



Tax highlights

10 November 2014

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Key developments this week

OECD releases Discussion Draft on Action 7 of BEPS Action Plan: On 31 October 2014, the OECD released a [Discussion Draft](#) on Action 7 - Prevent the Artificial Avoidance of PE Status. The objective of Action 7 of the [OECD Action Plan on Base Erosion and Profit Shifting \(BEPS\)](#) is to develop changes to the definition of permanent establishment (PE) to prevent the artificial avoidance of PE status in relation to BEPS.

Broadly, the Discussion Draft includes the preliminary results of the work carried on with respect to issues related to:

- Artificial avoidance of PE status through *commissionnaire* arrangements and similar strategies
- Artificial avoidance of PE status through the specific activity exemptions
- Splitting-up of contracts
- Insurance
- Profit attribution to PEs and interaction with Action Points on transfer pricing.

The Discussion Draft also includes proposals for changes to the definition of PE found in the OECD Model Tax Convention.

Public comments on the Discussion Draft are due for submission by 9 January 2015. To view Deloitte's Global Tax Alert regarding the release of the Discussion Draft, click [here](#).

OECD releases Discussion Draft on Action 10 of BEPS Action Plan: On 3 November 2014, the OECD released a [Discussion Draft](#) on Action 10 - Proposed Modifications to Chapter VII of the Transfer Pricing Guidelines Relating to Low Value-Adding Intra-Group Services. The objective of Action 10 of the [OECD Action Plan](#) is to develop transfer pricing rules to provide protection against common types of base eroding payments, such as management fees and head office expenses.

The Discussion Draft indicates that there are two main issues which need to be addressed in the analysis of transfer pricing for intra-group services:

1. Determining whether intra-group services have been rendered

2. Determining an arm's length charge.

In addition, the Discussion draft proposes an approach which identifies a wide category of common intra-group services fees commanding a very limited profit mark-up on costs, applies a consistent allocation key for all recipients, and provides greater transparency through specific reporting requirements.

Public comments on the Discussion Draft are due for submission by 14 January 2015.

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Weekly tax news

Business tax

Senate inquiry – tax affairs of corporate taxpayers in the spotlight: As previously reported in [Tax highlights 6 October 2014](#), the Senate has established an [Inquiry](#) to consider tax avoidance and aggressive minimisation by corporations in Australia and multinational corporations operating in Australia. It is due to report in June 2015. The Deloitte publication, *Tax insights: Your tax affairs in the public spotlight*, provides background to the Senate inquiry and outlines recent US and UK inquiries on corporate tax avoidance – [click here](#) to access.

ATO Interpretative Decision – commercial debt forgiveness: The ATO has released [ATO ID 2014/33](#) which states that where a creditor forgives a commercial debt as part of a settlement agreement and also pays the debtor an additional amount under the agreement that is assessable income of the debtor, the additional amount will not reduce the gross forgiven amount of the debt under paragraph 245-85(1)(a) of the ITAA 1997.

Rulings scheduled for release this week: The ATO has advised that the following rulings are scheduled for release on 12 November 2014:

Final tax ruling:

- Income tax: transfer pricing – the application of section 815-130 of the ITAA 1997 (previously issued as [TR 2014/D3](#)).

Draft tax determinations:

- TD 2014/D18: will paragraph 974-80(1)(d) of the ITAA 1997 be satisfied merely because a non-resident entity has chosen to invest indirectly in a debt interest issued by an Australian resident company and there is one or more equity interests interposed between the non-resident entity and the entity holding the debt interest?
- TD 2014/D19: is the reference to 'the interest' as it appears in the phrase at the end of subsection 974-80(2) of the ITAA 1997 a reference to the interest held by the 'ultimate recipient'?

Draft GST ruling:

- GSTR 2014/D5: development lease arrangements with government agencies.

ATO Rulings Program updated: The ATO has [updated](#) its Public Rulings Program as at 5 November 2014. Changes from the last update of the Program include:

Final tax determinations (TDs):

- Income tax: consolidation: if the conditions in subitem 50(3)(a) of Part 4 of Schedule 3 to *Tax Laws Amendment (2012 Measures No.2) Act 2012* are satisfied and the interim rules apply to an assessment and, on or after 29 June 2012, that assessment was amended to alter a claim made under the original 2010 law, do the interim rules apply to the altered claim (previously issued as [TD 2014/D4](#))? Last planned issue date was “on hold”, but the updated Program indicates that this TD is now scheduled for release on 17 December 2014
- Income tax: consolidation: if the conditions in subitem 50(5) of Part 4 of Schedule 3 to *Tax Laws Amendment (2012 Measures No.2) Act 2012* are satisfied and the original 2002 law applies to an assessment, will a subsequent request by the head company to amend that assessment result in the pre rules applying, by virtue of subitem 50(6), to the entire assessment or only to the subsequent amendment request (previously issued as [TD 2014/D5](#))? Last planned issue date was “on hold”, but the updated Program indicates that this TD is now scheduled for release on 17 December 2014
- Income tax: consolidation: if the conditions in subitem 50(3)(a) of Part 4 of Schedule 3 to *Tax Laws Amendment (2012 Measures No.2) Act 2012* are satisfied and the interim rules apply to an assessment and, on or after 29 June 2012 that assessment is amended to include a new claim which was not previously made in the assessment, do the interim rules apply to the new claim (previously issued as [TD 2014/D6](#))? Last planned issue date was “on hold”, but the updated Program indicates that this TD is now scheduled for release on 17 December 2014
- 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* (ITAA 1997) (previously issued as [TD 2014/D16](#))? Last planned issue date was “to be advised”, but the updated Program indicates that this TD is now scheduled for release on 3 December 2014.

Draft GST ruling:

- Goods and services tax: foreign currency products - supply of rights for use outside Australia. Last planned issue date was 10 December 2014, but the updated Program indicates that the issue date of this draft tax ruling is now to be advised.

Final tax ruling:

- Income tax: transfer pricing: documentation requirements (previously issued as [TR 2014/D4](#)). Last planned issue date was 12 November 2014, but the updated Program indicates that the issue date of this final tax ruling is now to be advised.

ATO Practice Statement Program: The ATO has [updated](#) its Practice Statement Law Administration Program as at 5 November 2014. Changes from the last update of the Program include:

- Administration of the penalty imposed under subsection 284-75(3) of Schedule 1 to the *Taxation Administration Act 1953*. Last planned issue date was to be advised, but the updated Program indicates that this Practice Statement is now scheduled for release on 27 November 2014

- Administration of transfer pricing penalties for income years commencing on or after 29 June 2013. Last planned issue date was 12 November 2014, but the updated Program indicates that the issue date of this Practice Statement is now to be advised
- Guidance on the steps in the process for transfer pricing documentation. Last planned issue date was 12 November 2014, but the updated Program indicates that the issue date of this Practice Statement is now to be advised
- Deceased estates. Last planned issue date was to be advised, but the updated Program indicates that this Practice Statement is now scheduled for release on 18 December 2014.

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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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