



Tax highlights

3 November 2014

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Key developments this week

New taxation bill introduced – foreign pension funds, restructure roll-overs and fuel tax: On 30 October 2014, [Tax and Superannuation Laws Amendment \(2014 Measures No. 6\) Bill 2014](#) (the Bill) was introduced into the House of Representatives. This Bill includes proposed amendments to:

- Ensure that foreign pension funds can access the managed investment trust (MIT) withholding tax regime and the associated lower rate of withholding tax on income from certain Australian investments. This is proposed to apply to income years commencing on or after 1 July 2008. The definition of 'foreign pension fund' has been updated from the definition included in the [exposure draft](#) and now includes a foreign superannuation fund that has at least 50 members
- Remove tax impediments to certain business restructures by making changes that include:
 - Extending the existing business restructure roll-overs to permit taxpayers to apply the roll-overs in circumstances where they held the relevant shares or units as revenue assets or trading stock. Broadly, these amendments are proposed to have effect from 8 May 2012 for shares and 10 May 2011 for unit holders in a unit trust who exchange their units for shares in a company
 - Allowing the roll-over for trusts transferring all their assets to a trust or company to apply where the new trust or company may hold rights needed to facilitate the transfer. Broadly, these amendments are proposed to apply to transfers after 1 November 2008 for transfers between trusts and from 10 May 2011 for transfers from trusts to companies
 - Addressing a technical defect in the operation of the business restructure roll-overs in relation to revenue assets. Broadly, this is proposed to apply from 8 May 2012
 - Clarifying that the business restructure roll-overs only apply where the new asset has the same character (as a revenue asset or trading stock) as the original asset. Broadly, this is proposed to apply from 8 May 2012
- Ensure that changes to the amount of excise and excise-equivalent customs duty (fuel tax) payable by taxpayers as a result of tariff proposals tabled in the House of Representatives are taken into account in calculating fuel tax credits and the cleaner fuels grant for biodiesel and renewable diesel. Broadly, this measure is proposed to apply from 10 November 2014. Consequential changes to the fuel tax credit attribution rules are proposed to apply from 1 July 2014.

Foreign resident withholding tax regime – discussion paper released: On 31 October 2014, the

Government released a [discussion paper](#) on the proposed design of a 10 per cent non-final withholding tax that is proposed to apply to the disposal, by foreign residents, of certain taxable Australian property, from 1 July 2016. This measure was previously announced in the [2013-14 Federal Budget](#) and the Coalition Government subsequently [announced](#) that it would proceed with this measure.

It is proposed that an obligation would be imposed on the payer to withhold an amount equal to 10 per cent of the proceeds from the transaction and to pay this amount to the Commissioner where all of the following apply:

- The payee is a foreign resident for Australian income tax purposes
- The transaction involves an asset that is taxable Australian property
- The asset is not residential property with a value less than \$2.5 million.

The non-final withholding tax is proposed to apply regardless of whether the gains on disposal are subject to tax under the capital gains tax regime or are subject to tax because the gains constitute ordinary income.

Submissions on the discussion paper are due by 28 November 2014.

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ATO Consultation Hub: The [ATO's Consultation Hub](#) lists the progress of those technical, compliance and administration matters on which the ATO consults with the community, industry and the tax profession.

The following [Compliance](#) matters are currently being considered and have progressed in the past month:

- *UPDATED - Improving the private groups and wealthy individuals client experience with the ATO:* Following the workshop that took place 26 August 2014 a meeting has been scheduled for November 2014 with a relevant business association relevant to scope potential co-design/consultation activities to aid in developing either a Webinar/focus group on the governance for private groups. An information session on reinventing private groups and wealthy individuals initiatives will be held on 1 December 2014 for a wider group of tax practitioners and tax association professionals
- *UPDATED - Reporting of taxable government grants and other specified payments:* Consultation across all states and territories, which included representatives from various federal, state and territory and local government entities, has now concluded. Consultation with software developers will commence shortly
- *UPDATED - Publishing risk factors for small-to-medium enterprises and wealthy individuals:* A webinar was held on 2 October 2014 to seek feedback on the new format and method, with a subsequent Discussion Board held between 3-17 October 2014 to seek further comment on a larger list of risk indicators. Building on these, the ATO is currently reviewing the option of presenting a summary of findings and next steps to the participants.

The following [Administration](#) matters are currently being considered and have progressed in the past month:

- *NEW - Improving communications around Director Penalty Regime*: Consultation will take place with the tax profession and other intermediaries on the proposed improvements in communication with the aim of improving the awareness of directors of the director penalty regime
- *NEW - ATO guidance on the tax treatment of website development expenditure*: Consultation will take place with relevant stakeholders to identify issues particular to the operations of the industry and the defining the appropriate tax treatment of certain types of expenditure as revenue outgoings, capital expenditure or deductible under the uniform capital allowances (UCA) regime
- *NEW - Examining the feasibility of 'safe harbours' in the tax system to reduce compliance costs*: The purpose of the consultation is to progress the development and application of safe harbours in the tax system via the Safe Harbours Steering Group
- *NEW - Tax agent lodgment program*: Consultation has commenced on potential improvements to the annual tax agent lodgment program and the Lodgment Program framework
- *NEW - Communicating with people with a disability*: The purpose of this consultation is to better understand the communication needs of people with a vision or hearing impairment
- *UPDATED - Tailored Business Returns (TBR) project – consultation with software developers*: In late October 2014, the TBR project re-engaged with interested software developer firms individually through a series of ongoing consultations managed by the 'ELS to SBR' team. Dialogue with software developers is expected to be on-going to support the development and delivery of TBR deliverables
- *UPDATED - ABN POI (proof of identity) requirements for non-individual entities non-resident associate issues*: The final proposal concerning this issue circulated on 12 September 2014 includes reduced POI requirements for associates once the minimum requirements are provided. The arrangements relieve some of the burden on business whilst retaining improvement of information collected on the Australian Business Register.

The following [International](#) matters are currently being considered and have progressed in the past month:

- *UPDATED - Application of new transfer pricing laws (Division 815)*: The interaction of customs and income tax law as they relate to transfer pricing issues is now the subject of a separate consultative process
- *UPDATED - Attribution and inter-branch derivatives*: The ATO is now making final changes to the document prior to publishing on the website
- *UPDATED - Application of Subdivision 820-D to authorised deposit-taking institutions and its interaction with the consolidation regime and Australian Prudential Regulation Authority's (APRA) prudential standards*: Two discussions have been held with the Australian Bankers Association (ABA) where an agreement has been made to form a working group to address the issue in relation to future years with a focus on the new APRA conglomerate rules.

The following [Indirect taxes](#) matters are currently being considered and have progressed in the past month:

- *NEW - Luxury car tax (LCT):* It is intended to replace the 'Working out the LCT on a sale' section on the ATO website ([Calculating-your-LCT](#), [Working-out-the-LCT-on-a-sale](#)). Industry feedback has been received and is being considered
- *UPDATED - Financial supplies guidance products:* As a result of this consultation [GSTD 2014/D4](#) in relation to supplies of brokerage services involving overseas securities or futures has been released. It is currently being determined whether further discussion with industry will be required
- *UPDATED - Tax status of certain grape alcohol beverages:* A consultation paper has been circulated and the closing date for feedback is 17 November 2014

The following [Trust](#) matters are currently being considered and have progressed in the past month:

- *NEW - Trustee nil assessments:* To consider any potential refinements to the ATO's practice in relation to trustee assessments and making the material easier to locate on the ATO web site
- *UPDATED - Small business CGT concessions and unpaid present entitlements:* On 14 October 2014 the ATO consulted on this issue at the first meeting of the limited life working group. The group also discussed other matters in relation to the taxation of closely-held trusts (including family discretionary trusts)
- *UPDATED - Alienation of income through discretionary trust partners:* A coordinated communication strategy has commenced with a [video](#) in which the guidelines, [Assessing the Risk – Allocation of profits within professional firms](#), will be explained. Three external sessions will also be presented over the next three weeks. A journal article is being prepared to be sent to the professional associations for inclusion in their regular publications, and an ATO [Let's Talk](#) webinar session and mail campaign will follow.

The following [Superannuation](#) matters are currently being considered and have progressed in the past month:

- *UPDATED - Apportionment of expenses partly incurred by a superannuation entity in gaining its assessable income:* Final comments from the consultation process were received on 17 September 2014 and all comments are currently in the final stages of being reviewed
- *UPDATED - Superannuation excess contributions tax – contributions reserving:* The ATO will consult more widely with industry in the coming weeks on the proposed changes to the form.

[Other matters](#) being considered which have progressed in the past month:

- *UPDATE - Guidance on ensuring that a partner in a limited partnership is not subject to double taxation:* In anticipation of participants endorsing the ATO's summary of the concerns and potential solutions that have been identified by industry, the ATO is examining options for developing further guidance material.

Term Deposits – forex treatment: The ATO has released [ATO ID 2014/32](#) which states that a term deposit is not a qualifying forex account for the purposes of Division 775 of the Income Tax Assessment Act 1997 (ITAA 1997).

Such accounts are not credit card accounts and do not have the primary purpose of facilitating transactions so do not satisfy the legislative requirements.

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Employment taxes

FBT – employee duties performed in non-profit hospital: The ATO has released Draft Tax Determination [TD 2014/D17](#) which sets out the Commissioner's preliminary view regarding when the duties of the employment of an employee of a government body are exclusively performed in, or in connection with, a public hospital or 'non-profit hospital' for the purposes of section 57A(2)(b) of the *Fringe Benefits Tax Assessment Act 1986*.

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Indirect taxes

Special leave hearing transcript for *ATS Pacific*: The [transcript](#) for the hearing where the High Court [refused](#) the taxpayer's application for special leave to appeal against the decision of the Full Federal Court in [ATS Pacific Pty Ltd v Commissioner of Taxation \[2014\] FCAFC 33](#) has been released.

The Full Federal Court held that the taxpayer (an inbound tour operator) made one supply only to its non-resident travel agent clients, and that this supply was properly characterised as the supply of a promise to the non-resident travel agent that the various components of the tour packages booked would be supplied to the non-resident tourists during their Australian tour. The Court found that this supply was wholly taxable, and that no part of the supply was GST-free.

GST – brokerage services – overseas exchanges: The ATO has released Draft GST Tax Determination [GSTD 2014/D4](#) which sets out the Commissioner's preliminary view that the supply of brokerage services that facilitates the sale or purchase of financial products on overseas securities or futures exchanges is a GST-free supply under paragraph (a) of item 4 in the table in section 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999*.

Japan-Australia Economic Partnership Agreement Bills introduced: On 29 October 2014, the following Bills were introduced into the House of Representatives to give effect to the [Japan-Australia Economic Partnership Agreement](#) (JAEPA) which was signed on 8 July 2014:

- [Customs Amendment \(Japan-Australia Economic Partnership Agreement Implementation\) Bill 2014](#) (the Customs Bill): Broadly, this Bill will amend the *Customs Act 1901* to introduce new rules of origin for goods that are imported into Australia from Japan and to enable goods that satisfy such rules to enter Australia at preferential rates of customs duty
- [Customs Tariff Amendment \(Japan-Australia Economic Partnership Agreement Implementation\) Bill 2014](#): Broadly, this Bill will amend the *Customs Tariff Act 1995* to:
 - Provide free rates of customs duty for goods that are Japanese originating goods in accordance with new Division 1K of Part VIII of the *Customs Act 1901* (proposed to

be inserted by the Customs Bill)

- Maintain customs duty rates for certain Japanese originating goods in accordance with the applicable concessional item
- Phase the preferential rates of customs duty for certain goods to Free by 2021
- Accommodate the preferential and phasing rates of duty and maintain excise-equivalent rates of duty on certain alcohol, tobacco and petroleum products. These rates are equivalent to the rates of excise duty payable on these goods when these products are locally manufactured.

The amendments contained in these Bills will be operative from the later of the day the Customs Bill receives Royal Assent and the day the JAEPA enters into force for Australia. The JAEPA is expected to enter into force in early 2015, subject to Australia's treaty process being completed and the exchange of diplomatic letters.

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International tax

Special leave hearing transcript for *RCF III*: The [transcript](#) for the hearing where the High Court [refused](#) the taxpayer's application for special leave to appeal against the decision of the Full Federal Court in [Commissioner of Taxation v Resource Capital Fund III LP \[2014\] FCAFC 37](#) has been released.

The Full Federal Court held that a Cayman Islands limited partnership was an independent taxable entity that is liable to tax for Australian tax purposes and the Australia/United States Double Tax Agreement does not preclude the limited partnership's liability to tax.

Governments commit to implement automatic exchange of information : On 29 October 2014, [51 jurisdictions](#) (excluding Australia) signed a [multilateral competent authority agreement](#) to automatically exchange information based on Article 6 of the [Multilateral Convention](#). The agreement specifies the details of what information will be exchanged and when, as set out in the [Standard for Automatic Exchange of Financial Information in Tax Matters](#).

The agreement consists of 8 sections:

- Section 1: contains the definitions of the terms used in the agreement
- Section 2: sets out the information to be automatically exchanged
- Section 3: sets out the timing and method of the automatic exchange of information
- Section 4: outlines how the parties to the agreement will work together to ensure compliance with the agreement
- Section 5: sets out provisions to ensure confidentiality and the safeguarding of the data
- Section 6: sets out the process to consult on ensuring the smooth operation of the agreement and to amend the agreement
- Section 7: sets out the subsequent notifications required under the agreement and how the agreement is then subsequently brought into effect
- Section 8: sets out the role of the Secretariat.

The OECD has [stated](#) that early adopters who have signed the agreement are committed to working towards launching their first information exchanges by September 2017 with others expecting to follow in 2018. Australia has indicated it will exchange using the new information exchange arrangements in

the 2018 year. Australia is already actively exchanging information with other OECD countries and has a number of [Tax Information Exchange Agreements](#) with non-OECD participating partners already in place.

A status report on [committed and not committed jurisdictions](#) is expected to be presented to G20 leaders in Brisbane on 15-16 November 2014.

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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