Australia update

Speakers

Manu Sriskantharajah
Tax Partner
Deloitte Australia

Priscilla Ratilal
Tax Partner
Deloitte Australia

Agenda

1. Government Consultation and ATO activity
2. Capital gains tax reforms
3. Latest on Managed Investment Trusts
4. Investment Manager Regime
5. Pillar Two Implementation
6. Country by Country Reporting Update
7. Debt—Quantum and Deductibility Issues

Government Consultation and ATO activity

Thin Capitalisation & Debt Deduction Creation Rules

1 Jul 2023: New thin capitalisation rules, including fixed ratio test and third part debt test (TPDT) commence.

1 Jul 2024: New debt deduction creation rules (DDCR) commence.

20 Aug 2025: ATO finalises Practical Compliance Guideline on new thin capitalisation and DDCR rules (PCG 2025/2 Schedules 1,2 and 4).

1 Oct 2025: ATO finalises Ruling (TR 2025/2) and Practical Compliance Guideline (PCG 2025/2 Schedule 3) on TPDT.

1 Feb 2026: Board of Taxation commences independent review of the rules.

Key issues:

- Practical impact and cost of complying with DDCR
- ATO's restrictive views in published guidance on access to TPDT (e.g., TPDT not available if proceeds of financing are used to fund capital management activities)

Reduction in Red Tape

24 Sep 2025: Government announces Board of Taxation will review ways to reduce red tape in the tax system.

Key objectives:

- Ease compliance burden on businesses
- Increase economic productivity
- Part of broader Government review into what regulators can do to support productivity

Considering opportunities in both **administrative** and **legislative** changes

Key themes in submissions made:

- Uncertainty in law making process (e.g., tax residency, thin capitalisation, DDCR)
- Excessive disclosure in ATO reviews rather than targeted risk-based approach
- Increased onerous and duplicative reporting (e.g., international dealings schedule, new short form local file, CbC and Public CbC reporting)

Government Consultation and ATO activity

Increased ATO Scrutiny on Foreign Investment

Foreign Investment Review Board (FIRB) processes:

- **14 Mar 2025:** Treasury releases updated Tax Conditions guidance notes (for FIRB approvals) reflecting increased scrutiny on arrangements which pose a risk to revenue.
- Revised Tax checklist expected to be included in FIRB applications which are very wide ranging.
- Specific conditions on private equity style transactions.

ATO's Private Equity Taskforce:

- Received significant additional funding in 2024 and 2025 Federal Budgets
- Increased review and audit activity on private equity held investments across all sectors (portfolio companies, real estate, etc.)
- Scope of review expanded from "divestment reviews" to also include "holding period reviews"

Renewed Focus on Withholding Taxes

ATO Review of 128F Interest WHT Exemption on publicly offered debt:

- *"We are engaging with banking and finance industry professionals to understand commercial practices relevant to 'public offers' for the purposes of the interest withholding tax exemption under section 128F... We have observed a range of behaviours that suggest some entities may be **incorrectly claiming** the interest withholding tax exemption as they do not satisfy the eligibility criteria under the 'public offer' test."* - ATO
- Consultation being undertaken with a view to provide guidance to the market on the criteria and evidence needed to demonstrate eligibility for the exemption.

Proposed New Penalty regime:

- Government has announced from **1 Jul 2026** penalties will apply to large taxpayers for **mischaracterised** or **undervalued** interest, dividend or royalty payments, to which withholding tax would otherwise apply.
- Aimed at perceived gaps. Details of rules still forthcoming.

Capital Gains Tax Reforms

Non-Resident CGT Reforms

Increased withholding taxes:

- **From 1 Jan 2025:**
  - The foreign resident capital gains withholding rate increased from 12.5% to 15%; and
  - The $750,000 threshold before which withholding applies involving either taxable Australian real property (TARP) or indirect real property interests (IARPI) relating to company title interests was removed.

Broader scope

- Proposal to broaden base of capital gains tax for foreign investors by extending concept of TARP to assets with **a close economic connection with Australian land**
  - Include a 365-day testing period for TARP status
  - Require foreign residents to notify ATO prior to disposing of shares/membership interests >A$20mil in value
  - Still no announcement on timing of changes

Wider CGT Reforms?

Speculation that Government will reform CGT concessions:

- Reports that CGT reform will form “the centerpiece” of the May 2026 Federal Budget
- Reduce CGT discount for eligible individuals from 50% to 33%/25%?
- Adjust discounts to duration of holding periods?
- Limit discounts to just residential real estate?
- Apply to only new investments?
- Will superannuation funds (who get a 1/3 discount) get impacted?
- Changes likely in conjunction with reform in other areas (e.g., personal income tax)

Latest on Managed Investment Trusts

"Captive MITs"

7 Mar 2025:

- ATO issues Taxpayer alert 2025/1 raising concerns regarding the following:
  - Restructures of existing structures to "inappropriately access" the MIT withholding regime (and deemed CGT treatment) (e.g., a unit trust having two or more unitholders to meet the MIS "pooled investment requirements").
  - Changing arrangements such that the management of the trust meets the licencing requirements for a MIT

13 Mar 2025:

- Treasury announces: "The Government will amend the income tax laws to ensure legitimate investors can continue to access concessional withholding tax…The amendments will make clear that **trusts ultimately owned by a single widely-held investor** (e.g. a foreign pension fund) are able to access the MIT concessions"
- Details of new measure yet to be released

Build to Rent Incentive

Income tax Incentives:

- Access to a concessional 15% managed investment trust (MIT) withholding tax (WHT) rate for rental and capital gains on disposals of membership interests in entities holding an active BTR development from 1 Jul 2024;
- An increase in the capital works rate of deduction from 2.5% to 4% for active BTR developments in respect of capital works from 9 May 2023.

Key requirements:

- BTR development of at least 50 dwellings
- Available to public for lease of at least five years
- At least 10% of dwellings must be offered as affordable

Traps to watch out for:

- "One out all out"—all dwellings have to qualify at all times.
- Punitive BTR development "misuse tax" of 45%
- CGT concession limited to dwelling itself (not adjacent lands or parts of buildings not dwellings)
- Significant administrative cost (e.g., notifications of change in ownership, monitoring "affordable" discounts)

Investment Manager Regime

Eligibility and Benefits

Eligible entities:

- Foreign fund entities that are "widely-held" and do not carry on business through an Australian permanent establishment
- Foreign entities that invest via an "independent Australian fund manager" (who may have an Australian permanent establishment).

Key Benefits:

- Australian tax exemption in relation to gains and some returns on portfolio (< 10% ownership interest) investments (e.g., shares, loans and derivatives) in Australian entities.
- No requirement to consider revenue v capital, source and treaty implications.

Note: Benefits are limited to non-resident investors. Withholding tax continues to apply to interest and dividends.

IMR (offshore fund) v MIT (onshore fund)

- IMR "widely held" ownership requirements are generally easier to satisfy compared to the MIT ownership requirements:
  - "IMR widely held entity" requires that either:
    (i) no one member ultimately has a 20%+ interest; or
    (ii) 5 or fewer members ultimately do not have 50%+ interest
  - Certain Special entities* themselves also qualify, and they are deemed to have a nil interest for the above tests (making the test even easier to satisfy).
  - MIT requires 50 members, or 25 for wholesale MITs (with concessional member count to the extent of special entities*) and no concentration (e.g., 10 or fewer owning 75%+)
- IMR regime applies to exempt non-residents on Australian sourced revenue gains. MIT regime does not, but allows for deemed capital treatment (essentially negating question of source and limiting tax to real property interests for non-resident investors)
- MIT better suited for non-residents investing in non-portfolio Australian real property investments (tax rate for non-residents generally limited to 15%)
- MIT is also better suited for a mix of Australian investors (who are able to access CGT discount and franking credits) and foreign investors (no tax on non-real property capital gains, and 15% tax rate on real property gains)

*Special entities include pension funds, sovereign funds and life insurance companies.

Pillar Two Implementation Update

Current Adoption

- Early adopter of the Pillar Two rules—IIR & QDMTT from FY24, UTPR from FY25.
- No immediate response from Australian Treasury on side-by-side package.
  - However, Australia is expected to implement the package in full (which will require new secondary legislation and could be retroactive from 1 Jan 2026).
- Unclear whether Australia will allow taxpayers to elect into permanent safe harbour early (from 1 Jan 2026) or not.
- **28 Jan 2026:** Australia signed up to the MCAA (Pillar Two exchange of information agreement).

Compliance & Guidance

- Deadline for December year-ends is **30 Jun 2026**.
- Additional local tax returns are required—the so-called "combined global and domestic minimum tax return " (**CGDMTR**) comprising the GIR/FNF, DMTT return & IIR/UTPR return.
- Only sample CGDMTR forms have been released by the ATO. Expect final/live versions in late Mar 2026.
- Key ATO guidance:
  - **17 Jul 2025:** Guidance on the "reasonable measures" taxpayers are expected to take to comply.
  - **17 Dec 2025:** guidance on prior period adjustments and particular issues for tax consolidated groups, including helpful guidance eon hybrid arbitrage arrangements arising within a consolidated group.
  - **22 Dec 2025:** Legislative Instrument regarding exemptions from requirement to lodge CGDMTR in certain cases.

Common Areas of Concern

- Flow-through JVs/funds causing failure of TSH and top-up tax liability
- Large R&D claims in Australia (R&D being a non-QRTC, but potentially a better outcome under new qualifying tax incentives regime?)
- Large carry-forward losses (recast at 15%)
- Transactions within consolidated groups that give rise to large accounting gains
- Hybrid arbitrage arrangements/intragroup financing arrangements with branches

Public CbCR—Brief Update

Scoping

- Group has income of A$1bil or more in reporting period and preceding period
- “Constitutional corporation” or trust where each trustee is a “constitutional corporation” or partnership where each partner is a “constitutional corporation”
- Group has aggregated turnover with Australian sourced income of A$10mil or more
- Has a member that is an Australian “resident” or foreign resident with an Australian permanent establishment

Registration

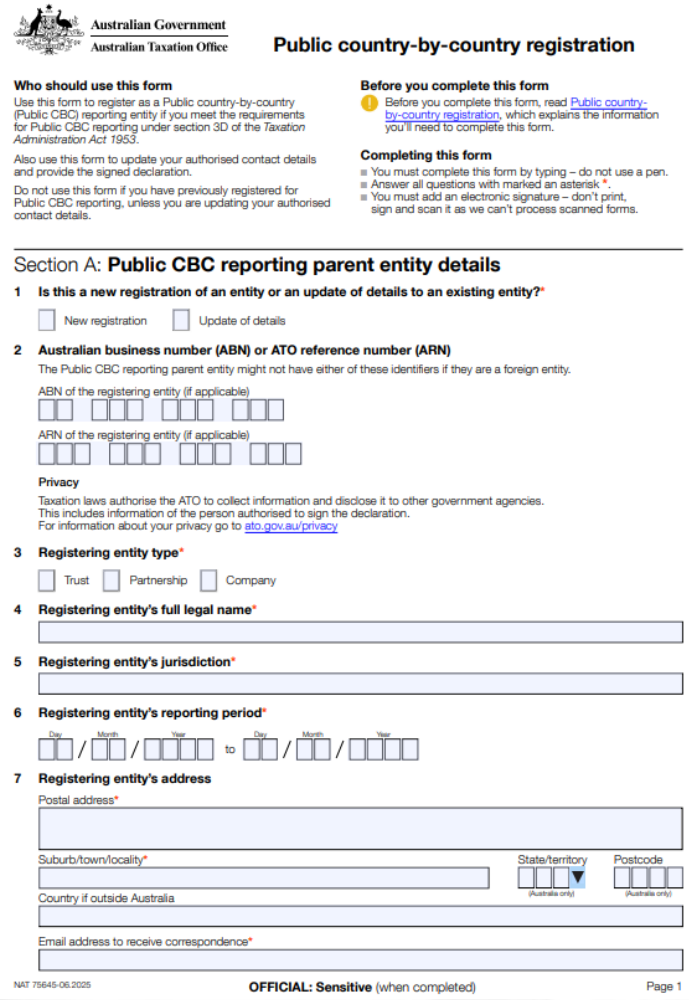
- Public CbC reporting parents should register via an editable PDF (screenshot right)
- See also detailed instructions on the ATO’s website the registration form

Exemptions

- ATO encouraging registration four weeks before applying for exemption
- PS LA 2025/2 provides the ATO’s administrative approach to the Commissioner’s discretion for granting an exemption from Public CbCR—“Full” or “Partial”
- Exemptions requested via an email address in a form with supporting information

Submission

- The submission document is an approved XML Schema form



Australian Government
Australian Taxation Office

Public country-by-country registration

Who should use this form

Use this form to register as a Public country-by-country (Public CBC) reporting entity if you meet the requirements for Public CBC reporting under section 3D of the *Taxation Administration Act 1953*.

Also use this form to update your authorised contact details and provide the signed declaration.

Do not use this form if you have previously registered for Public CBC reporting, unless you are updating your authorised contact details.

Before you complete this form

Before you complete this form, read Public country-by-country registration, which explains the information you'll need to complete this form.

Completing this form

- You must complete this form by typing – do not use a pen.
- Answer all questions with marked an asterisk *.
- You must add an electronic signature – don't print, sign and scan it as we can't process scanned forms.

Section A: **Public CBC reporting parent entity details**

1 **Is this a new registration of an entity or an update of details to an existing entity?***

New registration Update of details

2 **Australian business number (ABN) or ATO reference number (ARN)**

The Public CBC reporting parent entity might not have either of these identifiers if they are a foreign entity.

ABN of the registering entity (if applicable)

ARN of the registering entity (if applicable)

Privacy

Taxation laws authorise the ATO to collect information and disclose it to other government agencies. This includes information of the person authorised to sign the declaration. For information about your privacy go to ato.gov.au/privacy

3 **Registering entity type***

Trust Partnership Company

4 **Registering entity's full legal name***

5 **Registering entity's jurisdiction***

6 **Registering entity's reporting period***

Day / Month / Year to Day / Month / Year

7 **Registering entity's address**

Postal address*

Suburb/town/locality* State/territory* Postcode

(Australia only) (Australia only)

Country if outside Australia

Email address to receive correspondence*

NAT 75645-06.2025 **OFFICIAL: Sensitive** (when completed) Page 1

Public CbCR—Brief Update

Separate to confidential CbC reporting, for reporting period starting on or after 1 Jul 2024

Disclosure	Australia and specified jurisdictions	Rest of world (option to aggregate)
Description of global group approach to tax*		✓
Name of jurisdiction	✓	N/A
Description of main business activities		
Number of employees		
Revenue from unrelated parties*		
Revenue from related parties that are not tax residents of the jurisdiction*	✓	✓
Profit or loss before income tax		
Book value of tangible assets*		
Income tax paid (cash basis)		
Income tax accrued (current year)		
Explanation of difference in income tax accrued and tax if statutory rate applied to profit before tax*	✓	N/A
Currency used in calculating the above	✓	✓

Information must be based on “amounts as shown in the annual consolidated financial statements of the group”

The list of specified jurisdictions includes 40 jurisdictions (notably Singapore, Hong Kong, Bermuda, Switzerland) which differs from the EU list of non-cooperative jurisdictions for tax purposes

The CbC reporting parent will be penalised for non-/late lodgements. The maximum penalty would be A$825,000 (the last increase to penalty unit value occurred on 7 Nov 2024)

Public CbC Reports are due for lodgement within 12 months of the financial year end of the ultimate parent entity.

Debt—Quantum and Deductibility Issues

Arm's length quantum of debt	• From 1 Jul 2024, there is no "safe harbour" amount of debt for non-financial entities. • The ATO's Draft Practical Compliance Guideline (PCG) 2025/D2 sets a high bar on documentation to support the arm's length nature of debt. In addition to a transfer pricing analysis, relevant documentation may include details on the purpose of funding, correspondence on negotiation of terms, funding proposals to demonstrate other realistically available options, post-financing returns to shareholders, group funding policies, etc.
Definition of "financial entity"	• As part of the changes to Australia's interest limitation rules, the definition of "financial entity" changed, applying from 1 Jul 2024. Previously, the requirement was to be registered with the Financial Sector (Collection of Data) Act 2001. The key change was the introduction of the "all, or substantially all" test around a "business of providing of finance" or "dealing in securities or derivatives" with third parties. • The ATO's Banking & Finance team is developing a series of interpretive issues relating to the new definition to provide certainty to taxpayers.
Definition of "debt deductions"	• The definition of "debt deduction" in the new interest limitation rules effectively introduces a substance test, by including amounts "economically equivalent to interest". Additionally, the exclusion in relation to hedging costs has been removed. The new definition applied from 1 Jul 2024. • The ATO's Banking & Finance team is working through the impact on banks and non-banks, with a plan to confirming ATO views to provide clarity to taxpayers. The ATO is also open to private ruling applications on the issue.
Deductions for "bail-in" bonds	• Unsecured debt that are subject to non-viability provisions (i.e., bail-in bonds) fail the "debt test" in Australia's debt/equity rules. Regulations provided an exemption for instruments issued by Australian banks but do not apply to foreign banks. • On 16 Oct 2025, regulations were passed (with retrospective effect) to provide a similar exemption to bail-in bonds issued by Australian branches of foreign banks.

Deloitte.