



Tax highlights

21 July 2014

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Key developments this week

Carbon tax repeal bills – passage through Parliament and Royal Assent: On 14 July 2014, the **Clean Energy Legislation (Carbon Tax Repeal) Bill 2014** and seven related bills (“carbon tax repeal bills”) were re-introduced into the House of Representatives.

Notably, the package of carbon tax repeal bills did not include measures that were originally introduced in the 2013 package of carbon tax repeal bills, including:

- The repeal of personal income tax cuts and associated amendments to the low-income tax offset (LITO) that were legislated to commence on 1 July 2015
- The abolition of the Clean Energy Finance Corporation
- The abolition of the Climate Change Authority.

Instead, these measures are contained in the following bills (respectively):

- **Labor 2013-14 Budget Savings (Measures No. 1) Bill 2014** – introduced into the House of Representatives on 16 July 2014, see *Individuals and family groups* below for further detail
- **Clean Energy Finance Corporation (Abolition) Bill 2014** (currently before the House of Representatives)
- **Climate Change Authority (Abolition) Bill 2013 [No. 2]** (currently before the Senate).

The main carbon tax repeal bill was passed the House of Representatives with amendments on 14 July 2014. The amendments passed by the House included [amendments](#) that prohibit carbon-tax related price exploitation, ensure all cost savings attributable to the carbon tax repeal are passed through the supply chain for regulated goods, and ensure that lower prices resulting from the repeal of the carbon tax are passed on to consumers of regulated goods. The other seven related bills passed the House of Representatives on the same day without amendment.

The carbon tax repeal bills were introduced into the Senate on 15 July 2014 and were passed by the Senate on 17 July 2014 without amendment and received Royal Assent on the same day.

Progress of MRRT repeal bill: On 18 July 2014, the **Minerals Resource Rent Tax Repeal and Other Measures Bill 2013 [No. 2]** (“MRRT repeal bill”) passed the Senate with amendments.

Broadly, the [amendments](#) made by the Senate remove the following measures from the MRRT repeal

bill:

- Repeal of the low income superannuation contribution
- Repeal of the income support bonus
- Repeal of the schoolkids bonus.

The House of Representatives [disagreed](#) with the amendments and the Senate then subsequently insisted on the amendments that it had made. The Treasurer has issued a [press release](#) which indicates that the Government will not accept amendments that effectively retain measures that were intended to be funded by the Minerals Resource Rent Tax (MRRT). In addition, the press release contains updated costings for the repeal of the MRRT and all its associated measures over the current forward estimates.

For the measures contained in the MRRT repeal bill to proceed, it would seem that the bill will either have to return to the House of Representatives or be reintroduced into the House as a revised new bill.

Other measures proposed in the MRRT repeal bill that have not yet been legislated as a result of the bill failing to complete its passage through Parliament include:

- Rephrasing of the superannuation guarantee charge (SGC) percentage increase (Government amendments to the MRRT repeal bill to give effect to the 2014-15 Federal Budget announcement to maintain the SGC percentage at 9.5% until 30 June 2018 did not pass the Senate)
- Repeal of the loss carry-back measure with effect from the start of the 2013-14 income year
- Revision of certain capital allowance concessions granted to small business, with effect generally from 1 January 2014
- Repeal of the immediate deduction available for geothermal energy exploration and prospecting expenditure with effect for expenditure incurred after 30 June 2014.

For more information on these measures, refer to [Tax highlights 18 November 2013](#).

Thin cap, foreign non-portfolio distributions and foreign resident CGT integrity measures

introduced: The following bill was introduced into the House of Representatives last week:

- **Tax and Superannuation Laws Amendment (2014 Measures No. 4) Bill 2014:** This Bill includes:
 - **Amendments to thin capitalisation rules:**
 - Tightening the debt limit settings in the thin capitalisation regime (i.e. reducing the maximum debt limit from 3:1 to 1.5:1 (on a debt-to-equity basis) for general entities and from 20:1 to 15:1 (on a debt-to-equity basis) for non-bank financial entities)
 - Reducing the existing worldwide gearing test for outbound investors from 120% of worldwide gearing to 100%
 - Increasing the de minimis threshold from \$250,000 to \$2 million of debt deductions (e.g. interest expense) per annum to minimise compliance costs for small businesses
 - Introducing a worldwide gearing debt limit for inward investors, subject to an assets threshold.

The thin capitalisation amendments are proposed to apply to income years commencing on or after 1 July 2014

- **Reforms to exemption for foreign non-portfolio distributions:**
 - Amending the exemption so that it applies to distributions and non-share dividends on foreign non-portfolio equity interests
 - Extending the exemption to distributions and non-share dividends received by an Australian corporate tax entity through an interposed partnership or trust.

The non-portfolio distribution amendments are proposed to apply to distributions and non-share dividends made after the day the Bill receives Royal Assent

- **Amendments to foreign resident capital gains tax (CGT) integrity measures:**
 - Amending the foreign resident CGT regime so that it operates as intended by preventing the double counting of certain assets under the “principal asset test”
 - Ensuring foreign residents are subject to CGT in relation to CGT assets that they have used in carrying on a business through a permanent establishment located in Australia.

The principal asset test amendments will apply to consolidated groups for CGT events occurring on or after 14 May 2013 and for all other entities to CGT events occurring on or after 13 May 2014

- **Introduction of the tax receipt:** The proposed amendments require the Commissioner of Taxation to provide a breakdown to individuals of how their tax has contributed towards Government expenditure. The amendments are proposed to apply with respect to assessments for the 2014-15 and later income years
- **Miscellaneous amendments:** Addresses technical deficiencies and legislative uncertainties within several taxation and superannuation provisions.

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Weekly tax news

Business tax

Bill introduced: The following bill was introduced into the House of Representatives last week:

- **International Tax Agreements Amendment Bill 2014:** This Bill proposes to give the force of law in Australia to the [revised Australia-Switzerland tax treaty](#) which was signed on 30 July 2013. Highlights of the treaty include:
 - A general anti-treaty abuse rule. Treaty benefits will not apply if one of the principal purposes of a person in creating or assigning property or rights in respect of which income was paid, or in becoming a resident of Australia or Switzerland, was to take advantage of the Swiss treaty in order to obtain such benefits
 - The definition of ‘person’ now includes a trust
 - The term ‘permanent establishment’ no longer includes assembly projects
 - A 5% rate of royalty withholding tax
 - A 10% rate of interest withholding tax, reduced to nil in the source country on interest derived by:
 - An unrelated financial institution resident in the other country
 - A body performing government functions (including central banks)
 - Complying Australian superannuation funds or tax exempt Swiss pension schemes

- A 15% rate of dividend withholding tax, reduced to:
 - 0% for intercorporate dividends on non-portfolio holdings of more than 80% (subject to certain conditions)
 - 0% for dividends beneficially owned by a body performing government functions (including a central bank), complying Australian superannuation funds and tax exempt Swiss pension schemes, where they have direct holdings of no more than 10%
 - 5% for intercorporate dividends on other non-portfolio holdings.

The revised Swiss treaty is not a “post-BEPS” treaty. The bulk of the re-negotiations happened in 2011, prior to the Action Plan and key announcements under the OECD’s Base Erosion and Profit Shifting (BEPS) project.

Once the Swiss treaty enters into force, it will take effect in Australia in four stages, namely:

- In respect of fringe benefits tax, on fringe benefits provided on or after 1 April next following entry into force
- In respect of withholding tax on income derived by a resident of Switzerland, on income derived on or after 1 January next following entry into force
- In respect of other Australian tax, on income, profits or gains derived in the income year beginning 1 July next following entry into force
- In respect of exchange of information, to information that relates to taxation or business years beginning on or after 1 January next following entry into force.

Progress of current bills: At the conclusion of the 2014 Winter Parliamentary Sitings, the following tax bills were still outstanding:

Bill	Intro	Passed HoR	Passed Senate
Tax Laws Amendment (Research and Development) Bill 2013: For more information, refer to <i>Tax highlights 18 November 2013</i>	14/11/2013	09/12/2013	
Omnibus Repeal Day (Autumn 2014) Bill 2014: For more information, refer to <i>Tax highlights 24 March 2014</i>	19/03/2014	26/03/2014	
Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014: For more information, refer to <i>Tax highlights 24 March 2014</i>	19/03/2014		
Paid Parental Leave Amendment Bill 2014: For more information, refer to <i>Tax highlights 24 March 2014</i>	19/03/2014	02/06/2014	
Carbon Farming Initiative Amendment Bill 2014: For more information, refer to <i>Tax highlights 23 June 2014</i>	18/06/2014	25/06/2014	
Social Services and Other Legislation Amendment (2014 Budget Measures No. 1) Bill 2014 and Social Services and Other Legislation Amendment (2014 Budget Measures No. 2) Bill 2014: For more information, refer to <i>Tax highlights 23 June 2014</i>	18/06/2014	24/06/2014	

Excise Tariff Amendment (Fuel Indexation) Bill 2014 and Customs Tariff Amendment (Fuel Indexation) Bill 2014: For more information, refer to <i>Tax highlights 23 June 2014</i>	19/06/2014	25/06/2014	
Fuel Indexation (Road Funding) Bill 2014 and Fuel Indexation (Road Funding) Special Account Bill 2014: For more information, refer to <i>Tax highlights 23 June 2014</i>	19/06/2014	25/06/2014	
Clean Energy Finance Corporation (Abolition) Bill 2014: For more information, see <i>Key developments</i> above	23/06/2014		
Climate Change Authority (Abolition) Bill 2013 [No. 2]: For more information, see <i>Key developments</i> above	23/06/2014	26/06/2014	
Minerals Resource Rent Tax Repeal and Other Measures Bill 2013 [No. 2]: For more information, refer to <i>Tax highlights 30 June 2014</i> . *Note that this Bill passed the Senate with amendments which the House of Representatives rejected and the Senate insisted upon – see <i>Key developments</i> above for more information	23/06/2014	26/06/2014	17/07/2014 with amendments*
Labor 2013-14 Budget Savings (Measures No. 1) Bill 2014: For more information, see <i>Individuals and family groups</i> below	16/07/2014		
Tax and Superannuation Laws Amendment (2014 Measures No. 4) Bill 2014: For more information, see <i>Key developments</i> above	17/07/2014		
International Tax Agreements Amendment Bill 2014: For more information, see <i>above</i>	17/07/2014		

Federal Parliament resumes for the 2014 Spring sittings on 26 August 2014.

Financial system inquiry – interim report released: On 15 July 2014, the [interim report](#) of the Financial System Inquiry (FSI) was [released](#). The report sets out the Committee's views on the objectives of the financial system and the principles that should guide its development. It discusses the financial system from nine perspectives and makes 28 observations on how the system is currently working. For each of these observations, it sets out a range of options for change, including the option of no change.

From a tax perspective, the report identifies a number of taxes that distort the allocation of funding and risk in the economy, as well as tax issues that may adversely affect outcomes in the financial system. Broadly, this includes:

- The asymmetric tax treatment of interest costs and other expenses (which are fully tax deductible) and capital gains (which are taxed concessionally) encourages leveraged and speculative investment
- The dividend imputation system creates a bias for individuals and institutional investors (including superannuation funds) to invest in domestic equities, and may be a contributing factor to the lack of a deep domestic corporate bond market in Australia
- Interest withholding tax may be distorting the funding decisions of financial institutions and placing Australia at a competitive disadvantage internationally

- The goods and services tax (GST) is not levied on most financial services. This affects the size of the financial services industry relative to other industries where GST is levied, and affects the composition of the end-users who ultimately consume those financial services
- A more neutral taxation of savings vehicles and assets across the economy would be desirable.

For a complete list of the tax issues, refer to [Appendix 2](#) of the interim report. The FSI has indicated that the issues that are not currently under active Government consideration should be considered as part of the Tax White Paper process.

The FSI is seeking feedback on these observations and options to inform the recommendations in its final report in November. Submissions are due by 26 August 2014. The FSI will hold public forums in August in Sydney, Melbourne, Brisbane and Perth to allow members of the public to present their views.

Mutuality principle – strata corporation – [ATO ID 2014/24 released](#): The principle of mutuality does not apply to a penalty amount received by a strata corporation (for example, a penalty imposed on a member of the strata corporation for keeping a pet without permission or parking in the wrong parking bay, etc.). Therefore, the amount is ordinary income for the purposes of section 6-5 of the *Income Tax Assessment Act 1997*.

ATO Practice Statements Program – business tax – [updated as at 7 July 2014](#):

Practice statement scheduled for release within the next two months	
Topic	Planned issue date
Settlements: To clarify settlements policy	31 July 2014

Energy and resources – ATO’s administrative treatment for proposed farm-in farm-out rules:

The ATO has [announced](#) its administrative treatment in anticipation of expected amendments which will codify the farm-in farm-out rules in relation to the immediate deduction available for genuine exploration activities and clarify the tax treatment of interest realignment arrangements in the resource sector. These changes will apply from 7.30pm (AEST) 14 May 2013. An explanation of the administrative treatment relating to these changes is provided below.

Administrative treatment

The ATO will accept tax returns as lodged during the period up until the proposed law change is passed by Parliament. The ATO will **not** review assessments issued since the date of announcement until the outcome of the proposed amendment is known.

After the new law is enacted, taxpayers who:

- Claimed deductions that accord with the changes do not need to do anything more
- Have under-claimed deductions can seek amendments and, if a reduction in liability results, interest on overpayment will be paid if applicable
- Have over-claimed deductions will need to seek amendments:
 - No tax shortfall penalties will be applied and the ATO will remit any interest accrued to the base interest rate up to the date of enactment of the law change

- Any interest in excess of the base rate accruing after the date of enactment will be remitted if taxpayers actively seek to amend assessments within a reasonable timeframe after enactment.

If the proposed law change does not proceed, the ATO will issue further advice. For further information, please contact your Deloitte tax advisor or [David Ocello](#), Partner, Tax Services (08 9365 7041).

Tax administration transformation – reinventing the ATO: On 17 and 18 June 2014, the ATO held the National Tax Practitioner Conference which discussed the future of tax administration with an emphasis on technology and globalisation. The ATO has provided all the relevant speeches and presentation information from the conference – click [here](#) to access the documents. For further information, please also see [Tax highlights 23 June 2014](#).

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Individuals and family groups

Bill introduced: The following bill was introduced into the House of Representatives last week:

- **Labor 2013-14 Budget Savings (Measures No. 1) Bill 2014:** This Bill proposes to repeal the personal income tax cuts, and repeal associated amendments to the low-income tax offset, that were legislated to commence on 1 July 2015. A comparison of the current law concerning personal income tax rates from 1 July 2015 and effect of the amendments contained in the Bill is set out below:

Previously legislated 2015-16 and later years		Proposed 2015-16 and later years	
Income range (\$)	Rate (%)	Income range (\$)	Rate (%)
0 - 19,400	0	0 - 18,200	0
19,401 - 37,000	19	18,201 - 37,000	19
37,001 - 80,000	33	37,001 - 80,000	32.5
80,001 - 180,000	37	80,001 - 180,000	37
180,001 +	45	180,001 +	45

Taxation Determination (TD 2014/20) released on Division 7A benchmark interest rate: For the income year that commenced on 1 July 2014, the benchmark interest rate for the purposes of sections 109N and 109E of the *Income Tax Assessment Act 1936* is 5.95% per annum.

ATO Practice Statements Program – individuals and family groups – updated as at 7 July 2014:

Practice statement scheduled for release within the next two months	
Topic	Planned issue date
Deceased estates: To clarify and convert Chapter 32 of the ATO Receivables Policy into a practice statement.	30 September 2014

SMSFs – ATO recent compliance activity, areas of concern and ATO’s future priorities: On 17 July 2014, the Assistant Commissioner of the Self-Managed Superannuation Funds (SMSF) Segment, Mr Matt Bambrick, attended a conference where he discussed the emerging risks for the SMSF industry and the recent compliance activity of the ATO. The Assistant Commissioner highlighted the following as particular areas of concerns for SMSFs for this financial year:

- **Dividend washing:** The ATO has notified 2,000 SMSFs identified as potentially implementing a dividend washing scheme which enables a taxpayer to access a second franking credit attached to a second fully franked dividend even though the taxpayer effectively holds only one parcel of shares
- **Overseas seminars:** The ATO is watching promoters who advertise “questionable” SMSF conferences overseas. Trustees attending could contravene the sole purpose test
- **Home loan unit trusts:** The ATO has identified a potential home loan unit trust arrangement which involves the purchase of a residential property by a non-g geared trust whereby units are purchased by the SMSF, a related family trust and SMSF members and the property is occupied and rented by the member. This arrangement could contravene the sole purpose test and/or be considered as providing financial assistance to members
- **Dividend stripping:** The ATO has identified a retirement planning arrangement where a private company distributes retained earnings by way of a franked distribution to an SMSF in circumstances where the SMSF is entitled to a refund in relation to the franking credits attached to the distribution. The effect of the arrangement is that the earnings of the company are tax free in circumstances where the SMSF holds the shares for a short period of time at no risk
- **New penalties and ATO powers:** From 1 July 2014, the ATO has three new regulatory compliance powers to deter and address non-compliance by trustees:
 - education directions
 - rectification directions and
 - administrative penalties.

For the most severe non-compliance, the highest administrative penalty is \$10,200 per trustee. For a corporate trustee, the penalty is to be paid jointly and severally by the directors. In either case, the penalty is to be paid from personal, not SMSF, assets.

The Assistant Commissioner also identified a number of other areas of concern that trustees of SMSFs should be aware of – click [here](#) to read more.

Webinar for SMSF trustees: The ATO has [scheduled](#) a free webinar for taxpayers considering setting up an SMSF. The webinar provides an overview of the role and responsibilities of trustees and sources of SMSF information.

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Non-profit organisations

Appeal update – Hunger Project Australia: The Commissioner has [confirmed](#) that he will not lodge an application for special leave to appeal to the High Court against the Full Federal Court decision in [Commissioner of Taxation v Hunger Project Australia \[2014\] FCAFC 69](#). The Full Federal Court dismissed the Commissioner’s appeal against the decision of the Federal Court in [The Hunger Project Australia v Commissioner of Taxation \[2013\] FCA 693](#) and held that the taxpayer was a ‘public benevolent institution’ within the meaning of section 57A(1) of the *Fringe Benefits Tax Assessment Act 1986*.

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International tax

OECD Model Tax Convention – 2014 update: The OECD Council has [approved](#) the [contents of the 2014 Update](#) to the [OECD Model Tax Convention](#). The 2014 Update reflects work on the Model Tax Convention that was carried out between 2010 and the end of 2013, and therefore does not include any results from the ongoing work on the [BEPS Action Plan](#).

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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Contacts



David Watkins

Partner – Tax Services

Email: dwatkins@deloitte.com.au

Tel: +61 (0) 2 9322 7251

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