BDO's quarterly tax bulletin

Quarter ending 30 September 2026

Exploring the latest Australian tax developments

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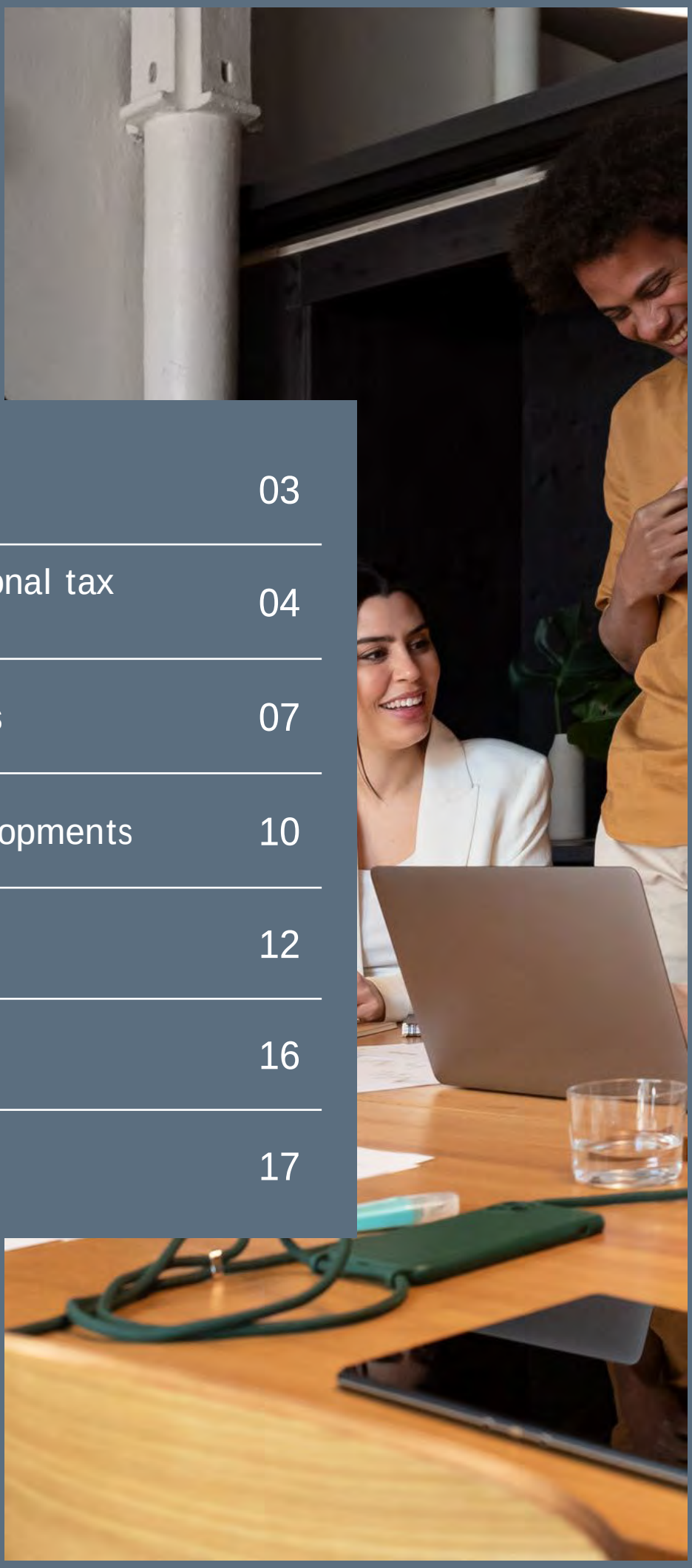
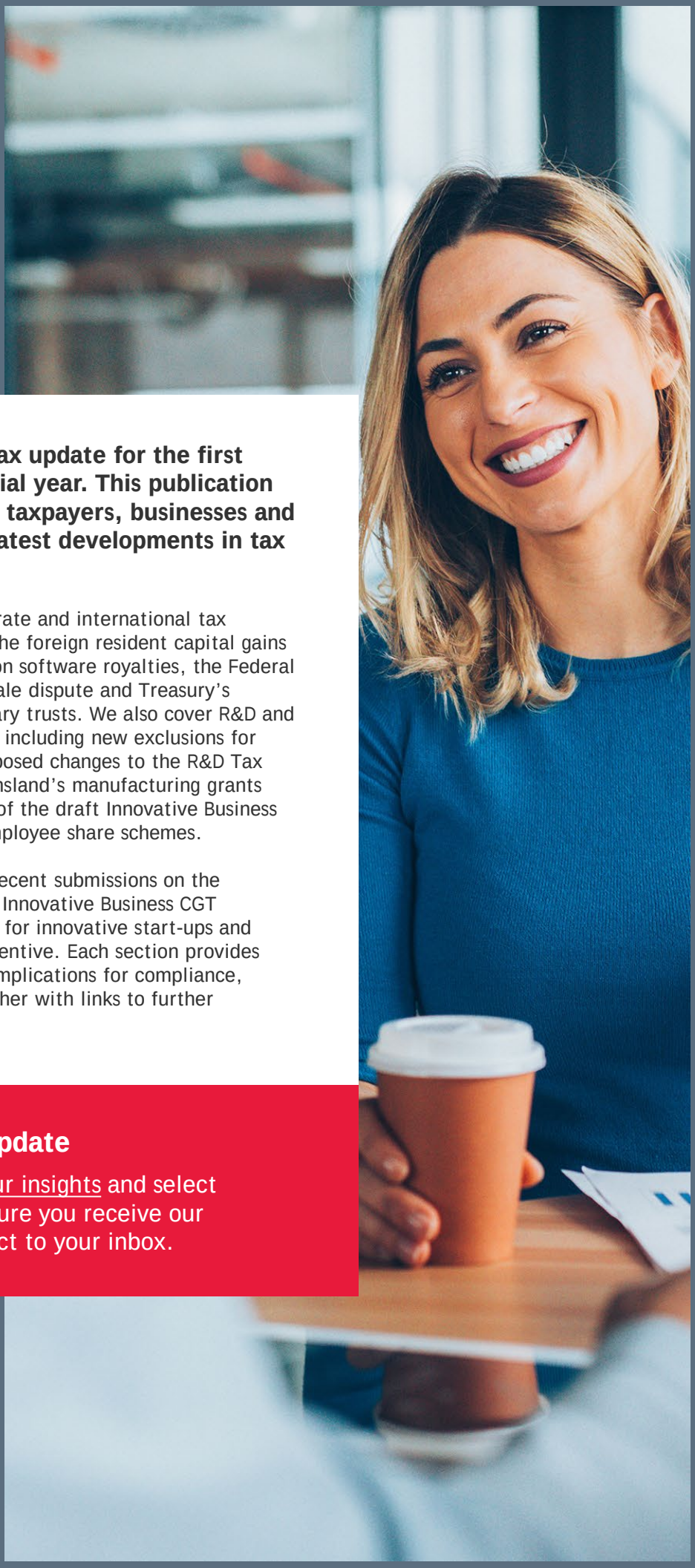


Introduction



Welcome to BDO's quarterly tax update for the first quarter of the 2026-27 financial year. This publication is designed to keep Australian taxpayers, businesses and advisers informed about the latest developments in tax law, policy and compliance.

In this edition, we explore key corporate and international tax developments, including reforms to the foreign resident capital gains tax regime, the ATO's final position on software royalties, the Federal Court's decision in the Hilton hotel-sale dispute and Treasury's proposed minimum tax on discretionary trusts. We also cover R&D and government incentive developments, including new exclusions for gambling and tobacco activities, proposed changes to the R&D Tax Incentive and the reopening of Queensland's manufacturing grants program, as well as the implications of the draft Innovative Business CGT Concession for start-ups with employee share schemes.

You'll also find a summary of BDO's recent submissions on the discretionary trust minimum tax, the Innovative Business CGT Concession, capital gains tax reforms for innovative start-ups and proposed changes to the R&D Tax Incentive. Each section provides practical insights into the potential implications for compliance, planning and risk management, together with links to further guidance from our tax experts.

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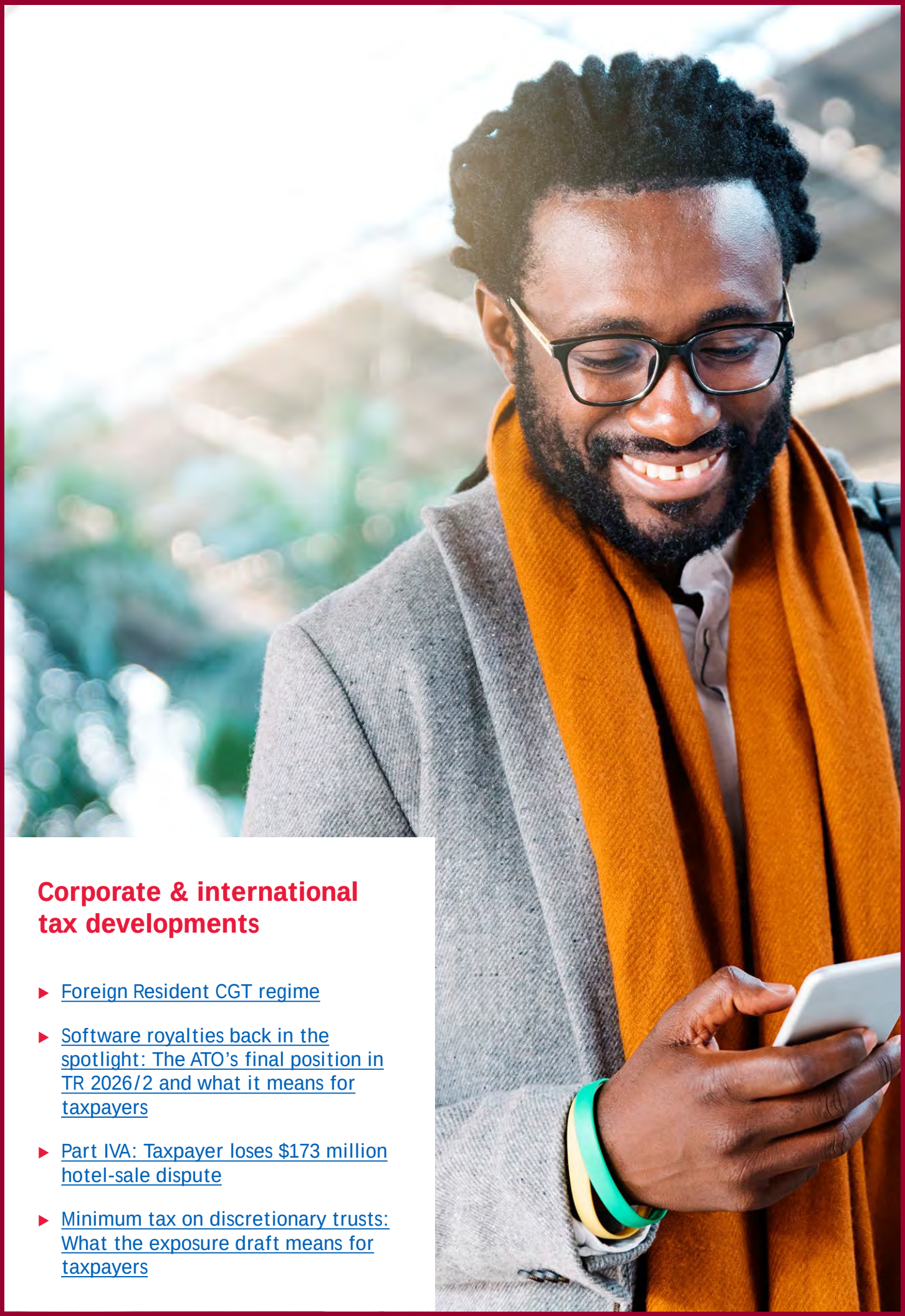


Corporate & international tax developments

- Foreign Resident CGT regime
- Software royalties back in the spotlight: The ATO's final position in TR 2026/2 and what it means for taxpayers
- Part IVA: Taxpayer loses $173 million hotel-sale dispute
- Minimum tax on discretionary trusts: What the exposure draft means for taxpayers

Corporate & international tax developments

Foreign Resident CGT regime

The Government has introduced legislation into Parliament to strengthen Australia's foreign resident capital gains tax (CGT) regime and implement changes to the proposed renewable energy CGT discount. The Bill follows consultation on the Exposure Draft released in April 2026 and includes several important modifications in response to stakeholder feedback.

Key changes include removal of the retrospective application of the new "real property" definition, restrictions on the Commissioner's ability to amend certain historical assessments, the retention of a 365-day Principal Asset Test with new Ministerial discretion , new Ministerial discretion regarding vendor notification and a reduction in the renewable energy asset threshold from 90 per cent to 75 per cent to access the proposed transitional CGT discount.

With the measures expected to commence following Royal Assent, foreign investors should review Australian asset classifications, transaction readiness processes, purchaser due diligence procedures and renewable energy investment strategies to understand the potential impact of the proposed reforms.

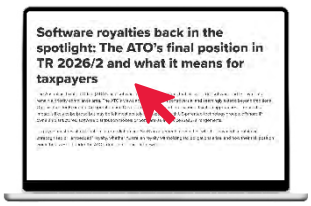
Learn more

Software royalties back in the spotlight: The ATO's final position in TR 2026/2 and what it means for taxpayers

The ATO's finalised software royalty ruling, TR 2026/2, and draft PCG 2026/D4 confirm that cross-border software and IP payments remain a priority compliance area. The guidance takes a broad view of when payments under software intermediation, distribution and SaaS arrangements may be treated as royalties and subject to Australian royalty withholding tax.

Taxpayers with offshore IP ownership structures, US-parented technology groups, software distribution models or SaaS arrangements should review existing and proposed arrangements to identify potential royalty components, reassess withholding tax exposure and understand where they may fall within the ATO's proposed risk framework. Robust documentation will be critical, particularly where taxpayers seek to support a lower-risk position or apply an apportionment methodology.

As the ATO moves from consultation to administration, early action will help taxpayers manage compliance risk, prepare for potential ATO engagement and support their current tax positions.



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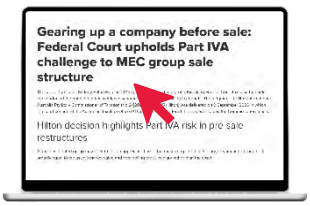
Corporate & international tax developments

Part IVA: Taxpayer loses $173 million hotel-sale dispute

The Federal Court's decision in Hilton International Australia Pty Ltd v Commissioner of Taxation (No 2) provides an important reminder of the tax risks associated with complex pre-sale restructures. The case involved the 2015 sale of the Sydney Hilton Hotel and a structure that produced a $173 million tax benefit. The Court upheld the Commissioner's application of Part IVA, Australia's general anti-avoidance rules.

The Court focused on whether the particular structure used was commercially necessary, or whether the same outcome could have been achieved through a simpler transaction. While the taxpayer identified commercial objectives for the sale, the Court was not persuaded that these objectives required the additional restructuring steps and substantial intra-group debt.

The decision has broader implications for M&A transactions, property disposals and corporate restructures. It reinforces the importance of identifying a robust commercial rationale which is documented contemporaneously, particularly where a structure produces a favourable tax outcome.



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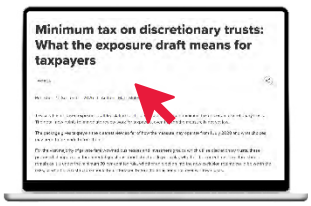
Minimum tax on discretionary trusts: What the exposure draft means for taxpayers

Treasury's exposure draft legislation for the proposed 30 per cent minimum tax on certain discretionary trusts provides the clearest indication yet of how the regime may operate from 1 July 2028. Although the measures are not yet law, the draft gives taxpayers greater insight into which trusts and income streams may be affected, and what planning decisions may need to be considered ahead of commencement.

The proposed legislation could have significant implications for family-owned businesses and investment groups that rely on discretionary trusts for flexibility, asset protection and succession planning. In particular, groups that use corporate beneficiaries or loss entities may face substantial double taxation outcomes under the proposed framework.

The exposure draft introduces several important features, including a broader fixed trust definition, an excluded election trust regime and transitional roll-over relief. These measures may provide alternative pathways for some taxpayers, but each carries its own commercial, tax and governance considerations that will require careful assessment.



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R&D tax developments

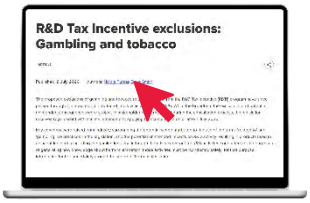
- R&D Tax Incentive exclusions: Gambling and tobacco
- RDTI exposure draft
- Transforming Queensland Manufacturing Program: Round 2 now open

R&D tax developments

R&D Tax Incentive exclusions: Gambling and tobacco

The proposed exclusions for gambling and tobacco-related activities from the R&D Tax Incentive (RDTI) have now passed as law, representing a significant shift from the industry-agnostic approach of the RDTI. Applying to income years starting on or after 1 July 2025, the changes introduce broad exclusions for activities related to gambling, gambling-like practices and tobacco, with limited carve-outs for activities conducted solely for harm minimisation purposes.

While the practical application of the new rules remains uncertain, businesses undertaking R&D in adjacent sectors or developing products and technologies with potential applications in gambling or tobacco-related industries may face increased uncertainty when assessing eligibility. The changes also limit the binding effect of existing Advance Findings where activities fall within the scope of the new exclusions.



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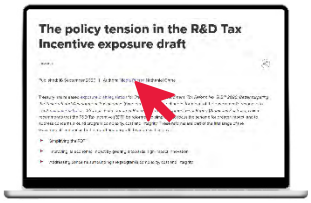
RDTI exposure draft

Treasury has released exposure draft legislation proposing significant changes to the R&D Tax Incentive (RDTI) from 1 July 2028, introducing an enterprise-age test for refundability, a therapeutic-goods-specific dominant-purpose finding extension process, and the removal of supporting R&D activities.

The therapeutic goods carve-out recognises that some R&D programs have long development cycles and regulatory pathways. Long-cycle, high-risk R&D also commonly arises in critical minerals, advanced manufacturing, clean energy, energy storage, defence, space and quantum technology, in which these changes could have profound effect on claims in these sectors.

While the draft is framed as streamlining the program, the proposed changes may add complexity for claimants and create new areas of uncertainty around eligibility, cash flow planning and documentation. Businesses that claim or plan to claim the RDTI should consider how the draft rules could affect future project planning and investment decisions.



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R&D tax developments

Transforming Queensland Manufacturing Program: Round 2 now open

A significant funding opportunity has re-opened for Queensland's manufacturing sector.

Designed to help local manufacturers scale, modernise and compete globally, the Transforming Queensland Manufacturing Grants Program is a key initiative that forms part of a broader $79.1 million grants package.

Eligible Queensland-based manufacturers can apply for matched funding grants of $100,000 to $1.5 million for projects that:

- Facilitate pathways for export opportunities
- Reshore or onshore manufacturing activity currently undertaken interstate or overseas
- Improve manufacturing productivity and competitiveness
- Stimulate private sector investment and generating jobs.

Applications close on 25 November 2026 at 1pm.

Learn more

Employment tax developments

- Innovative Business CGT Concession: What does the draft legislation mean for start-ups with employee share schemes?

Employment tax developments

Innovative Business CGT Concession: What does the draft legislation mean for start-ups with employee share schemes?

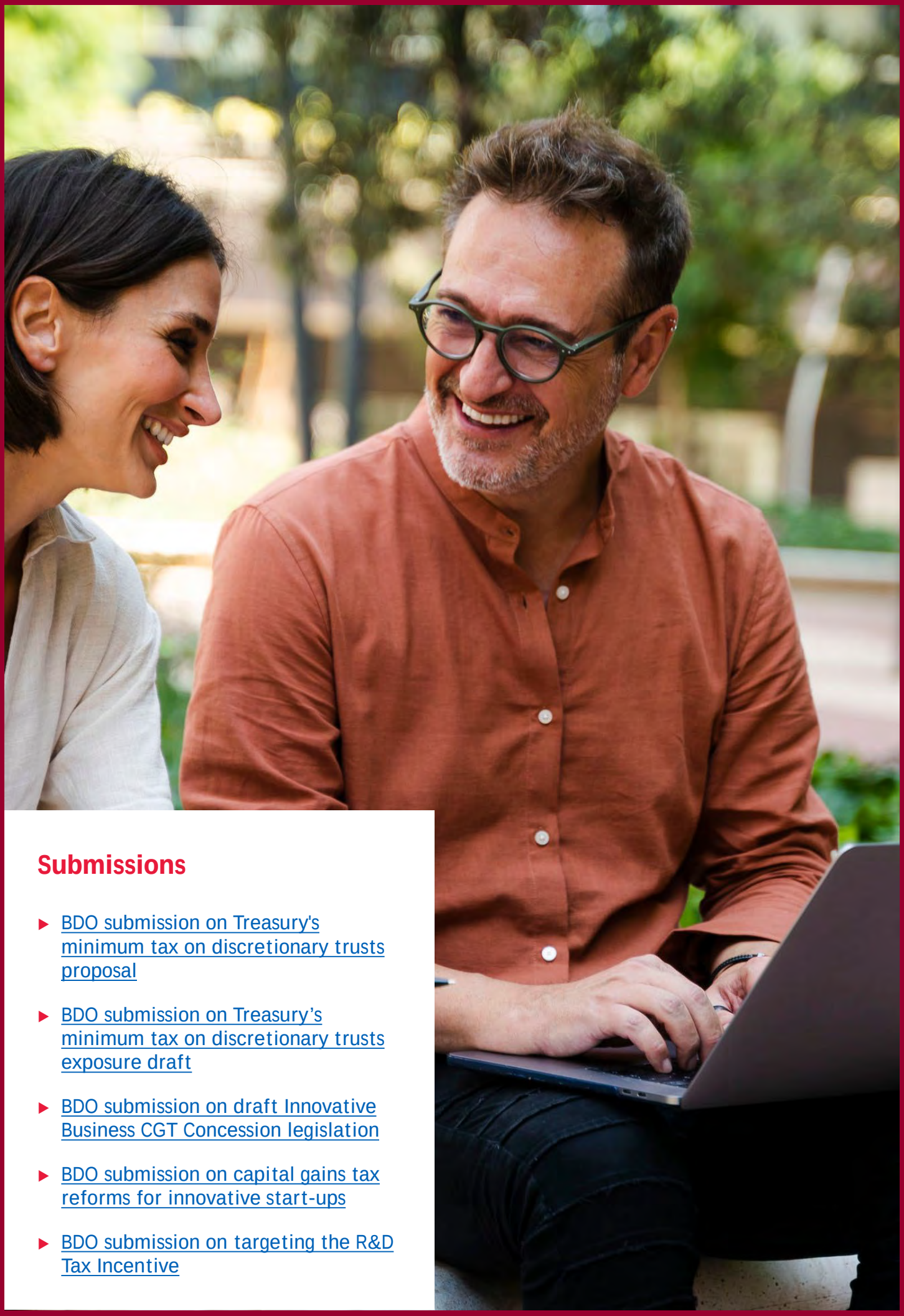
The Government's exposure draft legislation for the proposed Innovative Business CGT Concession (IBCC) provides greater clarity on how innovative Australian start-ups may be treated under the broader CGT reforms announced in the 2026-27 Federal Budget.

For businesses operating employee share schemes (ESS), the proposed changes may preserve access to a 50 per cent CGT discount on qualifying gains, helping maintain the attractiveness of employee equity arrangements.

The draft legislation is a positive step, providing a pathway to retain concessional CGT treatment for qualifying investments. However, eligibility is expected to be closely linked to the existing Early-Stage Innovation Company (ESIC) framework, meaning not all start-ups or growth businesses will qualify.

Businesses with existing or proposed ESS arrangements should review their equity structures and monitor the legislation's progress ahead of its proposed 1 July 2027 commencement date.

Learn more



Submissions

- BDO submission on Treasury's minimum tax on discretionary trusts proposal
- BDO submission on Treasury's minimum tax on discretionary trusts exposure draft
- BDO submission on draft Innovative Business CGT Concession legislation
- BDO submission on capital gains tax reforms for innovative start-ups
- BDO submission on targeting the R&D Tax Incentive

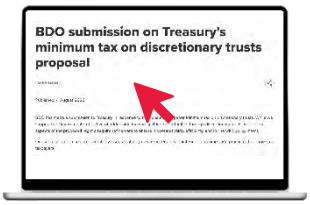
Submissions

BDO submission on Treasury's minimum tax on discretionary trusts proposal

Treasury is consulting on the introduction of a 30 per cent minimum tax on discretionary trusts. In its submission, BDO supports the Government's policy objective of addressing income-splitting opportunities while recommending several changes to improve the operation of the proposed regime.

Key recommendations include adopting a clearer definition of discretionary trusts, addressing potential double taxation outcomes for trust distributions made through companies and other trusts, introducing a Minimum Trust Credit Account mechanism, ensuring restructuring relief is supported by State and Territory duty concessions, and preserving important tax attributes where taxpayers choose to restructure.

The submission also considers exclusions, excess franking credits, collection mechanisms and the interaction of the proposals with existing trust taxation rules. The measures have the potential to affect a broad range of privately owned businesses, family groups and investment structures.



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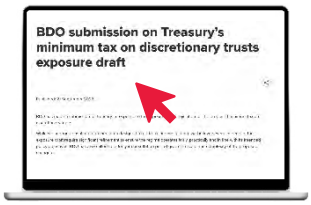
BDO submission on Treasury's minimum tax on discretionary trusts exposure draft

Treasury has released exposure draft legislation for the proposed 30 per cent minimum tax on discretionary trusts. In its submission, BDO supports consultation on measures designed to address income-splitting while recommending significant refinements to ensure the regime operates fairly, practically and in line with its intended policy objectives.

Key recommendations include preventing unintended double taxation of distributions to corporate beneficiaries, refining the proposed fixed trust definition so commercial trusts are not inadvertently captured, making restructuring relief more workable and providing greater flexibility within the excluded election trust regime.

The submission also calls for further consultation given the scale and complexity of the proposed changes. Careful design will be critical to avoiding unintended consequences for privately owned businesses, family groups, trustees and investors.



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Submissions

BDO submission on draft Innovative Business CGT Concession legislation

Treasury has released exposure draft legislation for the Innovative Business CGT Concession (IBCC). In its submission, BDO welcomes the proposed concession while identifying eight areas where the framework would benefit from greater clarity, more proportionate rules and stronger protections for investors.

Key recommendations include clarifying how the IBCC will interact with the existing Early Stage Innovation Company regime, accommodating holding company and group structures, providing clearer guidance on the workforce and predominant activity tests, and allowing innovative businesses to evolve or pivot without automatically losing access to the concession.

The submission also recommends protecting investors from retrospective cancellation or administrative failures and introducing clear service standards for registration and ruling processes. These changes would help provide greater certainty for founders, investors, venture capital funds and growing innovative businesses.

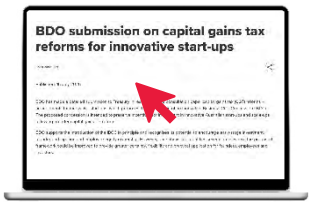
Learn more

BDO submission on capital gains tax reforms for innovative start-ups

Treasury has consulted on proposed capital gains tax reforms for innovative start-ups, including the introduction of an Innovative Business CGT Concession. In its submission, BDO supports the concession in principle and recognises its potential to encourage early-stage investment, founder participation and employee equity ownership.

Key recommendations include providing greater flexibility around the proposed 10-year age limit, establishing clearer and more objective innovation criteria, introducing carve-outs from the five-year holding period for genuine commercial exits, and reconsidering how the proposed lifetime cap may affect serial founders and investors.

The submission also highlights the need for workable transitional rules and greater clarity for carried interest, convertible notes, SAFEs and other common start-up financing arrangements. Further consultation will be important to ensure the concession provides practical certainty for founders, employees and investors while supporting innovation and capital formation.



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Submissions

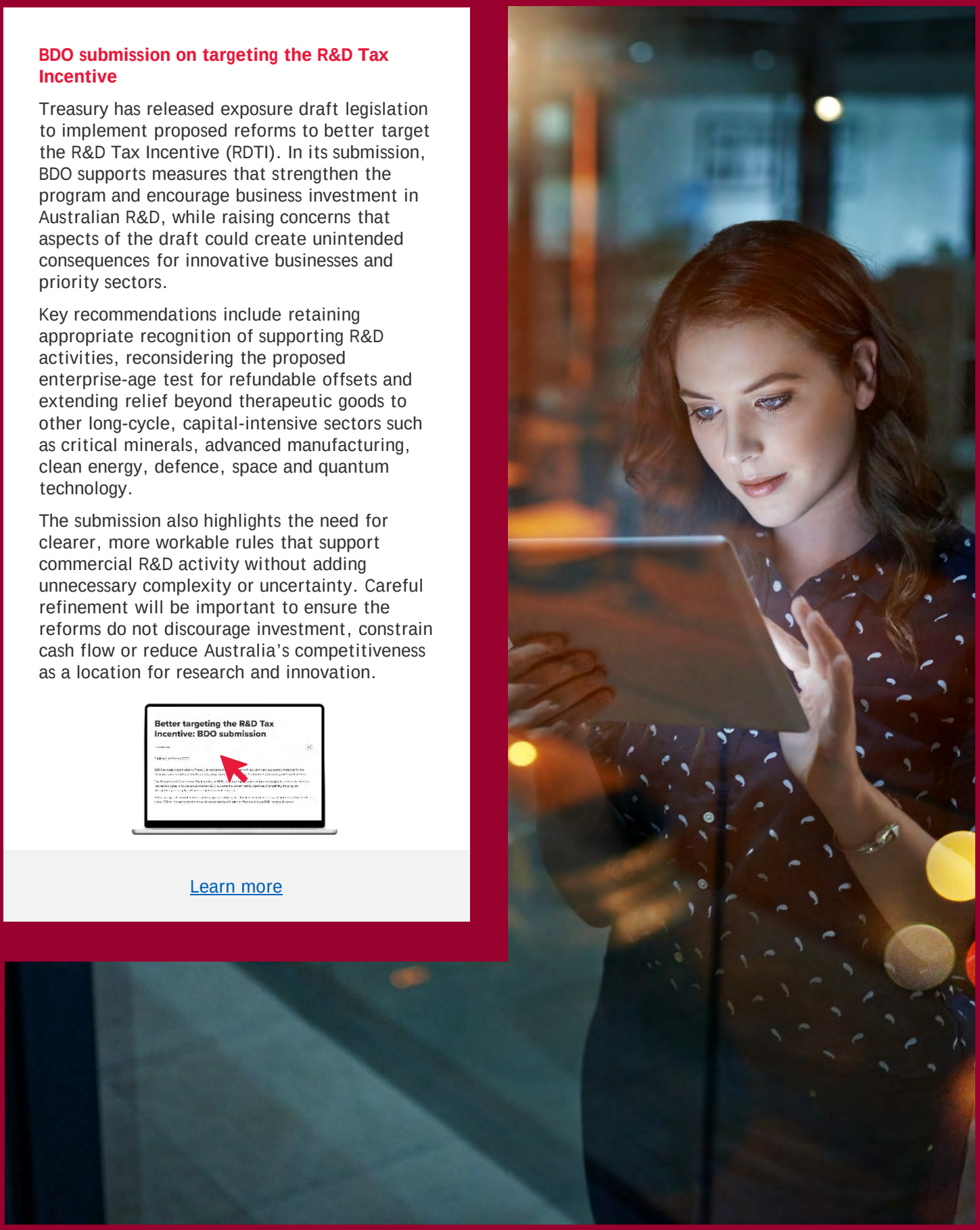
BDO submission on targeting the R&D Tax Incentive

Treasury has released exposure draft legislation to implement proposed reforms to better target the R&D Tax Incentive (RDTI). In its submission, BDO supports measures that strengthen the program and encourage business investment in Australian R&D, while raising concerns that aspects of the draft could create unintended consequences for innovative businesses and priority sectors.

Key recommendations include retaining appropriate recognition of supporting R&D activities, reconsidering the proposed enterprise-age test for refundable offsets and extending relief beyond therapeutic goods to other long-cycle, capital-intensive sectors such as critical minerals, advanced manufacturing, clean energy, defence, space and quantum technology.

The submission also highlights the need for clearer, more workable rules that support commercial R&D activity without adding unnecessary complexity or uncertainty. Careful refinement will be important to ensure the reforms do not discourage investment, constrain cash flow or reduce Australia's competitiveness as a location for research and innovation.

Learn more



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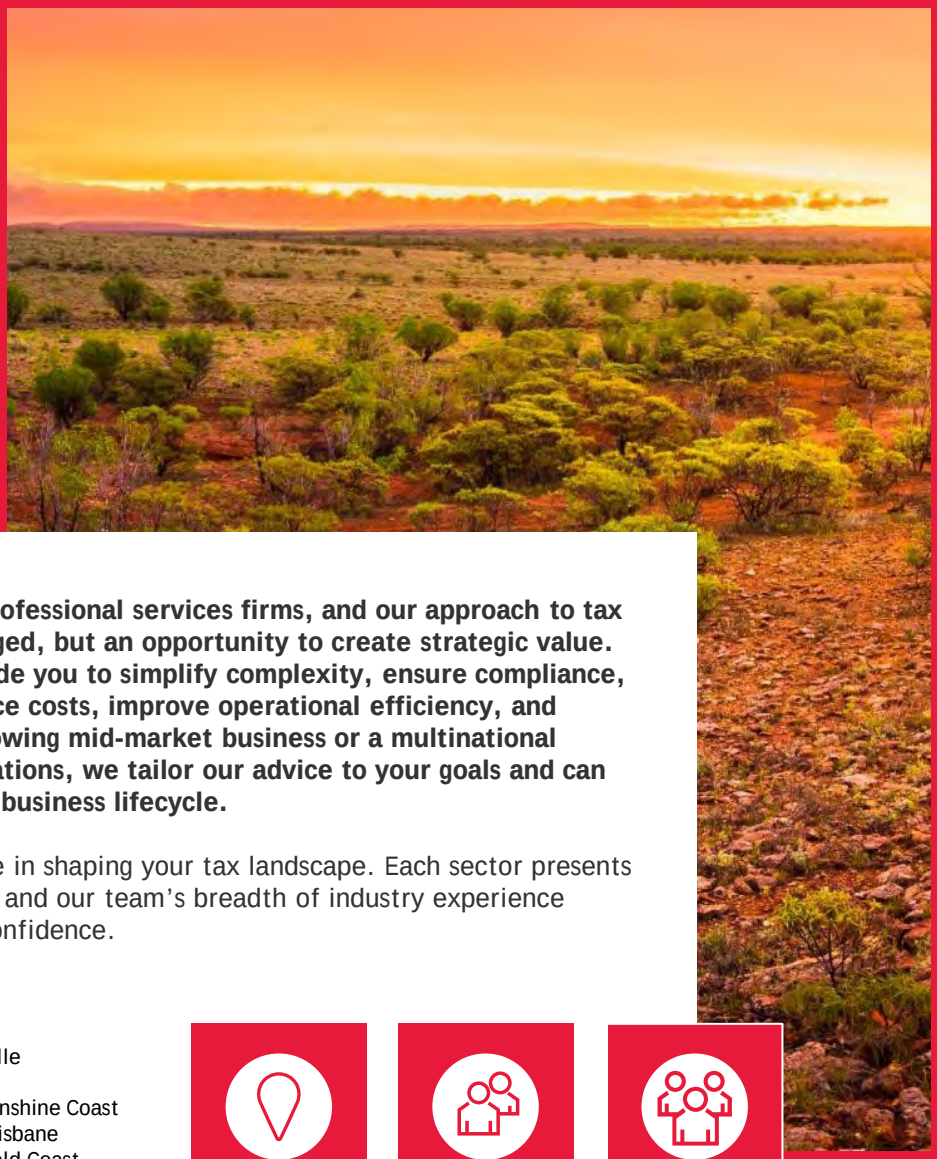

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Global data collected 1 October 2024 - 30 September 2025 | Australia figures taken on 01 July 2026

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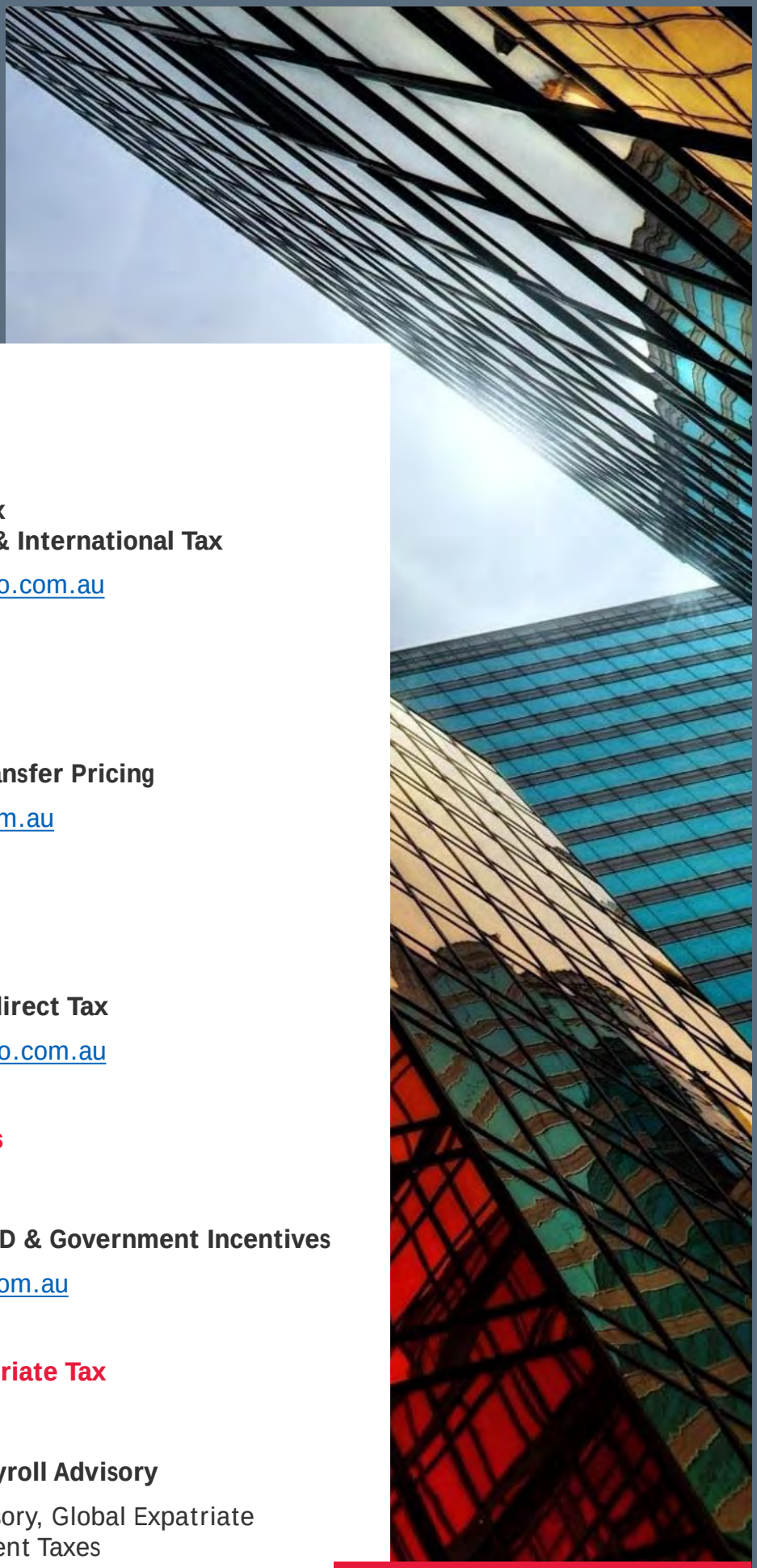

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