applebee decision looks at some common working from home deductions, especially post-COVID-19.

The Government has also issued draft legislation implementing previously announced changes to the proposed Division 296 tax on superannuation balances over \$3 million, a critical area of reform.

As change occurs, we'll keep you posted through Knowledge Shop's social media accounts – [X](#), [facebook](#) and [LinkedIn](#).

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## Coming Up...

<p><b>Small Business CGT Concessions Web Series</b> Step-by-step guide to working through the small business CGT concessions. <a href="#">Register.</a></p>	<p>Jan-Feb 2026 <a href="#">More</a></p>
<p><b>Professional Firms and Part IVA</b> Professional firms are firmly on the ATO's radar for 2026. Learn how to navigate profit allocation rules, assess your risk rating, and protect your practice from Part IVA scrutiny. <a href="#">Register.</a></p>	<p>19 March 2026 <a href="#">More</a></p>
<p><b>SMSF Training Bundle</b> Practical. Flexible. Trusted. <a href="#">Register.</a></p>	<p>Jan-Mar 2026 <a href="#">More</a></p>
<p><b>'How To' Tuesdays Series 5</b> When you've had enough of theory <a href="#">Register.</a></p>	<p>Feb-Jun 2026 <a href="#">More</a></p>
<p><b>TaxBanter's Tax Brief 2026</b> Be ahead of change <a href="#">Register.</a></p>	<p>Feb-Dec 2026 <a href="#">More</a></p>
<p><b>TaxBanter's Special Topics 2026</b> Dive deep into topical issues <a href="#">Register.</a></p>	<p>Feb-Dec 2026 <a href="#">More</a></p>

## From the Government

### Division 296

The Government has released exposure draft legislation for consultation on the Better Targeted Super Concessions measure announced in October 2025.

Schedules 1 and 3 of the draft Bill, together with the draft Imposition Bill, propose the introduction of a new Division 296 tax to reduce superannuation tax concessions for individuals with total superannuation balances (**TSB**) exceeding \$3 million.

From the 2026–27 income year, the measure proposes higher tax rates on superannuation earnings attributable to balances above \$3 million, with headline rates of:

- Up to 30% on earnings attributable to the portion of TSB between \$3 million and \$10 million; and
- Up to 40% on earnings attributable to the portion of TSB above \$10 million.

The existing 15% concessional tax rate will continue to apply to earnings attributable to balances of \$3 million or less.

The Division 296 tax will be levied directly on individuals, separate from income tax and tax paid by superannuation funds. Individuals may elect to pay their liability either by releasing amounts from superannuation or from funds held outside superannuation. The \$3 million and \$10 million thresholds will be indexed to CPI, broadly maintaining alignment with the transfer balance cap over time.

Transitional arrangements will apply for CGT assets held prior to commencement. Division 296 fund earnings will be adjusted to recognise accrued gains before commencement, with two adjustment methods proposed:

- A cost base adjustment method for small superannuation funds; and
- A factor method for other complying superannuation funds.

A further transitional rule applies for 2026–27, with Division 296 determined solely by reference to an individual's TSB on 30 June 2027. As a result,

individuals with a TSB of \$3 million or less at that date will not be subject to Division 296 tax for that year, even if their balance exceeds \$3 million on 30 June 2026.

The exposure draft does not include draft regulations. Treasury has indicated that supporting regulations will address key operational details, including:

- Exclusions from total superannuation earnings for certain interests;
- Attribution of relevant superannuation earnings, including alternative calculation methods;
- Valuation rules for certain superannuation interests; and
- The calculation of transitional CGT adjustments for large superannuation funds.

**More information**

[Treasury Laws Amendment \(Better Targeted Superannuation Concessions\) Bill 2025](#)

## 2025-26 Tax Expenditures and Insights Statement

The annual 2025-26 Tax Expenditures and Insights Statement (TEIS) released by the Treasurer on 17 December 2025 estimates the revenue forgone due to tax exemptions, deductions, concessional rates and offsets. Although the TEIS is not a statement of future policy intent, it can provide insight into areas that may attract scrutiny or focus from policy makers.

Some of the large tax expenditure and deduction items include:

- Main residence exemption
- Concessional taxation of employer superannuation contributions and superannuation earnings
- Rental deductions
- CGT discount for individuals and trusts
- Work related expenses
- Lower tax rate for small companies
- FBT exemptions for public benevolent institutions

**More information**

[2025–26 Tax Expenditures and Insights Statement](#)

## Targeted exclusions from the R&D tax incentive

The Government has released exposure draft legislation, *Treasury Laws Amendment Bill 2025: Exclusion of tobacco and gambling related activities from the Research and Development Tax Incentive* (the draft Bill), and accompanying explanatory material, to exclude research and development activities related to gambling, tobacco and nicotine products (including vaping and emerging alternatives) from eligibility under the Research and Development Tax Incentive (RDTI).

The exclusions are broad and are designed to capture core and supporting activity that could indirectly promote these activities, with a strict 'sole purpose' test for any exceptions. The reform is intended to support innovation while ensuring taxpayers are not funding and subsidising activities that have the potential to cause harmful outcomes to the public.

The sole purpose test preserves eligibility for RDTI for activities conducted solely for harm minimisation purposes, such as preventing problem gambling, reducing addiction, or supporting cessation and therapeutic outcomes.

Businesses in affected sectors, including technology providers and software developers, should review their R&D portfolios carefully, as the strict 'sole purpose' test disqualifies mixed purpose activities.

If enacted, the measures will apply to income years starting on or after 1 July 2025.

**More information**

[Exposure draft bill: Treasury Laws Amendment Bill 2025: Exclusion of tobacco and gambling related activities from the Research and Development Tax Incentive](#)  
[Explanatory materials: Treasury Laws Amendment Bill 2025](#)

## Modernising administration systems for trusts

The Government has released exposure draft legislation for the Treasury Laws Amendment Bill 2025:

Modernising trust administration systems. The draft Bill proposes amendments to change how closely held trusts report beneficiary Tax File Numbers (TFN) to the ATO.

The main proposed changes include streamlining TFN reporting so that trustees of closely held trusts report beneficiary TFNs when lodging the trust tax return, rather than on a quarterly basis. This applies where a beneficiary has quoted their TFN and is presently entitled to a share of the trust income.

The draft legislation also proposes that the Commissioner may notify a trustee of a beneficiary's correct TFN where a quoted TFN is incorrect, cancelled or withdrawn, and it is reasonable to do so. Where the Commissioner is not satisfied that a correct TFN has been provided, or identifying information does not match, the Commissioner must notify both the trustee and the beneficiary. In these cases, the beneficiary is treated as not having quoted their TFN, and the trustee may be required to withhold tax from the beneficiary's entitlement.

By aligning TFN reporting with the trust tax return, the ATO aims to improve matching of trust income to beneficiaries, support pre-filing of individual returns, and ensure the correct amount of tax is assessed.

The proposed changes do not alter existing TFN withholding rules for closely held trusts. Trustees will continue to be required to withhold tax where beneficiaries have not quoted their TFN, consistent with current law.

The proposed TFN reporting rules will apply for income years starting on or after 1 July 2026. Quarterly TFN reporting requirements will continue to apply for earlier income years.

#### More information

[Modernising tax administration systems](#)

## Transfer Balance Cap indexation

Following the release of the December 2025 quarterly CPI figures, the general transfer balance cap (TBC) will

increase from \$2,000,000 to \$2,100,000 from 1 July 2026. This could provide tax effective retirement pension and non-concessional contribution opportunities for some of your clients.

### Retirement Income Streams

Individuals who commence a retirement phase income stream for the first time after 1 July 2026 will have access to the full \$2,100,000 limit. For some individuals there may be a benefit in deferring the commencement of a retirement income stream until on or after 1 July 2026.

#### Example 1:

*Stephen aged 64 will be retiring in May 2026 and has a superannuation balance of \$2,400,000. Should he commence an income stream at retirement he can move \$2,000,000 to a tax-free retirement pension and will need to leave the remaining \$400,000 in accumulation which is taxed at 15% on the earnings.*

*If he waits until 1 July 2026 to start his pension, he can move \$2,100,000 into a retirement phase pension.*

Where the complexity lies with the transfer balance cap system is that clients who have commenced a retirement phase income stream prior to 1 July 2026 will have a personal TBC that is different to the general TBC of \$2,100,000. This is because indexation only applies to the individual's unused TBC.

#### Example 2:

*Mary aged 68 commenced an account based pension on 1 August 2025 with \$1,000,000. At that time the general TBC was \$2,000,000. Because Mary has used 50% of the general TBC she will be entitled to 50% indexation on 1 July 2026 meaning her personal TBC will only increase by \$50,000 and will be \$2,050,000.*

*If Mary had commenced her account based pension with \$2,000,000, she would not receive any indexation and her personal TBC would remain at \$2,000,000.*

Based on the proportional indexation rules we face a situation where clients may have a personal TBC anywhere between \$1,600,000 and \$2,100,000 (from 1 July 2026). A client's personal TBC and eligibility for indexation is shown on the ATO Portal and under their

My Gov Login and this should be checked before commuting or commencing any retirement phase pensions.

The upper total super balance (TSB) limit to be able to make non-concessional contributions (NCC) will also increase to \$2,100,000 from 1 July 2026 which may provide some opportunities for clients. Contribution caps are indexed to the December 2025 average weekly ordinary times earnings (AWOTE) numbers which will be released in late February 2026.

## From the Regulators

### Remission requests for interest and penalties

From 22 January 2026, registered tax and BAS agents must lodge requests for the remission of the general interest charge (GIC), shortfall interest charge (SIC) or failure to lodge (FTL) penalties using the relevant remission application form.

Forms must be submitted via ATO Online services or by mail, with a separate form required for each taxpayer and for each type of interest or penalty. Where an agent does not have access to ATO Online services, they may still contact the registered agent phone line, and the ATO will complete the form on their behalf.

Where the ATO does not fully remit an interest or penalty amount, it will issue a written decision outlining the reasons and advising the taxpayer of their review and objection rights.

Any remission requests submitted before 22 January 2026 will be actioned as normal.

The ATO has also updated its website guidance with the circumstances that it is likely a GIC request for remission will be approved or rejected.

#### More information

[Changes to interest and FTL penalty remission requests](#)

[How to request a remission of interest and failure to lodge penalties](#)

[Examples of GIC remission requests](#)

## Pillar Two compliance

The ATO has updated its website guidance in respect of the new lodgment obligations that were introduced as part of the Australian global and domestic minimum tax, consistent with the Global Anti-Base Erosion Model Rules (**GloBE Rules**).

The four new lodgment obligations include:

1. GloBE Information Return (**GIR**)
2. Foreign lodgment notification
3. Australian IIR/UTPR Tax Return (**AIUTR**)
4. Australian DMT Tax Return (**DMTR**).

For tax consolidated groups, each group entity, which includes subsidiary members, in Australia needs to lodge either a GIR or foreign lodgment notification (where the GIR is lodged overseas). Each group entity must also lodge an AIUTR or DMTR, unless their circumstances qualify for a lodgment exemption.

Multinational groups can appoint a nominated entity to lodge on behalf of each entity in the group that has a lodgment obligation.

#### More information

[Lodging, paying and other obligations for Pillar Two Tax consolidated group lodgments for Pillar Two](#)

## Super guarantee

The ATO is reminding employers that they must make super guarantee (SG) contributions to their employees' complying superannuation funds or retirement savings accounts (RSAs) for the December 2025 quarter by 28 January 2026 to avoid penalties and interest.

SG contributions must be paid by the quarterly due dates, being 28 days after the end of each quarter, to avoid the SG charge. While SG is generally quarterly, some super funds require monthly contributions, and by registering with those funds employers agree to comply with monthly payment terms.

The SBSCH will close from 1 July 2026. Existing users may continue to access the service until 11:59 pm AEST on 30 June 2026 and should transition to an alternative payment method before that date.

Employers should also check whether any industrial awards require contributions to be paid to a specific super fund.

Employers may make post-tax personal super contributions on behalf of employees in accordance with employment terms, legal requirements and award conditions. These contributions do not count towards SG obligations.

Employers can use Super Fund Lookup to confirm that a fund is complying. If a fund is not listed, written confirmation from the trustee should be obtained confirming that the fund:

- Is a complying super fund,
- Intends to accept the contributions; and
- Will continue to meet legal requirements.

Written confirmation may protect employers from penalties if a fund later becomes non-complying. Contributions made to a non-complying fund will not satisfy SG obligations, will not be tax deductible, and may give rise to FBT.

Qualifying SG contributions are tax deductible, but only in the income year in which they are paid. Missed or late contributions may attract the SG charge, which is not deductible. Late payments can be applied either to reduce an SG charge or as a pre-payment of future SG contributions for the same employee.

Practitioners should continue to monitor payment timing closely, as delays can affect both SG compliance and the timing of deductions.

#### More information

[Super guarantee \(SG\) payments due 28 January](#)

[How to pay super](#)

[Paying super guarantee](#)

## GST and fuel tax credit entitlements

The ATO is reminding taxpayers that GST credits and fuel tax credits expire if they're not claimed within the 4-year time limit. The credits expire if they're not claimed within the 4-year period and the ATO has no discretion or ability to amend assessments to include the credits.

The ATO is reminding taxpayers to:

- Have good governance frameworks and processes in place to regularly review the correctness of reporting – this should reduce the need to address mistakes in past periods near to the 4-year credit time limit. For Top 100 large corporates, the ATO expects disclosures to be made real-time, including of errors on the BAS.
- Ensure credits are correctly calculated and keep accurate records to support your claims – penalties may apply if you claim credits you're not entitled to.
- Actively manage the risks of expiry of your credits if you identify a mistake by considering the options available to you.
- Expect additional scrutiny if you seek to change long-standing positions to uplift GST recovery, for instance where an apportionment methodology is changed for periods to increase the rates claimed – this will likely take the ATO longer to review and they may need further information, so you should factor this into timeframes.

The 4-year credit time limit is different to the period of review. The period of review is the period the ATO can amend the assessment, generally 4 years from when the taxpayer lodges the BAS. The ATO can, however, extend the period of review by agreement.

The 4-year credit time limit for GST credits and fuel tax credits applies more strictly. If credits have expired, the ATO is unable to amend assessments to include these credits, even if the period of review is still open. This means there may be situations where the ATO amends for overpaid or underpaid GST or overclaimed credits, but additional credits can't be included in an amended assessment. So, it's important to make sure you claim any credit entitlements within the 4-year credit time limit.

Further information on the application of the 4-year credit time limit can be found in MT 2024/1.

#### More information

[Act early: Protect your GST and fuel tax credit entitlements](#)

## Exchange rates

The ATO has updated its website guidance to include the monthly exchanges up to and including December 2025.

The ATO has also published the foreign currency exchange rates for the calendar year ending 2025.

### More information

[Monthly exchange rates for 1 July 2025 to 30 June](#)

[2026](#)

[Calendar year ending 31 December 2025](#)

## SERR lodgments

Tax agents can now lodge Sharing Economy Reporting Regime (SERR) reports (v 1.4) on behalf of clients in Online services for agents via file transfer.

You can submit a test file to ensure it meets validation requirements and lodge the file, receiving confirmation if it passes validation.

### More information

[Key changes](#)

## ATO issuing departure prohibition orders

The ATO is actively using departure prohibition orders (DPOs) as part of a broader strategy to strengthen payment compliance and debt collection. Since July 2025, the ATO has issued 21 DPOs, which is more than the total issued in the entire 2024–25 financial year, signalling a clear shift towards earlier and firmer enforcement action.

A DPO prevents persons with outstanding tax liabilities from leaving Australia until their debt is paid or satisfactory payment arrangements are in place.

The ATO has indicated that taxpayers with significant debts who have the capacity to pay but deliberately avoid doing so, particularly where overseas travel is prioritised over meeting tax or superannuation obligations, can expect travel plans to be disrupted.

While the ATO continues to prefer early engagement and voluntary compliance through reminders and tailored support, DPOs will be used where there is concern a taxpayer may leave the jurisdiction or undermine debt recovery.

This approach forms part of the ATO's focus on reducing its \$50 billion collectable debt book, with particular attention on unpaid employee superannuation, PAYG withholding and GST collected but not remitted. DPOs are often applied alongside other firmer actions, including director penalty notices, garnishees, credit reporting referrals and wind-up applications, especially where those actions would be ineffective if the taxpayer were to depart Australia.

The ATO has emphasised that taxpayers can avoid these measures by engaging early, paying debts on time, or entering into appropriate payment arrangements with the assistance of their tax adviser.

### More information

[Grounded: Tax dodgers banned from leaving the country](#)

## Commercial deals service resources

The ATO has updated its website guidance with case studies and videos that demonstrate how the ATO can assist with providing certainty on commercial deals.

### Small business CGT concessions

For example, a partnership sold a property and sought to fully reduce the capital gain by applying the small business 50% active asset reduction and the small business rollover. The ATO requested further information to substantiate that the partnership was carrying on a primary production business. After reviewing the information provided and considering TR 97/11, the ATO concluded that there was insufficient evidence of active trading. The partnership tax returns did not show any primary production income or expenses, and the taxpayer was therefore found ineligible for the concessions. The taxpayer accepted the ATO's position and withdrew its claims.

### Market value substitution rule

Another example involved three siblings each holding a one-third interest in a family company. Two siblings sold their interests to a trust controlled by the third sibling. The ATO examined whether the market value substitution rule applied, given the non-arm's length nature of the transaction. Following internal valuation advice and further enquiries, the ATO concluded the sale price was below market value. The sellers confirmed that the purchaser set the price and that no bargaining occurred to avoid family conflict. A pre-lodgment agreement was reached to substitute market value capital proceeds.

### Value shifting in restructures

A company restructure case focused on changes to share classes and rights ahead of a planned transaction. New share classes with preferential rights were issued, followed by a later variation of rights and share split that inflated the value of those shares. The ATO determined that these changes resulted in a direct value shift from individual shareholders to a family trust. Applying the general value shifting regime, the ATO deemed capital gains to arise for the individuals in the 2022 income year, providing tax certainty for the later transaction.

### Foreign resident CGT withholding

In a foreign resident CGT case, a non-resident shareholder participated in a scheme involving non-cash consideration. To allow the transaction to proceed ahead of a shareholder vote, the taxpayer provided security equal to the estimated CGT liability. Following discussions, an escrow arrangement was agreed and the foreign resident CGT withholding rate was varied to 0%.

### Apportioned CGT discount for non-residents

The ATO also examined the calculation of the CGT discount for a non-resident beneficiary of a trust. The taxpayer had incorrectly used the contract date as the "gain day" rather than 30 June. Correcting this reduced the proportion of the discount available based on periods of Australian tax residency.

### Capital versus revenue

Finally, the ATO accepted that the sale of multiple warehouse properties by related trusts was on capital

account. Evidence showed the properties were acquired for operational use rather than profit-making, and the later sale was a mere realisation of capital assets, allowing access to the 50% CGT discount.

These case studies demonstrate the ATO's continued focus on evidence, valuations and technical CGT integrity issues, particularly in related-party and high-value transactions.

#### More information

[Commercial deals service resources](#)

## Rulings, Determinations & Guidance

### Personal services businesses and Part IVA

The ATO has issued PCG 2025/5 which sets out the Commissioner's view on the types of arrangements that are 'lower' or 'higher' risk of Part IVA applying and the likelihood the Commissioner will apply compliance resources to review those arrangements.

The PCG focuses on situations where clients use a company or trust to generate personal services income (PSI) and the entity is able to pass the PSI tests so that it is classified as a personal services business (PSB). While the PSI attribution rules don't apply to automatically cause the individual who performed the work to be taxed on the relevant profits, the ATO's long-standing view is that Part IVA could potentially apply if profits relating to an individual's personal services are split with others or retained in a company.

Indicators of a low risk arrangement include:

- The net PSI is distributed to the individual whose personal efforts or skills generated that income and taxed at their marginal rate.
- The remuneration received by the individual is substantially commensurate with the value of their personal services.
- Remuneration (for example, salary or wages) is paid to an associate for bona fide services

related to the earning of the PSI if that amount is reasonable for the services provided by them.

- There is a timing difference between the earning of the PSI and distribution of net PSI to the individual, either for reasons outside the control of the individual and PSE or where the delay is explained by circumstances not attributable to tax. This creates only a temporary deferral of tax to a following income year.
- The PSE makes a superannuation contribution on behalf of the individual, who is an employee of the PSE, for the purpose of providing a superannuation benefit.
- There is an intention to temporarily retain the profits for working capital purposes, such as to fund business operations or acquire an asset for a clear commercial purpose, and that intention is carried out.

Indicators of a higher risk arrangement include:

- The net PSI is distributed to another entity so that it is taxed at an overall lower rate than if the individual had received the income directly.
- The remuneration received by the individual is less than commensurate with the value of their personal services.
- The PSE does not distribute any income to the individual who provided the actual services.
- There is an intention to temporarily retain the profits for working capital purposes, but the intention is not carried out and there are no sound commercial reasons for not carrying that intention out.
- The net PSI (or a part thereof) is split with an associate of the individual, thereby reducing the overall income tax liability.
- Remuneration is paid to an associate (or a service trust) that is not commensurate with the skills exercised or services provided by the associate.
- The net PSI (of a part thereof) retained in the PSE is greater than required for clear commercial purposes, and the retained funds are subsequently made available to the individual for their personal use (for example, via a complying Division 7A loan). However,

the mere fact that PSI is retained is a sufficient indicator of high risk.

#### More information

[PCG 2025/5 | Legal database](#)

## First year compliance approach for Payday Super

The ATO has finalised PCG 2026/1 which sets out its compliance approach for the first year of operation of Payday Super. This relates to the possibility of the ATO investigating a superannuation guarantee (SG) shortfall for a qualifying earnings (QE) day for 1 July 2026 to 30 June 2027.

For the first year, the ATO will prioritise the application of compliance resources to the areas of highest risk, to investigate employers who have not paid the minimum amount of SG contributions for their employees. The ATO has indicated it will not have cause to apply compliance resources in respect of employers falling in the low-risk zone.

- Low risk: The employer made on-time contributions intended to fully meet SG obligations, but some contributions were not received by the fund on time. Those contributions are later received and allocated to employees as soon as reasonably practicable, resulting in nil final SG shortfalls for all employees.
- Medium risk: The employer does not meet the low-risk criteria, but all final SG shortfalls are reduced to nil within 28 days after the end of the relevant quarter.
- High risk: The employer does not meet the low- or medium-risk criteria. This includes situations where one or more employees still have an SG shortfall after 28 days following the end of the quarter.

Where an employer attempts to pay the minimum amount of contributions for all employees in line with Payday Super, but issues arise that cause the contributions to be late, the level of risk will depend on whether, and how quickly, the error is corrected.

The PCG also covers some examples of how the risk zones apply. The ATO also provides that employers can move between the risk zones within the year, for

example, if they stop making on-time contributions part way through the year.

#### More information

[PCG 2026/1](#)

## Right to occupy under a deceased's will

The ATO has issued a draft determination TD 2026/D1 which sets out the Commissioner's view on when an individual has a right to occupy a dwelling under a deceased's will for the purposes of subsection 118-195(1) of the *Income Tax Assessment Act 1997* when seeking to apply the main residence exemption to a property that was previously held by a deceased individual just before they died.

The phrase 'right to occupy the dwelling under the deceased's will' is not defined in the ITAA 1997 and takes its ordinary meaning. In light of the statutory context in which the words 'under the deceased's will' are found in section 118-195, and consistent with the reasoning adopted in case law, the ATO indicates that this item is limited to circumstances where a right to occupy has been expressly granted under the terms of the will to an individual specifically named in the will.

The ATO confirms that an individual will only have a right to occupy a dwelling under the deceased's will if this right was granted in accordance with the terms of the will itself 'without the aid or intervention of any subsequent or intermediate transaction'.

Consequently, a right given by an executor or trustee using a broad discretionary power from the will does not qualify. Likewise, a right established by a separate deed or agreement between the beneficiaries and the estate's representatives is also not considered a right 'under the deceased's will'.

The draft determination also contains examples of when a right to occupy arises under a separate agreement, the trustee's broad discretion, under a court order etc. For example, the ATO indicates that a family provision order made under the relevant legislation takes effect as if it had been made as a codicil to the deceased's will.

#### More information

[TD 2026/D1](#)

## Public country-by-country reporting exemptions

The ATO has issued PS LA 2025/2 which outlines the ATO's administrative approach to the Commissioner's discretion to grant full or partial exemptions from Australia's Public Country-by-Country (CBC) reporting obligations. It provides context on the regime, key considerations for exemptions, and the application process, emphasising case by case assessments.

The Public CBC regime applies to qualifying reporting entities for reporting periods starting on or after 1 July 2024, requiring public disclosure of tax related information to enhance transparency and align with OECD standards. Entities in scope include constitutional corporations, partnerships (where each partner is a constitutional corporation), or trusts (with constitutional corporate trustees) that are members of a CBC reporting group.

To qualify as a reporting entity, it must have been a 'CBC reporting parent' in the prior period, meaning it had annual global income of A\$1 billion or more and was not controlled by another group member. Subsidiaries may also qualify independently if not consolidated globally and meet thresholds.

CBC reporting obligations apply if aggregated turnover includes Australian sourced income of \$10 million or more in the reporting period, with reports due within 12 months of period-end and published via the ATO on a government website.

Exemptions are granted only in exceptional circumstances where disclosure would be inappropriate, balancing transparency goals against potential harms like national security risks, breaches of Australian or foreign laws, or substantial commercial damage. A partial exemption is the ATO's preferred approach.

Considerations for the Commissioner to grant an exemption to CBC reporting include the unusual nature of circumstances beyond routine, evidenced magnitude and likelihood of adverse impacts, whether information is already public or disguised by

aggregation, retrospectivity, potential to mislead and compliance costs.

Entities are encouraged to register with the ATO for Public CBC reporting before lodging an exemption for administrative efficiency. Entities seeking an exemption from Public CBC reporting should apply by submitting a written request to the ATO with supporting information.

A Public CBC reporting exemption decision is not a 'reviewable objection decision'. This means entities do not have the right to lodge an objection with the Commissioner or, subsequently, have the exemption decision reviewed by the Administrative Review Tribunal. If an entity is not satisfied with an exemption decision, it may appeal to the Federal Court of Australia for a review of the administrative decision.

**More information**

[PS LA 2025/2](#)

## Transfer pricing issues related to inbound distribution arrangements

The ATO has issued draft Practical Compliance Guideline PCG 2019/1DC, which is an update to PCG 2019/1 dealing with transfer pricing outcomes for inbound distributors.

The draft update includes the following proposed changes to PCG 2019/1:

- **Clarification of scope** — The update reiterates that it applies to arrangements of any scale except where taxpayers opt into PCG 2017/2 (simplified record-keeping option). It also clarifies when an entity is an inbound distributor, being a business which comprises:
  - Distribution of goods purchased from related foreign entities for resale to third parties where the Australian entity/entities do not significantly contribute to the creation (including manufacture or alteration) of the goods in Australia.
  - Sale of digital products/services where the products/services are sold to third parties and the intellectual property is substantially held by

related foreign entities, where the Australian entity/entities do not significantly contribute to the creation of the products/services.

- **Introduction of a white zone** — A new risk zone, the white zone, is proposed. Taxpayers are in the white zone if they have any of the following:
  - A signed Advance Pricing Arrangement (APA);
  - A settlement agreement with the Commissioner;
  - A relevant tribunal/court decision (within 3 income years); or
  - A recent review with a low/high assurance rating

and there has been no material change since the applicable income years.

Where in the white zone, the ATO will not allocate compliance resources to further review transfer pricing outcomes except to confirm ongoing consistency.

- **Updates to profit markers** — Updated profit markers indicating different risk levels.

Public comments on PCG 2019/1DC are invited until 13 February 2026.

**More information**

[PCG 2019/1DC](#)

## Deductions for mining and petroleum exploration expenditure

The ATO has published draft Taxation Ruling TR 2017/1DC which is a proposed update to the existing TR 2017/1.

The proposed changes make clear that, in line with the Full Federal Court's decision in *FCT v Shell Energy Holdings Australia Limited* [2022] FCAFC 2, the ordinary meaning of 'exploration or prospecting' should be assessed in light of the provision's context and history.

The Commissioner remains of the view that, for the purposes of section 40-730(4) of the ITAA 1997, the ordinary meaning of 'exploration or prospecting' is confined to activities directed at discovering and identifying the existence, extent and nature of

minerals, encompassing both the search to find the resource and the work to determine the size of a find and assess its physical characteristics.

**More information**

[TR 2017/1DC](#)

## ATO's focus on related party property development arrangements that defer income and exploit tax losses

The ATO has released Taxpayer Alert TA 2026/1, putting property developers and related entities on notice about certain contrived arrangements involving related party property development management agreements.

These schemes typically involve structures where related parties defer the recognition of taxable income while exploiting tax losses, often in a deliberate and repeated manner. The Commissioner states that “in these arrangements, a special purpose developer entity (developer) is interposed between an entity that owns the land being developed (landowner) and another entity undertaking building and construction works on the land (builder). The interposition of the developer artificially separates the landownership and development activities which are, in substance, a single economic activity of property development.”

The ATO is concerned that such arrangements may constitute a scheme under section 177D of the Income Tax Assessment Act 1936, triggering the general anti-avoidance rules.

Key risks highlighted include:

- Artificial deferral of income that would otherwise be assessable;
- Exploitation of tax attributes like losses in ways that lack commercial rationale; or
- Potential application of promoter penalties.

The ATO is currently actively reviewing such arrangements and should shortly publish a draft practical compliance guideline for public consultation.

**More information**

[TA 2026/1](#)

## Education directions for SMSF trustees

The ATO has issued PS LA 2026/1 which provides guidance on the administration and application of an education direction under section 160 of the *Superannuation Industry (Supervision) Act 1993 (SISA)*.

The statement outlines when and how the ATO will issue education directions to individual trustees or directors of corporate trustees of self-managed superannuation funds (SMSFs) following contraventions of SISA or the *Superannuation Industry (Supervision) Regulations 1994 (SISR)*.

The statement applies to contraventions occurring on or after 1 July 2014 and emphasises education as a compliance tool to address knowledge gaps in a trustee's knowledge or understanding of their duties and obligations to prevent contraventions from occurring.

**More information**

[PS LA 2026/1](#)

## ATO proposes zero withholding for remote Indigenous artists

The ATO has released draft Legislative Instrument LI 2025/D25 which proposes to vary the PAYG withholding rate to nil for payments made for artistic work to Indigenous artists who live or work in remote Zone A areas of Australia and do not quote their ABN.

The measure aims to reduce administrative burdens and support Indigenous artists in remote communities. The payer also does not need to give a payment summary where the amount withheld is varied to nil.

**More information**

[LI 2025/D25](#)

## ATO proposes zero withholding for certain payments to religious practitioners

The ATO has released draft Legislative Instrument LI 2025/D26 which proposes to vary the PAYG withholding rate to nil for specific payments made by an entity to a religious practitioner.

The variation applies to qualifying payments where the religious practitioner receives remuneration or allowances in connection with their religious duties.

Some examples of when a variation is allowed include:

- Payments of certain allowances to a religious practitioner where it can be reasonably expected that the religious practitioner will incur deductible work expenses related to the allowance that are at least equal to the amount of the allowance;
- Payments related to certain locum services performed by a religious practitioner; and
- Payments related to work or services provided by a religious practitioner.

### More information

[LI 2025/D26](#)

## Exemptions from requirement to lodge for MNE Groups

The ATO has issued LI 2025/28 to reduce compliance costs for multinational enterprise groups by exempting global and domestic minimum tax return lodgments which the Commissioner considers to be unnecessary because they could only ever disclose a nil liability.

### More information

[LI 2025/28](#)

## Cases

### Capitalised interest not deductible

The Full Federal Court has held in favour of the Commissioner that the interest was not deductible under section 8-1, and that it was a capital expense used to honour a guarantee.

Charles Apartments Pty Ltd (**Charles**) was a land-holding entity within the Demian property group. In 2002, Charles acquired three adjoining parcels of land (the Astoria properties), funded by a \$3 million loan from St George Bank.

In 2003, the Demian group refinanced its broader funding arrangements through a single \$27 million facility with Suncorp. Charles was not a borrower under the Suncorp facility but provided security by granting a mortgage over the Astoria properties and guaranteeing the group's obligations to Suncorp.

To discharge the St George loan, another Demian group entity advanced \$3 million to Charles under an intra-group loan. Interest under this arrangement was capitalised and payable only from any surplus realised on the future sale of the Astoria properties.

In 2010, Charles sold the Astoria properties for approximately \$5 million. In accordance with Suncorp's requirements, the net sale proceeds were paid directly to Suncorp, reducing the group's indebtedness under the Suncorp facility and releasing Suncorp's mortgage over the properties. Charles claimed a deduction of \$1.87 million, representing the interest component of the intra-group loan.

The Federal Court disallowed the deduction, finding that the outgoing was not incurred in gaining or producing Charles' assessable income, but was instead a capital payment made in satisfaction of its obligations as guarantor.

On appeal, the Full Federal Court upheld the Commissioner's position. The Court emphasised that Charles was always a "true guarantor" rather than a borrower in respect of the Suncorp facility. While the sale proceeds extinguished amounts that included

capitalised interest, the liability being reduced was that of another Demian group entity to Suncorp, not Charles' own borrowing. Any benefit obtained by Charles was the reduction of its exposure as guarantor and the avoidance of enforcement action by Suncorp, including a mortgagee sale of the Astoria properties.

Accordingly, the Court confirmed that the \$1.87 million claimed as interest was capital in nature and non-deductible, reinforcing that payments made to satisfy or reduce guarantee liabilities will not satisfy the nexus required under section 8-1, even where the underlying assets are income-producing.

#### More information

[Charles Apartments Pty Limited v Commissioner of Taxation \[2025\] FCAFC 180 \(11 December 2025\)](#)

## GST on dog breeding enterprise

The Administrative Review Tribunal (**ART**) has concluded that dog breeding activities carried on by a taxpayer were an 'enterprise' under section 9-20 of the GST Act, rather than a hobby. The matter was remitted to the Commissioner to determine the input tax credits (**ITCs**) allowable in relation to that enterprise.

The taxpayer, an entrepreneurial consultant also engaged in property investment, operated a French bulldog breeding business known as 'Delish Frenchies'. While relatively small in scale, the Tribunal found the activity had a clear commercial character. Factors supporting this conclusion included formal marketing activities, a dedicated website, 16 sales contracts with unrelated parties, professional licensing, specialised infrastructure and approximately \$96,000 in income, demonstrating a genuine profit intention.

However, the taxpayer was unsuccessful in claiming ITCs for entertainment expenses and for property investment activities, which were not accepted as creditable acquisitions.

In relation to penalties, the Commissioner had imposed a 50% shortfall penalty for recklessness, together with a 20% base penalty uplift. The Tribunal set aside penalties relating to the dog breeding enterprise itself but upheld the 50% recklessness penalty for other

issues. A significant factor was the taxpayer's failure to report sales income while simultaneously claiming ITCs in respect of the same enterprise.

The Tribunal also ordered the remission of the 20% uplift, noting that the ATO had incorrectly applied the uplift to every tax period and had miscalculated interest.

Separately from the substantive tax issues, the Tribunal made pointed comments on the use of AI tools in tax research, emphasising the need for care. While it was unclear whether the taxpayer had relied on AI tools, the Tribunal warned that any authorities identified using AI must be independently verified, read in full and confirmed to support the propositions for which they are cited. In this case, several cited authorities did not exist, were irrelevant, or did not say what was claimed, wasting Tribunal resources. The comments serve as a timely warning to practitioners about the risks of uncritical reliance on AI-generated research.

#### More information

[Smith and Commissioner of Taxation \(Taxation\) \[2026\] ARTA 25 \(12 January 2026\)](#)

## Occupancy expenses and car logbook rejected

The ART has found that a taxpayer who was a senior technical solutions consultant was not entitled to claim deductions for his occupancy expenses and his logbook based travel expenses.

### Occupancy Expenses

The ART examined two key questions in deciding whether the taxpayer could claim a deduction for occupancy expenses related to their home office:

- Whether the home office qualified as a place of business (ie, had the essential character of a dedicated business location rather than merely an extension of the employer's workplace or a personal convenience area).
- Whether the relevant expenditure was actually incurred in the course of producing assessable income.

The ART ultimately found against the taxpayer on these issues.

The taxpayer claimed occupancy expenses during the period where the entity contracting the taxpayer was phasing in a 'return to office' policy after the easing of restrictions during the COVID-19 pandemic. The employer had not required or directed the taxpayer to work from home during this time, but the taxpayer continued to work from home for three days each week. As such, the ART held that the home setup was treated as ancillary to the primary workplace rather than a standalone place of business.

Further, the room the taxpayer worked from was not solely used as a place of business (for example, the room had a weights bar stored in it and was listed as a bedroom on the floorplan). Such factors contributed to the ART disallowing the full occupancy costs claimed.

### Car Expenses

The ART disallowed the taxpayer's car expenses claimed under the logbook method due to the logbook not being completed contemporaneously. The taxpayer produced different versions of the logbook that were inconsistent with each other and also did not give evidence under oath to the ART about the logbooks. The Commissioner's allowance of only the \$3,600 under the cents per kilometre method was upheld by the ART.

The Tribunal found that the penalties for making false or misleading statements should not be remitted beyond the Commissioner's remittance of 20%. The original penalty imposed for recklessness was 50%.

#### More information

[Applebee and Commissioner of Taxation \(Taxation and business\) \[2025\] ARTA 2625 \(8 December 2025\)](#)

## \$6 million net asset value test not met

This case focused on the application of the \$6m maximum net asset value (MNAV) test under the small business CGT concessions and whether the market

value of the shares that were sold was different from the actual sale price.

The Kilgour Trust had sold its minority 20% interest in conjunction with the two other shareholders in Punters Paradise Pty Ltd (Punters) to News Corp Investments Pty Ltd (News Corp). The purchase price of \$31,057,722 was apportioned between the vendors in amounts reflecting the number of shares sold by them, the trustees of the minority holdings each receiving \$6,211,544 reflecting their 20% holdings.

The taxpayer, Mrs Kilgour, as a beneficiary of the Kilgour Trust was assessed on the capital gain by reference to the distribution which she received. The capital gain was calculated having regard to the 'market value' of the shares as CGT assets. Mrs Kilgour contended that she should be assessed on a lower capital gain because she qualified for the small business CGT concessions in Division 152 of the ITAA 1997 by satisfying the MNAV test.

She argued that the market value of the shares was less than \$6 million, despite the actual proceeds received being more than this. Her arguments were based on the following points:

- News Corp paid above the true market value due to factors unrelated to the inherent worth of the minority shareholdings themselves.
- The deal was not conducted at arm's length, meaning the parties did not negotiate on fully independent commercial terms when agreeing to the Share Sale Agreement. Under section 116-30, this would require substituting the actual sale proceeds with a lower market value of the shares.

The taxpayer argued that for CGT purposes, the market value should be determined by viewing each 20% parcel in isolation, as if it were a standalone transaction, rather than considering the collective sale of 100% of the shares in the company to News Corp at the same time.

The Full Federal Court dismissed the taxpayer's arguments and decided that:

- The parties to the Share Sale Agreement dealt with each other at arm's length; and
- The market value substitution rule did not apply and the capital proceeds received were an

accurate representation of the market value of the transaction

Therefore, the beneficiaries of the Kilgour Trust were not entitled to apply the small business CGT concessions as the MNAV test was failed.

**More information**

[Kilgour v Commissioner of Taxation \[2025\] FCAFC 183 \(12 December 2025\)](#)

## Legislation

### Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025

The Bill that introduces the small business instant asset write-off extension and other tax measures received Royal assent on 4 December 2025 and is now law.

Schedule 7 extends the \$20,000 instant asset write-off for eligible small business entities (aggregated turnover under \$10 million) by 12 months to 30 June 2026. The measure applies to eligible depreciating assets first used or installed ready for use between 1 July 2025 and 30 June 2026.

The Act also amends the ITAA 1997 to allow an income tax deduction for reverse-charged GST where the GST paid exceeds available input tax credits, provided the general deduction rules are satisfied. This applies from income years including 1 July 2023.

**More information**

[Treasury Laws Amendment \(Strengthening Financial Systems and Other Measures\) Bill 2025](#)

### Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Bill 2026

A Bill has been introduced which contains consequential amendments to the ITAA 1997 to amend the definition of 'firearms surrender arrangements' to include the national firearms program as defined in the Bill.

The amendments provide that amounts received as compensation under the national gun buyback scheme which would otherwise be assessable income are treated as non-assessable non-exempt income under section 59-10.

Under the legislation, a capital gain made from compensation received under the national gun buyback scheme is disregarded under section 118-37(3). Further, where compensation received under the national gun buyback scheme exceeds the adjustable value of a surrendered firearm, no amount will be included in assessable income via section 40-285 under section 40-289 of the *Income Tax (Transitional Provisions) Act 1997*.

**More information**

[Combatting Antisemitism, Hate and Extremism \(Firearms and Customs Laws\) Bill 2026](#)