



Tax highlights

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Key developments this week

Access to family court documents – ATO view of Darling case: The ATO has released a [Decision Impact Statement](#) (DIS) about the decision of the Full Family Court in [Commissioner of Taxation v Darling \[2014\] FamCAFC 59](#). In this decision, the Full Family Court set aside the Family Court decision in [Commissioner of Taxation & Darling and Anor \[2013\] FamCA 118](#) and allowed the Commissioner to obtain documents in a husband and wife's Family Court proceedings in relation to an audit of the husband's affairs. The DIS broadly outlines that:

- the Commissioner accepts the decision of the Full Court of the Family Court that the implied obligation not to use documents obtained from the court file applies to the Commissioner as a stranger to the litigation
- the ATO's policies were updated in 2011 to instruct ATO officers not to seek to inspect or copy documents from court files by relying on access powers, because such conduct could constitute contempt of court
- where the Commissioner, as a non-party to litigation, seeks access to court documents for use other than in the proceeding in which the documents were filed, the Commissioner will make an application to the court for release from the implied obligation. The Commissioner will have regard to the factors considered by the Full Court of the Family Court in making any such application.

Senate inquiry into corporate tax avoidance: Last week the Senate voted in favour of a [motion](#) to launch an inquiry into corporate tax avoidance and has referred this matter to the Economics References Committee for inquiry and report by the first sitting day of June 2015. The inquiry will consider tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia, with specific reference to:

- (a) the adequacy of Australia's current laws;
- (b) any need for greater transparency;
- (c) the broader economic impacts of this behaviour, beyond the direct effect on government revenue;
- (d) the opportunities to collaborate internationally and/or act unilaterally to address the problem;
- (e) the performance and capability of the Australian Taxation Office (ATO) to investigate and launch litigation, in the wake of budget cuts;

- (f) the role and performance of the Australian Securities and Investment Commission in working with corporations and supporting the ATO to protect public revenue;
- (g) any relevant recommendations or issues arising from the Government's White Paper process on the "Reform of Australia's Tax System" and
- (h) any other related matters.

On this same issue, the OECD Centre for Tax Policy and Administration has already [delivered](#) the first recommendations for a co-ordinated international approach to combat tax avoidance by multi-national enterprises in September 2014.

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Business tax

ED released correcting miscellaneous errors in tax and super laws: On 30 September 2014, Treasury issued an exposure draft, [Tax and Superannuation Laws Amendment Bill: miscellaneous amendments](#), which proposes a number of miscellaneous amendments to taxation and superannuation laws.

The main amendments deal with corrections in respect of:

- Objection rights for indirect tax rulings: Section 14ZW(1AAC)(b) of the *Tax Administration Act 1953* (TAA 1953) is proposed to be repealed and replaced. This proposed amendment is to ensure that taxpayers who do not receive a notice of assessment do not have an unlimited period to lodge an objection against an indirect tax ruling and aligns the time limit for objecting to private indirect tax rulings with the time limit for objecting to other tax rulings
- Distributions in respect of corporate limited partnerships: Section 94L of the *Income Tax Assessment Act 1936* (ITAA 1936) is proposed to be amended. This section currently operates so as to include within a reference to 'dividend' throughout the income tax law, a distribution made by a corporate limited partnership to a partner. This distribution is then assessable to the partner as a 'dividend' under section 44 of the ITAA 1936. Due to past amendments made to section 44 that broadened assessability to dividends paid out of amounts other than profits, the exposure draft proposes a consequential amendment to section 94L of the ITAA 1936 so that distributions made by a corporate limited partnership paid or credited against partnership capital would not be assessable. This issue was previously listed in the ATO's [Tax Issues Entry System](#) (TIES) as issue 0009/2014
- Disclosure of protected information to legal practitioners and public officers: Section 355-25(2)(b) of Schedule 1 to the TAA 1953 is proposed to be amended to allow taxation officers to disclose protected information about an entity to the entity's public officer, and allows public officers to on-disclose the information, regardless of whether the public officer is nominated by the entity via the approved form. Amendments proposed also clarify that taxation officers can make disclosures to a legal practitioner representing an entity in relation to affairs under one or more tax laws, and not just the income tax laws
- Suspending or revoking endorsements for tax concessions: Section 426-55 in Schedule 1 to the TAA 1953 is proposed to be amended to ensure that the Commissioner can revoke endorsement for access to certain tax concessions in relation to past periods of non-compliance regardless of whether such non-compliant behaviour is present at the time the decision to revoke is made
- Acquisition cost of Australian carbon credit units: Section 420-60(4) of the ITAA 1997 is proposed to be amended to provide for the acquisition costs of Australian carbon credit units to be calculated in the same way as other registered emission units. Currently, there is no

mechanism for determining the acquisition cost of these units as they are not covered under s420-60(3) which deals with units issued under the Carbon Farming Initiative.

- Capital allowances rollover relief: Section 40-340(2)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997) is to be amended to recognise that section 122-25(3) of the ITAA 1997 has a more general application for “precluded assets” than just Subdivision 122-A of the ITAA 1997. This issue was previously listed in TIES as issue 005/2011
- GST: Section 17-15 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) (Working out net amounts using approved forms) is proposed to be repealed (the outcome sought to be achieved by section 17-15 of the GST Act is now achieved through the assessment-making process in section 155-15 of Schedule 1 to TAA 1953). Section 93-15 of the GST Act is also proposed to be repealed and updated with terminology that makes it clear that an entitlement to an input tax credit ceases when the Commissioner is no longer able to amend an assessment of the assessable amount relating to the GST.

The proposed amendments have various dates of effect. Submissions on the exposure draft are due on 22 October 2014.

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

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

- *The feasibility of use of External Compliance Assurance Process (ECAP) for basic ATO assurance work* (i.e. use of registered company auditors): Work has begun in planning several external ECAP information sessions scheduled for November 2014. These sessions will provide an update on the pilot
- *Review of ATO pre-lodgment compliance review (PCR) product*. A workshop was held on 10 September 2014 to discuss specific issues (for example, certainty, materiality and statutory audit results) within the pre-lodgment compliance product. The outcomes of this meeting will be carried forward to finalise the design and implement the reinvented pre-lodgment compliance review product
- *Publishing risk factors for small-to-medium enterprises (SMEs) and wealthy individuals*: the ATO will refine the compliance risk factors and indicators for SMEs and wealthy individuals for publication on the ATO website by December 2014
- *NEW - Pre-issue compliance program correspondence*: the ATO will consult with the tax profession on implementation of recommendation 5.5 from the Inspector General of Taxation's review into the 'ATO's compliance approach to individual taxpayers – income tax refund integrity program'

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

- *The ATO's proposed statement of approach to electronic service delivery*: the ATO will gather feedback on their proposed statement of approach to electronic service delivery over the next three to five years. A round of one-on-one conversations with software developers about the concept of a standard chart of accounts has just been completed. The next round of consultation will engage with the tax and accounting professions

- *NEW - ATO guidelines when contacting clients of tax practitioners:* the ATO has identified a need to consider whether the current guidelines are appropriate to manage the use of contact channels proposed by the ATO (for example email, SMS, Portal, myTax inbox)
- *NEW - Intermediaries correspondence report:* Due to technology changes, individual clients with a link to myGov will receive correspondence electronically in their myGov inbox regardless of whether there is a tax agent linked to their account. The ATO is developing an intermediaries report function in the Tax Agent Portal for tax agents to be able to see correspondence issued directly to an individual's myGov inbox
- *NEW - Review of public ATO advice and guidance:* Consultation is in progress as to the strengths and potential points of improvement in relation to current products, processes and delivery platforms for public ATO advice and guidance

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

- *Attribution and inter-branch derivatives:* the ATO is currently making further changes to the guidelines, required as a result of an actual case that arose during August/September 2014. The report is now awaiting final approval before being published on the ATO website
- *Application of Subdivision 820-D to authorised deposit-taking institutions and its interaction with the consolidation regime and Australian Prudential Regulation Authority's prudential standards:* further discussions have taken place with ABA members in August and September 2014. In addition, 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 being considered and have progressed in the past month:

- *Financial supplies guidance products:* The ATO is currently determining whether further discussion with industry will be required on the initial draft ATO views

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

- *Small business capital gains tax concessions and unpaid present entitlements:* The ATO are currently in the process of setting up a limited life working group to consult in relation to this and other matters in relation to the taxation of closely-held trusts
- *Alienation of income through discretionary trust partners:* The guidance publication *Assessing the risk – allocation of profits within professional firms* was issued on 1 September 2014 as a working draft to allow for further consultation. The guidelines will apply to the 2014-2015 and subsequent years. A program of education, assistance and awareness will occur during the 2014–15 year
- *Australian custodians' tax return obligations in respect of trustee liabilities under section 98 of the ITAA 1936:* on 3 September 2014 the Australian Custodial Services Association (ACSA) responded to the ATO's proposal. Follow up action is being undertaken internally in relation to further questions raised by ASCA members

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

- *Apportionment of expenses incurred by a superannuation entity only partly in gaining its assessable income- ruling :* Final consultation comments were received on 17 September 2014 and all comments are currently being reviewed
- *Superannuation excess contributions tax – contributions reserving (concerns as to the requirement to object to assessments raised in error due to limitation of information reported to the ATO by funds):* The ATO has provided The Tax Institute with an alternative proposal

for review and feedback

Other matters being considered which have progressed in the past month:

- *Guidance on ensuring that a partner in a limited partnership is not subject to double taxation:* the summary of industry concerns and issues that were raised during the consultation process was sent to representatives on 12 September 2014 for feedback.

The following matters are currently under consideration to determine if consultation is the best approach to resolve them:

- Review of risk weighting/identification for GST refund verification
- FBT – minor benefits

Senate to inquire into a regulatory framework for bitcoin and other digital currencies: On 2 October 2014 the Senate voted in favour of a motion to refer an inquiry into digital currency to the Economics References Committee for report by the first sitting day of March 2015. The inquiry will particularly consider:

- how to develop an effective regulatory system for digital currency that
 - ascertains the most appropriate definition of digital currencies under Australian tax law
 - promotes competition and growth of the digital currency industry
 - ensures ongoing stability in the financial services industry
 - secures protection of consumers and businesses against illegal activity
 - incorporates digital currencies into Australia's national security framework, and
 - ensures the financial stability of the industry
- the potential impact of digital currency technology on the Australian economy
- how Australia can take advantage of digital currency technology to establish itself as a market leader in this field, and
- any other related matters.

Readers will also remember that the ATO has previously released their views on [tax treatment of crypto-currencies](#) in August 2014. For further information, please refer to [Weekly Tax Highlights – 25 August 2014](#).

ATO releases Class Rulings: On 1 October 2014, the ATO issued the following Class Rulings:

- [CR 2014/74](#) - Fringe benefits tax: employer clients of Emerchants Payment Solutions Limited (Emerchants) pertaining to the use of Emerchants Meals and Entertainment Card facility
- [CR 2014/75](#) - Fringe benefits tax: employer clients of Emerchants Payment Solutions Limited (Emerchants) pertaining to the use of Emerchants' Living Expenses Card facility
- [CR 2014/76](#) - Income tax: Capital management distribution: Wesfarmers Limited
- [CR 2014/77](#) - Income tax: Westfield Retail Trust: Merger with Westfield Group's Australian/New Zealand business
- [CR 2014/78](#) - Income tax: Westfield Group - Restructure and Merger with the Westfield Retail Trust
- [CR 2014/79](#) - Income tax: treatment of transfer payments to employees of Delta Electricity following the sale of the Delta Coast business to a private sector entity
- [CR 2014/80](#) - Income tax: Commonwealth Bank of Australia - CommBank PERLS VII Capital Notes

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Superannuation

Superannuation - ATO Interpretative Decision: The ATO has released Interpretative Decision [ATO ID 2014/28](#) which considers the status for superannuation guarantee purposes of pizza delivery drivers. ATO ID 2014/28 states that pizza delivery drivers, who are required to provide and maintain their own motor vehicles in performing their deliveries, are classified as employees as per the ordinary meaning of that term and in accordance with s12(1) of the Superannuation Guarantee (Administration) Act 1992 (SGAA).

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Indirect taxes

GST Ruling on motor vehicle incentive payments: The ATO has released a goods and services tax (GST) ruling [GSTR 2014/1](#) which explains the Commissioner's view on the GST consequences of incentive payments made by motor vehicle manufacturers, importers and distributors.

This Ruling is divided in two parts:

- Part A, which makes general observations relevant to the GST consequences of motor vehicle incentive payments and provides specific advice on common types of incentive payments through worked examples, and
- Part B, which outlines the information requirements for third party adjustment notes issued by manufacturers to dealers

Korea-Australia Free Trade Agreement Bills: Last week both the [Customs Amendment \(Korea-Australia Free Trade Agreement Implementation\) Bill 2014](#) and [Customs Tariff Amendment \(Korea-Australia Free Trade Agreement Implementation\) Bill 2014](#) were passed in the Senate and now await Royal Assent.

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International tax

OECD issues revised timetable for stakeholder consultation: On 1 October 2014, the OECD released an [updated timetable](#) of the OECD/G20 BEPS project, containing updated dates for discussion drafts, webcasts and public consultation. Discussion drafts scheduled to be released in the next two months are:

- Actions 8-10: Low-value adding services
- Action 7 : PE status
- Action 6: Treaty abuse

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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