



## Tax highlights

24 November 2014

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### Key developments this week

**China-Australia free trade agreement reached:** On 17 November 2014, Australia and China concluded negotiations for a China-Australia Free Trade Agreement, with each committing to take the necessary steps to bring the Agreement into force.

#### **Benefits for Australian exports to China**

The text of the Agreement has not been made public (and this is unlikely to occur for several months). Details released by the Government on 17 November focus on the ways in which the Agreement will benefit Australian businesses exporting goods and services to China. These benefits include:

- Removal of Chinese import tariffs on a wide range of **agricultural products and processed foods**, generally within four to eleven years. Products to benefit include dairy goods, beef, sheep meat, live animal exports, seafood, barley, horticulture products, wine, fruit juice, honey, canned fruits, chocolate, wool, hides and leather. Import tariffs currently levied on these goods can be as high as 25% (beef) or 30% (horticulture products)
- A built-in review process three years after the Agreement enters into force, including in relation to market access. This offers the potential for Australia to secure improved access to China's market for highly sensitive commodities such as rice, wheat, sugar and cotton
- Removal of Chinese import tariffs on all **resources and energy products**, including the 3% tariff on coking coal for steel making, and the 6% tariff on non-coking coal for power generation, and on refined or otherwise transformed resources and energy products that currently attract import tariffs of up to 10%. Many of these tariffs will be removed upon the Agreement entering into force. The Agreement also commits China to maintain 0% tariffs on significant exports including iron ore, crude petroleum oils, LNG and gold
- Removal of import tariffs of up to 10% on **pharmaceuticals** either on entry into force or phased out within four years
- Removal of import tariffs for **other manufactured products** from Australia, within four years of entry
- New or substantially improved market access for **Australian services** suppliers, including those in the finance, insurance, funds management, securities and futures, legal and professional services, education, health, aged care, construction, manufacturing and

telecommunications services sectors. The Agreement also guarantees existing market access for Australian services suppliers in a wide range of other sectors in the Chinese market.

### ***Other changes and implications***

Other notable changes to be delivered by the Agreement include:

- Promotion of further growth of Chinese investment in Australia, most notably by raising the threshold above which investments in non-sensitive sectors by private sector entities from China are reviewed by the Foreign Investment Review Board (i.e. the \$248 million threshold to be lifted to \$1.08 billion)
- Reduction of barriers to labour mobility and temporary entry access. The Agreement includes measures to improve access for various skilled service providers, investors and business visitors from both countries, with the aim of supporting investment and reducing uncertainty for business.

Comparatively few details have been released about the benefits of the Agreement from the perspective of China and Chinese businesses. Although it is expected that the Agreement will require Australia to remove import tariffs on all goods imported from China, the period in which this is to occur is unknown.

While the reduction or elimination of tariffs on Chinese imports may make it harder for local producers to compete in the domestic market (e.g. for example, those in the textiles, clothing and footwear sector), other businesses will welcome the opportunity to import Chinese goods at a lower landed cost. Those businesses will need to pay close regard to the 'rules of origin' that are introduced ahead of the Agreement's entry into force, to determine whether their imports will qualify for improved tariff treatment. If not, there may be scope to work with Chinese suppliers to increase the Chinese content of imported goods to a level that is sufficient to benefit from the Agreement.

### ***When will the Agreement enter into force?***

The Government has not given an indication of the date that it anticipates that the Agreement will enter into force. Based on Australia's recent experience implementing trade agreements made with other trading partners, it would be surprising if all of the steps to implement the Agreement had been completed by both countries in time for entry into force before 1 July 2015. Realistically, this may take up to 12 months to occur.

**BEPS: Action 6: Preventing Treaty Abuse – follow up discussion draft released:** On 21 November 2014, the OECD [released](#) a public discussion draft, [Follow up work on BEPS Action 6: Preventing Treaty Abuse](#). This follows the previous release in March and September 2014 of discussion drafts by the OECD regarding Action 6 of its Base Erosion and Profit Shifting (BEPS) Action Plan – see below. Comments on the November 2014 draft are due by 9 January 2015 and public consultation will be held in Paris (and online) on 22 January 2015.

In March 2014, the OECD [released](#) a discussion draft on Action 6 entitled [Preventing the Granting of Treaty Benefits in Inappropriate Circumstances](#). The discussion draft focused on three areas: limiting treaty benefits in inappropriate circumstances, clarifying that treaties are not intended to create double non-taxation, and tax policy considerations for entering into a tax treaty. On 16 September 2014, the OECD [released](#) the first seven of its BEPS recommendations including the Action 6 deliverable, which

acknowledged that further follow-up work was required in relation to certain aspects of the work on Action 6 including in relation to the limitation on benefits (LOB) rule and policy considerations relevant to treaty entitlement of collective investment vehicles (CIVs) and non-CIV funds.

The November 2014 draft seeks comments on:

- Issues related to the LOB provision, including the application of the LOB and treaty entitlement of CIVs and non-CIV funds
- Issues related to the principal purposes test rule
- Other issues including the design and drafting of the anti-abuse rule applicable to permanent establishments located in third States, and the application of the new treaty tie-breaker rule.

The final version of the Action 6 report is expected to be released in September 2015.

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## *Weekly tax news*

### **Business tax**

**ATO releases minutes from September 2014 NTLG meeting:** On 17 November 2014, the ATO released the [minutes](#) from the National Tax Liaison Group (NTLG) meeting held on 18 September 2014. Agenda items for the meeting were broadly focused around:

- Issues of significance in tax law interpretation, policy and law design including a report from Treasury concerning the progress of announced but un-enacted tax measures, Treasury's involvement in the Tax White Paper process and Treasury's comments on Australia's 2014 Presidency of the G20
- Red tape reduction and a presentation of a draft discussion paper produced by a working group of representatives of NTLG member associations on safe harbours as a potential tool to reduce the costs of compliance and reduce red tape in the tax system in a way that does not undermine the integrity of the tax system
- Strategic ATO and Treasury initiatives including the impact of changes in ATO and Treasury operations as a result of organisational restructures and redundancies programs, the progress of the 'Reinventing the ATO' program, the impact/rationale of the program on the ATO/ tax practitioner relationship, and a health-check of the ATO's consultation arrangements
- The ATO review of public advice and guidance products to examine whether current products and processes could be improved to better support willing participation by taxpayers. The review will examine a range of matters including the capacity to develop systems to assist in the earlier identification of issues on which ATO guidance could be produced, the capacity to produce administrative solutions based on a mutual understanding of the approaches that are low-risk in the ATO's view (i.e. where taxpayers can safely 'swim between the flags') and the capacity to produce ATO guidance that enables rather than curbs taxpayer activity.

The next NTLG meeting will be held in Sydney on 3 December 2014.

**Tax information sharing and investigation taskforces:** On 17 November 2014, the [Tax and](#)

[Superannuation Laws Amendment \(2014 Measures No. 3\) Regulation 2014](#) (Regulation) was registered. This Regulation includes amendments to the *Taxation Administration Regulations 1976* to facilitate information sharing between the ATO and other agencies for the purposes of investigations being carried out by the Phoenix Taskforce (set up to identify and implement cross agency strategies to mitigate and deter the evasion of tax and other liabilities through the deliberate liquidation of related corporate trading entities) and the Trusts Taskforce (set up to audit taxpayers who have been involved in tax avoidance and evasion using trust structures).

**Labor push for earlier start of tax transparency rules:** On 24 November 2014, Labor introduced into Parliament a Private Members Bill, [Tax Laws Amendment \(Tax Transparency\) Bill 2014](#), which proposes to put more information concerning the tax affairs of large companies (typically referred to as tax transparency) into the public domain.

Under the tax transparency rules enacted last year, the ATO is required to publish certain details about companies that have total income of over \$100 million (large companies). Details include how much tax large companies pay each year. Under the tax transparency rules, the ATO must publish the required details from the 2013-14 and later income years. However, the publication of the details regarding the 2013-14 income year is not expected to be published until late 2015.

Labor's Private Members Bill calls for the public disclosure of the required details from the 2012-13 income year.

Labor faces two potential problems with the Bill:

- Labor does not currently have the numbers in the House of Representatives to pass the Bill, and is therefore calling on the Government to support it
- From all accounts, the ATO is not necessarily ready to publish the required information for the 2013-14 year before late 2015. The ATO has advised that it will be consulting with stakeholders on implementation issues for the transparency measure, and that it expects to start the formal public consultation process later in 2014 or early in 2015. Consequently, we may not see tax information in the public domain at an earlier date to that which is currently planned, even if the Bill were to pass both Houses of Parliament. The Bill, if it was passed, would put one more year's data into the public domain (i.e. the Bill proposes details from the 2013 income year should also be published), but may not achieve an earlier disclosure of that information.

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## **Individuals and family groups**

**Share transactions data matching program:** On 18 November 2014, the Commissioner of Taxation issued a [gazette notice](#) indicating that the ATO will acquire details of entities' share registries for the period 20 September 1985 to 30 June 2016 from the following sources:

- Link Market Services Limited
- Computershare Limited
- Australian Securities Exchange Limited
- Boardroom Pty Ltd
- Advanced Share Registry Services Pty Ltd

- Security Transfer Registrars Pty Ltd.

The ATO estimates that more than 95 million records will be obtained, including the records for approximately 1.2 million individuals. These records will be electronically matched with certain ATO data holdings to identify non-compliance with registration, lodgment, reporting and payment obligations under taxation laws.

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### International tax

**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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