

Tax highlights

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Key developments this week

OECD releases first BEPS recommendations: On 16 September 2014, the OECD [released](#) its first seven BEPS ('base erosion and profit shifting') [recommendations](#). An official [Explanatory Statement](#) has also been released. The OECD recommendations were included on the agenda for the [G20 Finance Ministers and Central Bank Governors meeting](#) held in Cairns on 20-21 September 2014 – see [G20 Finance Ministers and Central Bank Governors meeting – key themes](#) below.

The OECD began work on their BEPS project to address concerns that current principles of national and international taxation were failing to keep pace with the global nature of modern trading and business models. The first seven elements of the OECD [BEPS Action Plan](#) are focussed on:

- Addressing the [tax challenges of the digital economy](#) (Action 1)
- Ensuring the coherence of corporate income taxation at the international level, through new model tax and treaty provisions to [neutralise hybrid mismatch arrangements](#) (Action 2)
- Countering [harmful tax practices](#) (Action 5)
- Realigning taxation and relevant substance to restore the intended benefits of international standards and to [prevent the abuse of tax treaties](#) (Action 6)
- Assuring that transfer pricing outcomes are in line with value creation, through actions to address [transfer pricing issues in the key area of intangibles](#) (Action 8)
- Improving transparency for tax administrations and increase certainty and predictability for taxpayers through improved [transfer pricing documentation and a template for country-by-country reporting](#) (Action 13), and
- Facilitating swift implementation of the BEPS actions through a report on the [feasibility of developing a multilateral instrument](#) to amend bilateral tax treaties (Action 15).

The OECD BEPS Action Plan, which was endorsed by the G20 in July 2013, identifies 15 key areas to be addressed. The remaining recommendations are due to be delivered in 2015.

G20 Finance Ministers and Central Bank Governors meeting – key themes: As mentioned above, the G20 Finance Ministers and Central Bank Governors met in Cairns on 20-21 September 2014 (the G20 Finance Ministers meeting) and, amongst other important global economic matters, provided an update on the G20's view on BEPS.

Two important themes emerged from the G20 Finance Ministers meeting:

1. A number of comments indicated that BEPS is not a targeted program directed at the digital economy or specific companies. According to Treasurer Joe Hockey, it is a “once-in-a-century opportunity to reform the international tax system” and reset international tax rules for the next 100 years
2. Whilst the OECD continues to work through the 15 BEPS Actions with a September 2015 deadline, the first clear international response is to focus on the automatic exchange of tax information.

What is Australia doing?	What is the G20 doing?
Implementing effective domestic tax law change	Addressing BEPS
Working with the ATO to strengthen tax administration	Tackling tax avoidance and promoting tax transparency through automatic exchange of information
Supporting the OECD in pursuing multilateral international tax law changes	Working with developing countries so that they can also benefit from the tax reforms

The [Communiqué](#) from the meeting stated (see paragraph 8):

“We are strongly committed to a global response to cross-border tax avoidance and evasion so that the tax system supports growth-enhancing fiscal strategies and economic resilience. Today, we welcome the **significant progress** achieved towards the completion of our two-year G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan and **commit to finalising all action items in 2015**.

We **endorse the finalised global Common Reporting Standard for automatic exchange of tax information** on a reciprocal basis which will provide a step-change in our ability to tackle and deter cross-border tax evasion. **We will begin exchanging information automatically between each other and with other countries by 2017 or end-2018, subject to the completion of necessary legislative procedures.** We call on all financial centres to make this commitment by the time of the Global Forum meeting in Berlin, to be reported at the Brisbane Summit, and support efforts to monitor global implementation of the new global standard. We support further coordination and collaboration by our tax authorities on their compliance activities on entities and individuals involved in cross-border tax arrangements. We welcome progress so far, and encourage further steps by G20 countries to deliver the St Petersburg commitment to lead by example in meeting the Financial Action Task Force standards on beneficial ownership.

We will continue to take practical steps to assist developing countries preserve and grow their revenue bases and stand ready to help those that wish to participate in automatic information exchange. We are deepening developing country engagement in tackling BEPS issues and ensuring that their concerns are addressed.”

Aside from the formal statements of the G20 Finance Ministers meeting, there were many other interesting comments over the course of 20-21 September 2014, set out below.

Treasurer, Joe Hockey:

- On the commencement of the automatic exchange of tax information in Australia: Australia is “in the group of early adopters” covering the first two years of entry into the arrangements, but Australia was “always going to be in the second year”
- In relation to the need for continuing domestic tax law reform: “... where there are any legislative gaps..., we will fill those gaps over the next 12 months. And we will do so on the basis that we need to get on with implementation now. Of course, the OECD has just passed us this significant amount of work. We’ve got to look at our own system and measure up whether our system has any holes. And then we will see about filling the legislative holes as soon as possible”
- On patent box regimes: “there is an argument there are good patent boxes and there are bad patent boxes. I think that’s still to be resolved in some of the work that the OECD is going to undertake....My attitude? Well, it depends on how they’re structured and they have got one name but many different definitions and objectives”.

Commissioner of Taxation, Chris Jordan:

- “[BEPS] is an extraordinarily large and important thing ... It is not about a few handfuls of companies that happen to be maybe in one particular industry. This is resetting the tax rules, the way that countries operate over the next 50-100 years”
- The ATO and other tax administrators will “invert their thinking” and move from a country specific view to a global, bigger picture view. This will include tax administrations in multiple countries mapping the global operations of multinationals in the digital economy.

OECD Secretary-General, Ángel Gurría:

- On the digital economy: “...the digital economy is very different, it is very unique, but not so different, not so unique, and not so original. And therefore, the hard-core principles as applied, as modernized, as evolved, from 70-80 years ago to today can apply...the general tax rules will apply. So [the digital economy] will not be exceptional ... will not be discriminated against.”
- In response to a question on what is hindering the OECD coming to a verdict on patent box regimes: “Nothing is hindering. Except the fact that we identified them, we said that they should be done away with ... If somebody has a system which basically offers benefits to a company that are not related to the business that is being done in that particular country ... they’re eroding the tax base”.

Other reports delivered ahead of the G20 Finance Ministers meeting included the following:

- [Part 1 – Base Erosion and Profit Shifting, Automatic Exchange of Information and Tax and Development and Part II – Global Forum on Transparency and Exchange of Information for Tax Purposes](#), OECD Secretary-General Report to the G20 Finance Ministers and Central Bank Governors, September 2014
- [G20 Common Reporting Standard Implementation Plan](#), September 2014
- [G20 response to 2014 Reports on Base Erosion and Profit Shifting and Automatic Exchange of Information for Developing Economies](#), G20 Development Working Group, September 2014.

Business tax

Legislation expected to be debated in Parliament this week: According to this week's House of Representatives [draft legislation program](#), the House is scheduled to debate [Customs Amendment \(Korea-Australia Free Trade Agreement Implementation\) Bill 2014](#), [Customs Tariff Amendment \(Korea-Australia Free Trade Agreement Implementation\) Bill 2014](#), [Tax and Superannuation Laws Amendment \(2014 Measures No. 4\) Bill 2014](#) and [Tax and Superannuation Laws Amendment \(2014 Measures No. 5\) Bill 2014](#) this week.

The [draft legislation program](#) for the Senate currently indicates that, subject to passage in the House of Representatives and introduction into the Senate, the Senate may also debate [Tax and Superannuation Laws Amendment \(2014 Measures No. 4\) Bill 2014](#) later in the week.

ATO Practice Statement Program updated: The ATO has updated its [Practice Statement Law Administration Program](#) as at 12 September 2014. Changes from the last update of the Program include:

- Administration of the penalty imposed under section 284-75(3) of Schedule 1 to the *Taxation Administration Act 1953* – last planned issue date was 18 September 2014, but the updated Program indicates that this Practice Statement is now scheduled for release on a date to be advised
- Deceased estates – last planned issue date was 30 September 2014, but the updated Program indicates that this Practice Statement is now scheduled for release on a date to be advised.

The following Practice Statements remain scheduled for release as follows:

- Administration of transfer pricing penalties for income years commencing on or after 29 June 2013 – expected to be issued on 15 October 2014
- Guidance on the steps in the process for transfer pricing documentation – expected to be issued on 15 October 2014
- Exercise of the discretions under sections 48-71 and 51-75 of the *A New Tax System (Goods and Services Tax) Act 1999* to approve an 'early day of effect' for membership of GST groups and participation in GST joint ventures – expected to be issued on 9 October 2014.

Payments received when not providing personal services – draft TD released: In draft Tax Determination [TD 2014/D15](#), the ATO expresses the preliminary view that a payment received by a personal services entity from a service acquirer during the period the service provider is not providing services to the service acquirer until further called upon, is personal services income within the meaning of section 84-5(1) of the *Income Tax Assessment Act 1997*.

MRRT – ATO administrative treatment: The ATO has released details of its [administrative treatment](#) of the repeal of the minerals resource rent tax (MRRT). The repeal is expected to commence on 30 September 2014 with entities no longer accruing MRRT liabilities from 1 October 2014. The ATO advises that entities will need to consider their circumstances to ensure their MRRT obligations accruing up to and including 30 September 2014 are met. These MRRT obligations include:

- Lodging MRRT instalment liability notices and paying MRRT instalments for instalment

quarters (including those commencing on and after 1 July 2014)

- Lodging MRRT returns.

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Employment taxes

Employee share schemes – ‘indeterminate right’ – Draft Taxation Determination TD 2014/D16 scheduled for release on 24 September 2014: This draft tax determination will consider whether a right to acquire a beneficial interest in a share granted subject to shareholder approval is an ‘indeterminate right’ within the meaning of section 83A-340(1) of the *Income Tax Assessment Act 1997*.

FBT – class ruling – car fringe benefits: [CR 2014/73](#) applies to employer clients of Toyota Finance Australia Limited who provide car fringe benefits under novated lease arrangements incorporating the payment of insurance premiums.

Transfer payment – class ruling – Sydney Trains: The ATO has issued [CR 2014/72](#) which sets out the tax treatment of certain transfer payments to employees of Sydney Trains.

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Indirect taxes

Review of border fees, charges and taxes: On 17 September 2014, the Government [announced](#) that the Australian Customs and Border Protection Service (ACBPS) has commenced a [review into Australia’s border-related fees, charges and taxes](#) (Fees Review). The Fees Review will be led by ACBPS in partnership with the Department of Agriculture and the Department of Immigration and Border Protection.

The Fees Review will cover current major charging arrangements at the border, including:

- Import Processing and Passenger Movement Charges levied by Customs and Border Protection
- Import related fees and charges recovered by the Department of Agriculture such as full import declaration charges, container charges and registration fees
- Visa Application Charges administered by the Department of Immigration and Border Protection
- Current and future cost recovery based charging for services, particularly those resulting from industry demand factors.

The Review will not consider revenue items such as customs duty or goods and services tax.

The ACBPS website provides further information on the Fees Review as well as an [Industry Consultation Paper](#). The industry consultation process will commence with a request for written submissions until 31 October 2014, followed by targeted engagement with various industry groups over the coming months.

Validity of notice about unclaimed input tax credits – DIS released: The Commissioner has released a [Decision Impact Statement](#) (DIS) about the decision of the Administrative Appeals Tribunal

(AAT) in [North Sydney Developments Pty Ltd and Commissioner of Taxation \[2014\] AATA 363](#). At issue in that case was whether a letter sent by the taxpayer to the Commissioner was, for the purposes of section 105-55 of Schedule 1 to the *Taxation Administration Act 1953*, sufficient to notify the Commissioner of the taxpayer's entitlement to unclaimed input tax credits.

The AAT decided that the letter was a complying notification for the purposes of section 105-55. It found that section 105-55 simply requires the notice to specify the tax period(s) involved and the nature of the input tax credit (or refund) claimed. The AAT rejected the Commissioner's assertion that a notice given under section 105-55 is not valid unless it details the specific nature of the refund and the circumstances under which the refund arises.

The Commissioner has accepted the AAT's decision that the taxpayer's letter satisfied the 'notice' requirement in section 105-55, and will review Miscellaneous Taxation Ruling [MT 2009/14](#) in order to make any necessary changes to reflect and ensure consistency with the decision. The Commissioner will also review Practice Statement [PS LA 2009/3](#) and make any necessary changes.

GST – 'passed on' and 'reimburse' – Draft Goods and Services Tax Ruling GSTR 2014/D4 scheduled for release on 24 September 2014: This draft GST ruling will consider the meaning of the terms 'passed on' and 'reimburse' for the purposes of Division 142 of the *A New Tax System (Goods and Services Tax) Act 1999*.

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[International tax](#)

Korea-Australia Free Trade Agreement – hearings: The [transcripts](#) of public hearings held by the Senate Foreign Affairs, Defence and Trade References Committee on the Korea-Australia Free Trade Agreement on 8 and 9 September 2014 have been released. Comments included reference to the competitiveness of Australia's financial services landscape and the status of the arrangements to establish an Asia Region Funds Passport involving, currently, six countries: Singapore, Korea, Australia, New Zealand, Thailand and the Philippines. The transcript also refers to the [Deloitte response to the Interim Report of the Financial System Inquiry](#).

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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