



Tax highlights

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Key developments this week

Japan-Australia Economic Partnership Agreement – Customs Bills await Royal Assent: On 27 November 2014, the Senate passed the following Bills, without amendment:

- [Customs Amendment \(Japan-Australia Economic Partnership Agreement Implementation\) Bill 2014](#)
- [Customs Tariff Amendment \(Japan-Australia Economic Partnership Agreement Implementation\) Bill 2014](#).

The Bills now await Royal Assent.

Passage of the Bills through the Senate was [recommended](#) by the Senate Foreign Affairs, Defence and Trade Legislation Committee on 26 November 2014, following its review of the Bills' provisions.

The Bills make changes to the customs laws, in readiness for the [Japan-Australia Economic Partnership Agreement](#) (JAEPA) entering into force.

In summary, the amendments made by the Bills determine whether goods are Japanese originating goods, provide for the preferential tariff treatment of those goods when imported into Australia, and impose obligations on producers and exporters of Australian goods to Japan.

The JAEPA will enter into force once both countries have completed their domestic treaty processes and exchanged diplomatic notes, currently expected to occur in early 2015.

Progress of tax-related Bills: This week is the last sitting week of the Spring 2014 Parliamentary sittings. The following tax-related Bills are scheduled for debate in the [House](#) and [Senate](#):

House of Representatives

- [Treasury Legislation Amendment \(Repeal Day\) Bill 2014](#) (contains amendments relating to taxation, superannuation and shareholdings in certain financial sector companies as part of the Government's deregulation agenda).

Senate

- [Tax and Superannuation Laws Amendment \(2014 Measures No.5\) Bill 2014](#) (includes amendments to reduce the rate of both the refundable and non-refundable research and

development (R&D) tax offsets by 1.5 percentage points)

- [Tax and Superannuation Laws Amendment \(2014 Measures No. 6\) Bill 2014](#) (contains amendments to ensure foreign pension funds can access the managed investment trust withholding tax regime, amendments to the capital gains tax rollover provisions for certain business restructures and amendments concerning the calculation of fuel tax credits and grants). This Bill was passed by the House of Representatives on 25 November 2014 (without amendment) and introduced into the Senate on 26 November 2014
- [Tax Laws Amendment \(Research and Development\) Bill 2013](#) (contains amendments to deny access to the R&D tax offset from 1 July 2013 for large groups with aggregate Australian assessable income in excess of \$20 billion).

Parliament will resume for the [2015 Autumn sittings](#) on 9 February 2015.

Asia-Pacific Tax Commissioners taskforce to be established: On 27 November 2014, the Commissioner of Taxation [announced](#) that Tax Commissioners from the Asia-Pacific region will establish a taskforce to share compliance tactics, increase tax transparency and help countries to tackle base erosion and profit shifting.

The announcement was made following the 44th meeting of the [Study Group on Asian Tax Administration and Research](#) (SGATAR) in Sydney. The SGATAR group is comprised of 17 countries including China, Japan, Singapore, Malaysia, Korea and New Zealand. Participants shared knowledge and experiences on globalisation and erosion of the tax base, the operation of multinational entities, the seamless exchange of information and the use of bulk data, and opportunities for capability development across all fields of tax administration.

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Employee share schemes – ‘indeterminate right’ – final tax determination scheduled for release this week: Final Tax Determination TD 2014/21 *Income tax: where a right to acquire a beneficial interest in a share is granted subject to shareholder approval, is the right an ‘indeterminate right’ within the meaning of subsection 83A-340(1) of the Income Tax Assessment Act 1997?* – scheduled for release on 3 December 2014 (previously issued as [TD 2014/D16](#)).

Australia and India Social Security Agreement: Australia has entered into a bilateral [social security agreement](#) with India to prevent the double-coverage of pension obligations and allow individuals to claim a pension from both countries. The agreement is broadly similar to social security agreements which Australia has concluded with other countries.

Under the agreement, workers seconded from their employer in one country to work for the employer (or a related entity) in the other country, but remain covered by their ‘home’ country’s pension/superannuation legislation, will be exempt from having to comply with the ‘host’ country’s superannuation/pension legislation for up to five years (or such longer period as may be agreed between Australia and India). This also applies where the worker is first seconded from, say, India to a

third country and subsequently is seconded to Australia. In each case this avoids the double -coverage of pension obligations where such employers and/or workers would be required to make pension contributions in both countries.

The agreement further provides transferring individuals with access to their home country's pension system. This means that former Australian residents or former Indian residents are able to claim the pension benefits from their home country. This provides more certainty for individuals who have retired in the other country and helps improve their retirement incomes. The agreement is limited to the pension benefits on the Australian age-pension, Indian old-age pension, survivor pension and Permanent Total Disability pension for employed persons.

The agreement comes as part of a number of agreements recently entered into between Australia and India aiming to strengthen the economic relationship and encourage the flow of workers between the two countries. The agreement is intended to come into effect from July 2015.

Comment: The introduction of an agreement to prevent the double pension coverage is welcomed by Deloitte.

The agreement will eliminate the need for employers to pay a pension contribution in both countries while an employee is on assignment. This will further eliminate the need for departing Australia superannuation payments ('DASP') to be made on departure. These two factors will reduce the compliance burden on employers and reduce the tax burden on the superannuation benefits provided to the employees.

The agreement is a positive step in enhancing the economic relationship between India and Australia and enhances the value of an assignment between the two countries.

Parliamentary report on progress of ATO initiatives: On 24 November 2014, the House of Representatives Standing Committee on Tax and Revenue [tabled](#) its Second Report following its Inquiry into the 2012-13 Annual Report of the ATO. This report focuses on evidence provided by the ATO to the Committee's second hearing of the Inquiry on 27 August 2014. The report provides insight into many of the ATO's initiatives including:

- **Consultation committees:** In the past year, the ATO has reduced its ongoing consultation committees from 68 to just eight ongoing committees with special purpose and technical forums convened as required. The ATO advised that it intends to undertake a post-implementation review of the new consultation arrangements in the first quarter of 2015
- **Staff redundancies:** The Commissioner of Taxation acknowledged that the likelihood of staff reductions affecting the agency's ability to collect revenue had increased as a greater number of employees were made redundant. However, he was satisfied that the current staff reductions will not have any 'material impact' on revenue collection. He also explained that the ATO was pursuing a range of additional strategies to minimise any negative impact on ATO services such as introducing contemporary technology and improving risk assessment processes
- **Tax Gap:** The ATO will be undertaking a formal assessment of the Tax Gap in Australia (considered to be the difference between the amount of tax legally payable, assuming full compliance by all taxpayers, and the amount of tax actually collected) to cover all taxes

administered. However, it will be 'at least two years' before they can produce an 'overarching aggregate figure of what the Tax Gap might be, that can be disaggregated into the various components for the tax system.' Part of this process will be a program of random audits for small business and individuals from 2016, as this will test the reliability of the data. The ATO indicated that this random audit process may not result in penalties to non-compliant taxpayers but may instead result in encouraging taxpayers to self-correct, in recognition of the cost to taxpayers of undertaking this program

- **International taxation issues:** The Committee questioned the ATO about its concerns in relation to the operation of section 25-90 of the *Income Tax Assessment Act 1997* (which typically deals with interest deductions relating to foreign non-assessable non-exempt income such as foreign dividends). The ATO advised that the Department of Treasury had consulted with the private sector on this issue and that advice was with the Government for a decision. The ATO understands that the consultations showed that Australian companies would find it very difficult to identify and track interest specifically related to their foreign operations
- **Crowdfunding:** Given the complexity of the tax implications, the ATO recommended that businesses engaged in this style of capital raising should contact the ATO for assistance. The ATO also stated it would consider issuing further public guidance (which it has now [released](#)).

The Committee plans to next meet with the ATO and its scrutineers in early 2015.

Deloitte Tax Insights – latest tax developments – a snapshot, comprehensive analysis and next steps to consider: The following publications are now available on the Deloitte website:

- **[G20 Brisbane and BEPS: Where to from here?](#)**: Outcomes from the G20 Leaders' Summit which took place in Brisbane on 15-16 November 2014
- **[ATO releases draft guidance: section 974-80](#)**: Analysis of two Draft Tax Determinations on certain aspects of the debt/equity integrity provisions in section 974-80 of the *Income Tax Assessment Act 1997* (ITAA 1997) that were released by the ATO on 12 November 2014
- **[Taxing the Hypothetical: Chevron Australia Holdings v Commissioner of Taxation](#)**: Deloitte insight on how arm's length is the "arm's length" test under the transfer pricing provisions in Australian tax law.

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BEPS – What's Happened So Far? And What's Next? Deloitte Asia Pacific Dbrief: On 2 December 2014, a Deloitte Asia Pacific Dbrief will be held which will provide a good summary of the status of the BEPS process as we near the end of 2014. You can register for the Dbrief at the [Asia Pacific Dbriefs website](#).

BEPS Central: For a one-stop shop for information on the OECD BEPS Project, with links to all the official documents and Deloitte's comments, visit Deloitte [BEPS Central](#).

Dbriefs Bytes: Deloitte Dbriefs Bytes is a short weekly video summary of the significant international tax developments impacting the Asia Pacific region – click to view the latest [Dbriefs Bytes](#).

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