



## Tax highlights

27 October 2014

### Contents:

#### Key developments

- [Agricultural Competitiveness Green Paper released](#)
- [Ireland releases legislation affecting multi-nationals](#)

#### Weekly tax news

- [Business tax](#)
- [Superannuation](#)
- [Indirect taxes](#)
- [State taxes](#)
- [International tax](#)

### *Key developments this week*

**Agricultural Competitiveness Green Paper released:** On 21 October 2014, the Minister for Agriculture [announced](#) the release of the [Agricultural Competitiveness Green Paper](#). The Green Paper notes that, while taxation policy changes should generally be considered in the context of the Government's Tax White Paper, specific tax policy changes that relate only to the agriculture sector could be considered in the Agricultural Competitiveness White Paper.

Broadly, the Green Paper suggests the following tax-related policy changes:

- Revising the non-commercial loss rules to encourage investment
- Increasing thresholds and extending eligibility for the Farm Management Deposits Scheme
- Changing the effective life schedules for farm plant and equipment to reduce the complexity of depreciation for such equipment
- Realigning the Zone Tax Offset scheme to be representative of the true cost of isolation from publicly funded amenities
- Allowing farmers to trade tax losses to non-farm businesses to assist farm cash-flow in low-income years
- Allowing farmers to opt back in to the income tax averaging provisions after a period of time to recognise changing circumstances
- Reducing and better targeting the rebate of the Wine Equalisation Tax.

Submissions on the Green Paper are due by 12 December 2014.

**Ireland releases legislation affecting multi-nationals:** On 23 October 2014 Ireland's Finance Bill 2014 was published. The bill brings into effect measures announced in the Irish budget on 14 October 2014. Significant measures relevant to the multinational sector are included in the Finance Bill such as the grandfathering of "double Irish" structures created before 1 January 2015; the change in tax residence rules for Irish companies incorporated after that date; and the enhancement of the onshore intellectual property and R&D tax credit regimes. For further information click to view, [Ireland Tax Alert](#).

[Back to top](#)

## Weekly tax news

### Business tax

**Treasury Legislative Amendment Bill introduced:** On 22 October 2014 the [Treasury Legislation Amendment \(Repeal Day\) Bill 2014](#) was introduced into the House of Representatives. The Bill contains proposed amendments relating to taxation, superannuation and shareholdings in certain financial sector companies as part of the Government's deregulation [agenda](#).

Broadly the proposed measures include:

- **Consolidation and repeal of tax provisions:** Simplifying the taxation laws by consolidating duplicated taxation administration provisions contained in various taxation Acts, repealing spent or redundant taxation laws; and moving some regulations into the primary law. The changes include a rewrite of the Commissioner's information gathering powers (sections 263 and 264) and the production of a notice under subsections 177EA(8) and 177EB(8) of the *Income Tax Assessment Act 1936*. The objective is that there is no change in the law, just simplifying the Acts. These sections are to be incorporated within the *Tax Administration Act 1953* as follows:

Old law	New law
177EA(8)	350-10 in Schedule 1
177EB(8)	350-10 in Schedule 1
263	353-15 in Schedule 1
264	353-10 in Schedule 1

In addition, the re-write has removed much of the content requirements of the previous annual investment income reports and instead leaves such requirements to the Commissioner to determine in approving the manner and form in which this report is to be provided to him or her. The re-write also gives the Commissioner the ability to enter into arrangements with investment bodies for the report to be provided in a different manner in order to facilitate a simpler interaction between the ATO, investment bodies and taxpayers. These amendments take effect on various dates, either from the day of Royal Assent or 1 July 2015

- **Definition of Australia:** The rewritten provisions define 'Australia' for income tax purposes. The income tax concept applies across other taxes, with amendments as required in order to retain intended policy differences. The rewritten provisions generally make no policy changes, but are another step towards achieving a single income tax assessment Act for Australia. This rewrite applies to tax periods or quarters commencing on or after 1 July 2015.

**Update on AASB112 Income Taxes:** The compiled AASB Standard, AASB112 Income Taxes has been [registered](#) as a legislative instrument as at 23 October 2014. This compiled Standard applies to annual reporting periods beginning on or after 1 January 2015. Early application is permitted. It incorporates relevant amendments made up to and including 14 August 2013 in respect of amendments to Australian Accounting Standards – Investment Entities. (Those amendments required an investment entity to measure unconsolidated subsidiaries at fair value through profit or loss in accordance with AASB 9 Financial Instruments in its consolidated and separate financial statements.)

**Proceeds from sale of mining tenements assessable:** The Administrative Appeals Tribunal (AAT) has held that a taxpayer was assessable on his share of the proceeds from the sale of his interest in a number of mining tenements. During the 2007 and 2008 income years, the taxpayer entered into a number of agreements which provided, broadly, for mining tenements he held in partnership with two other individuals to be transferred to various third parties.

The AAT held that one of the agreements was ineffective, as it specified that the consideration for the transfer would be “an amount... to be agreed upon”. As consideration is a necessary element of a concluded and enforceable agreement, the AAT found that the taxpayer retained his interest in the relevant tenements that were the subject of that particular agreement.

As for the remaining agreements, the AAT found that, even though the taxpayer may not have received his share of the proceeds, as they were dealt with as he directed or on his behalf, they were therefore included in his assessable income by operation of section 6-5(4) of the *Income Tax Assessment Act 1997* – click to view [Kirkby and Commissioner of Taxation \[2014\] AATA 759](#) (21 October 2014).

**Taxpayer entitled to tax offset – R&D expenditure ‘incurred’:** The Federal Court has dismissed the Commissioner’s appeal against the decision of the Administrative Appeals Tribunal (AAT) in [Desalination Technology Pty Ltd and Commissioner of Taxation \[2013\] AATA 846](#). In that case, the AAT held that the taxpayer was entitled to a tax offset in respect of research and development expenditure on the basis that the expenditure was “incurred” within the meaning of section 73B(14) of the *Income Tax Assessment Act 1936* (ITAA 1936).

The circumstances surrounding the tax offset claim involved a structure under which, broadly, a new company was formed to act as a project manager for all R&D projects and to coordinate the use of labour and equipment for various projects.

The taxpayer contracted with that company to obtain the labour and equipment required to complete its R&D project and was issued with monthly invoices. These invoices were paid by debiting a running account which did not have to be settled until:

- The taxpayer received funds from investors, lenders or other sources, and
- The taxpayer regarded it “prudent” to make the payment.

The AAT noted that, even though the timing of the payments by the taxpayer to the company was conditional on the receipt of funds from investors, lenders or other sources, as well as consideration as to whether it was “prudent” to make the payment, this did not render impossible the proposition that the taxpayer was definitively committed to the company in respect of the R&D expenditure.

In dismissing the Commissioner’s appeal:

- The Court noted that it was not the payment of the invoices that was subject to the two contingencies, but instead the repayments of the running account. Accordingly, once the AAT found as a matter of fact that the taxpayer was definitively committed to paying the R&D expenditure, this inevitably led to the conclusion that the R&D expenditure had been “incurred”

- While the Court accepted the proposition that a contingency as to the timing of a payment does not mean that expenditure has not been incurred, the Court agreed with the Commissioner's contention that the two contingencies were not about timing, but instead went to the very existence of the obligation to discharge the running account. However, this had no bearing on whether the taxpayer was definitively committed to the payment of the invoices.

Click to view [Commissioner of Taxation v Desalination Technology Pty Limited \[2014\] FCA 1120](#) (21 October 2014).

*The outcome in similar cases is likely to be different under the R&D tax incentive given that payments to associates now also need to be paid in the income year as well as incurred under section 355-205 of the Income Tax Assessment Act 1997.*

**ATO releases Class Rulings:** On 22 October 2014, the ATO issued the following Class Rulings:

- [CR 2014/88](#) - Goods and services tax: bus transport in New South Wales - offers of employment and subsequent recompense payments made under Bus Service Contracts
- [CR 2014/89](#) - Income tax: Royal Melbourne Institute of Technology (RMIT) University Academic Voluntary Departure Program 2014-2015.

**Draft tax determinations – GST and FBT – due for release this week:** The following draft tax determinations are due to be [released](#) by the ATO on 29 October 2014:

- GSTD 2014/D4 - Goods and services tax: is the supply of brokerage services that facilitates the sale or purchase of financial products on overseas securities or futures exchanges, a GST-free supply under paragraph (a) of item 4 in the table in section 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*?
- TD 2014/D17 - Fringe benefits tax: when are the duties of the employment of an employee of a government body exclusively performed in, or in connection with, a public hospital or 'non-profit hospital' for the purposes of section 57A(2)(b) of the *Fringe Benefits Tax Assessment Act 1986*?

**Taxable payments reporting – construction industry:** On 23 October 2014 the ATO [updated](#) its guide for the building and construction industry.

The updates made are in respect to:

- Lodging the taxable payments annual report – online information was updated including a new link to taxable payments annual report software products
- Payments that are not reported – payments for private and domestic projects information was updated including new examples: 11a and 11b
- Frequently asked questions and answers.

**[Back to top](#)**

## Superannuation

**Superannuation - ATO Interpretative Decision:** On 24 October 2014, the ATO published Interpretative Decision [ATO ID 2014/31](#): Superannuation guarantee – payment of salary and wages after the death of an employee to the deceased estate.

[Back to top](#)

## Indirect taxes

**Korea-Australia Free Trade Agreement Bills – Royal Assent:** On 21 October 2014, the [Customs Amendment \(Korea-Australia Free Trade Agreement Implementation\) Bill 2014](#) (Customs Amendment Act) and [Customs Tariff Amendment \(Korea-Australia Free Trade Agreement Implementation\) Bill 2014](#) (Customs Tariff Amendment Act) received Royal Assent.

The Customs Amendment Act amends the Customs Act 1901 by inserting:

- Rules of origin for goods imported into Australia from Korea. Imported goods that satisfy the new rules as 'Korean originating goods' will be eligible for preferential rates of customs duty under the Customs Tariff Act
- Rules relevant to the exportation of goods to Korea. These rules concern record keeping and other obligations and will apply to persons exporting goods to Korea and wanting to obtain preferential treatment for them in Korea, and on producers of such goods.

The Customs Tariff Amendment Act amends the Customs Tariff Act 1995 to provide, among other things, 'free' rates of customs duty for certain Korean originating goods, and to provide for the phasing of preferential rates of customs duty to 'free' by 2021 for certain other Korean originating goods.

The amendments made by the two Acts will become operative from the later of 1 December 2014 and the day on which the Korea-Australia Free Trade Agreement comes into force for Australia. Both Australia and Korea are currently aiming for entry into force before the end of 2014.

[Back to top](#)

## State taxes

**WA – land tax exemption and duties changes proposed:** The [Taxation Legislation Amendment Bill \(No. 2\) 2014](#) was introduced into the Western Australian Parliament on 23 October 2014. The Bill amends the *Land Tax Assessment Act 2002* (WA) to modernise and simplify the land tax exemption for land used for primary production purposes. It also makes amendments to the *Duties Act 2008* (WA).

The main land tax exemption changes include:

- Making the primary production exemption available in circumstances where the primary

produce is sold in a processed or converted state (i.e. where land is used for both primary production and secondary processing as part of an integrated business). The exemption would be available in respect of that proportion of the land that is being used to grow the produce

- Abolishing the existing one-third income test (and associated 50% concession for those failing it), and replacement with a more flexible business test. The test is aimed at determining whether a genuine primary production business is being conducted on land that is non-rural and for which land tax exemption is sought. Currently, the owner is required to derive at least one-third of their total net income from primary production to qualify for the exemption
- Replacing the current owner-user rule which requires non-rural land to be used for primary production purposes by the owner of the land. The change will extend the availability of exemption in circumstances where the primary production enterprise is being carried on by a family member of the owner or a trust, company or other entity associated with the owner.

The Bill contains two amendments to improve the operation of the duties law:

- A change to the landholder duty provisions, effective from 1 July 2008, to overcome the existing anomaly that an agreement to acquire or dispose of a landholder's subsidiary is treated differently to an agreement to acquire or dispose of a direct interest in land
- A change to address taxpayer attempts to shift value away from the dutiable component of a transaction (e.g. land, mining tenements) to other assets that do not attract duty (e.g. mining information).

**Back to top**

## **International tax**

**OECD Forum on Tax Administration:** On 24 October 2014 the [Ninth Meeting of the OECD Forum on Tax Administration](#) (FTA) took place in Dublin. The meeting predominantly focused on OECD/G20 Base Erosion and Profit Shifting (BEPS) Project and the move to automatic exchange of financial account information. Discussions around these topics concluded with consensus that ever greater co-operation will be necessary to successfully implement these measures.

Specifically they agreed:

- A strategy for systematic and enhanced co-operation between tax administrations
- To invest the resources needed to implement the new standard on automatic exchange of information and
- To improve the practical operation of the mutual agreement process.

A [communique](#) was released at the close of the meeting containing further details and links to the following publications that have just been released by the FTA:

- [Increasing Taxpayers' Use of Self-service Channels](#)
- [Working Smarter in Tax Debt Management](#)
- [Tax Compliance by Design – Achieving improved SME Tax Compliance by Adopting a System Perspective](#)
- [Measures of Tax Compliance Outcomes – A Practical Guide](#)

The FTA is the leading international body concerned with tax administration, bringing together the

heads of tax administrations from the OECD, members of the G20 and large emerging economies.

**Australia - Swiss Convention – entry into force:** The [Convention](#) between Australia and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income [entered into force](#) on 14 October 2014. The date of effect of the Convention varies according to different articles of the Tax Treaty.

In the case of Australia, the dates of effect are as follows:

- Withholding tax on income derived by a resident of Switzerland: effective for income derived on or after 1 January 2015
- Fringe benefits tax: effective for benefits provided on or after 1 April 2015
- Other Australian tax: effective for income, profits or gains derived in the income year beginning on or after 1 July 2015

In the case of Switzerland, the dates of effect are as follows:

- Withholding tax on income derived by a resident of Australia: effective for amounts paid or credited on or after 1 January 2015
- Other taxes: effective on or after 1 January 2015

For both countries:

- Exchange of Information Article (Article 25): effective for information that relates to taxation or business years beginning on or after 1 January 2015.

**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](#).

**[Back to top](#)**

## Contacts



### **David Watkins**

Partner – Tax Services

Email: [dwatkins@deloitte.com.au](mailto:dwatkins@deloitte.com.au)

Tel: +61 (0) 2 9322 7251

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the “Deloitte Network”) is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

This document and the information contained in it is confidential and should not be used or disclosed in any way without our prior consent.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/au/about](http://www.deloitte.com/au/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

#### About Deloitte

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte’s approximately 170,000 professionals are committed to becoming the standard of excellence.

#### About Deloitte Australia

In Australia, the member firm is the Australian partnership of Deloitte Touche Tohmatsu. As one of Australia’s leading professional services firms, Deloitte Touche Tohmatsu and its affiliates provide audit, tax, consulting, and financial advisory services through approximately 5,400 people across the country. Focused on the creation of value and growth, and known as an employer of choice for innovative human resources programs, we are dedicated to helping our clients and our people excel. For more information, please visit our web site at [www.deloitte.com.au](http://www.deloitte.com.au).

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Touche Tohmatsu Limited

© 2014 Deloitte Tax Services Pty Ltd.