



Tax highlights

28 July 2014

Contents:

Key developments

- Deloitte Tax Alert on amendments to thin capitalisation and replacement of section 23AJ
- OECD releases global standard for information exchange
- Court confirms right to private ruling in respect of rights to future income abrogated by amending legislation

Weekly tax news

- Business tax
- Individuals and family groups
- Superannuation
- Indirect taxes
- State and Territory Taxes
- International tax

Key developments this week

Amendments to thin capitalisation and replacement of section 23AJ – Deloitte tax alert: As reported in last week's *Tax highlights*, [Tax and Superannuation Laws Amendment \(2014 Measures No. 4\) Bill 2014](#) was introduced into the House of Representatives on 17 July 2014. The Bill includes measures to:

- Repeal current section 23AJ of the *Income Tax Assessment Act 1936* (ITAA 1936), and introduce new Subdivision 768-A in the *Income Tax Assessment Act 1997* (ITAA 1997) in respect of distributions and non-share dividends received from foreign companies
- Amend the thin capitalisation regime
- Introduce integrity measures in respect of the capital gains tax (CGT) provisions applying to non-residents.

Deloitte has prepared a tax alert which provides an overview of proposed new subdivision 768-A, as well as amendments to the thin capitalisation regime, and sets out implications and key considerations for affected taxpayers – click [here](#) to view.

OECD releases global standard for information exchange: The OECD has [released](#) the full version of a new global standard for the exchange of information between jurisdictions. The [Standard for Automatic Exchange of Financial Account Information in Tax Matters](#) calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with the tax authorities of other jurisdictions on an annual basis.

The standard includes a common reporting standard (CRS) which contains the reporting and due diligence procedures to be followed by financial institutions, and a model competent authority agreement (CAA) which contains the detailed rules on the exchange of information. The Standard also includes detailed commentaries on the CRS and CAA.

The financial information to be reported with respect to reportable accounts includes all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income) and also account balances and sales proceeds from financial assets.

The financial institutions that are required to report under the CRS includes banks, custodians and certain other financial institutions such as brokers, certain collective investment vehicles and certain

insurance companies.

The Standard was developed in response to a G20 request and was endorsed by the G20 Finance Ministers in February 2014. The OECD will formally present the Standard to the G20 Finance Ministers meeting to be held in Cairns on 20 – 21 September 2014.

Court confirms right to private ruling in respect of rights to future income abrogated by amending legislation: The Full Federal Court has unanimously dismissed the taxpayer's appeal from the Federal Court decision in [IOOF Holdings Limited v Commissioner of Taxation of the Commonwealth of Australia \[2013\] FCA 1189](#) and held that the special application rule with respect to the amendments contained in *Tax Laws Amendment (2012 Measures No 2) Act 2012* (the 2012 Amending Act) for private rulings and certain written advice (Schedule 3, Part 4, Item 51) does not allow a review relating to a private ruling request to be determined by the Administrative Appeals Tribunal (the Tribunal) in accordance with the law prior to the 2012 Amending Act.

In reaching its decision, the Full Court agreed that the rights that the taxpayer acquired by making a ruling request and exercising its statutory rights of objection and review, were only rights to have the ruling request determined in accordance with the law as it stood at the time of the review.

As the 2012 Amending Act amended the *Tax Laws Amendment (2010 Measures No 1) Act 2010* retrospectively, the Tribunal could only review the taxpayer's objection relating to its private ruling request by reference to the 2012 Amending Act unless item 51 applied. The Full Court agreed that item 51 did not apply to the taxpayer as the underlying intention of item 51 was to preserve the rights of a taxpayer who was issued with a private ruling prior to 31 March 2011; not if the ruling request is in progress. The Full Court held that there was no obligation on the Commissioner to issue a ruling to the taxpayer by 31 March 2011 – the taxpayer only had the right to have its ruling request considered as per Division 359 of Schedule 1 to the *Tax Administration Act 1953*.

Back to top

[Weekly tax news](#)

Business tax

Denying large business access to the research and development (R&D) tax incentive – administrative treatment: The ATO has released its [administrative treatment](#) in relation to the proposed measure to deny access to the R&D tax incentive for companies with aggregated assessable income of \$20 billion or more for an income year. This measure was [announced](#) by the former Treasurer on 17 February 2013 and the Coalition Government [confirmed](#) that it would proceed with this measure on 6 November 2013. [Tax Laws Amendment \(Research and Development\) Bill 2013](#) was introduced into the House of Representatives on 14 November 2013 to give effect to this measure, and is currently before the Senate.

The ATO has advised that they will accept tax returns as lodged during the period up until the proposed law change is passed by Parliament. Once the new law is enacted, taxpayers will need to review their positions back to income years starting on or after 1 July 2013. Taxpayers who:

- Claimed the R&D tax offset in accordance with the changes do not need to do anything more
- Over-claimed the R&D tax offset will need to seek amendments. No tax shortfall penalties will be applied and any interest accrued will be remitted to the base interest rate up to the date of enactment of the law change. In addition, any interest in excess of the base rate accruing after the date of enactment will be remitted where taxpayers actively seek to amend assessments within a reasonable timeframe after enactment.

Infrastructure and superannuation forum: On 25 July 2014, the Treasurer, NSW Premier and the NSW Treasurer met with representatives from the superannuation industry, industry groups, investment managers and government to [discuss](#) practical ways to encourage Australia's superannuation industry to invest further in infrastructure projects in Australia. In particular, investment in 'greenfield' assets was discussed and initiatives such as improvements to the current regulatory settings that could encourage greater involvement in this type of infrastructure by superannuation funds was explored.

Takeovers Panel – no guidance note on dividends: The Takeovers Panel has [decided](#) not to publish a Guidance Note on Dividends following consideration of the submissions received on the [Consultation Paper](#) released on 10 January 2014. The Consultation Paper proposed a draft guidance note to clarify that:

- If a bidder includes the value of franking credits in its 'headline' offer price, it is likely to give rise to unacceptable circumstances
- A bidder should make it clear in the bidder's statement how any deduction for franking credits would be calculated (either by a formula or as a fixed amount) and the basis for adopting that calculation.

The Panel noted the competing views on, in particular, whether the value of franking credits should be deducted from bid consideration and the assessment of that value if the value was to be deducted. The Panel has decided to keep the area under review and revisit the possibility of publishing guidance in the future should it be warranted. The Panel has published a [Public Consultation Response Statement](#), attaching the five submissions received.

ATO Interpretative Decision (ATO ID) released on taxation of financial arrangements (TOFA):

- [ATO ID 2014/25](#): A term deposit provided as security for a performance bond is not a right or obligation under a guarantee or indemnity subject to the exception in section 230-460(8) of the ITAA 1997.

Amended Practice Statement scheduled for release on 31 July 2014:

- PS LA 2011/27: Matters the Commissioner considers when determining whether the ATO view of the law should only be applied prospectively

[Back to top](#)

Project DO IT – ATO adds to eligibility scenarios: The ATO has extended the range of eligibility scenarios for the amnesty available under Project DO IT to include a [scenario](#) where a taxpayer has diverted income offshore using an offshore service provider. Under Project DO IT, taxpayers disclosing their offshore assets will generally be assessed for the last four years, will be liable for a maximum shortfall penalty of 10% and full shortfall interest charges, and will not be investigated by the ATO or referred for criminal investigation on the basis of their disclosures. The ATO's stated position has been that it will not review disclosures for fraud and evasion for those taxpayers who are not excluded from the amnesty (i.e. taxpayers not under audit, or under covert investigation). In response to feedback received, the ATO has clarified the broad eligibility criteria that apply by including an eligibility scenario that involves a taxpayer who has more actively engaged in fraud and evasion. According to the ATO, "there are only a small number of exclusions from Project DO IT". Project DO IT closes on 19 December 2014.

Maximum net asset value (MNAV) test calculation – Decision Impact Statement (DIS) released on *Altnot*: The Commissioner has released a [DIS](#) concerning the decision of the Federal Court in [Commissioner of Taxation v Altnot Pty Ltd \[2014\] FCA 362](#) relating to the application of the MNAV test for the purposes of the CGT small business concessions under Division 152 of the ITAA 1997. In that case, the Federal Court set aside the Administrative Appeals Tribunal (AAT) decision in [Altnot Pty Ltd and Commissioner of Taxation \[2013\] AATA 140](#) on the basis that the AAT did not consider whether the director's wife was deemed to be 'connected with' the taxpayer by virtue of section 152-30(2)(b) of the ITAA 1997 which required that her connection be determined also by reference to her 'small business CGT affiliates' or together with her 'small business CGT affiliates'. For more information on the Federal Court's decision, refer to [Tax highlights 28 April 2014](#).

The ATO notes that the Court's decision is consistent with the Commissioner's submissions to the Court. The ATO also notes that, while section 152-30 was repealed in 2007, the test for determining whether an entity is connected with a taxpayer is now to be found in section 328-125, when read with section 152-78. The ATO considers that the Court's construction of the covering words in the former section 152-30(2) is equally applicable to the covering words of section 328-125(2).

Taxation Ruling (TR) scheduled for release on 30 July 2014:

- TR 2014/5: Matrimonial property proceedings and payments of money or transfers of property by a private company to a shareholder (or their associate). Previously issued as [TR 2013/D6](#).

[Back to top](#)

Superannuation

Review of retirement income stream regulation: On 21 July 2014, the Acting Assistant Treasurer released a [discussion paper](#) which considers key areas such as:

- The regulatory barriers restricting the availability of relevant and appropriate retirement income stream products
- Facilitating deferred lifetime annuities (DLAs) by extending concessional taxation treatment. In particular, the Government is considering the possibility of extending the same concessional treatment that applies to investment earnings on assets supporting

superannuation income streams to DLAs

- The minimum payment requirement for account-based pensions.

Submissions are due by 5 September 2014.

Self-managed superannuation funds – information from the ATO website:

- [Record-keeping requirements](#) for all investment decisions
- [Rollover benefits statement](#).

Back to top

Indirect taxes

Goods and Services Tax Determination (GSTD) scheduled for release on 30 July 2014:

- GSTD 2014/3: Do payments made by a vendor to a purchaser of real property when the rent received falls below a rental yield guaranteed by the vendor give rise to an adjustment event for the purposes of Division 19 of the *A New Tax System (Goods and Services Tax) Act 1999*? Previously issued as [GSTD 2014/D2](#).

Draft Goods and Services Tax Ruling (GSTR) scheduled for release on 30 July 2014:

- GSTR 2014/D2: Treatment of ATM service fees, credit card surcharges, and debit card surcharges.

Amended Practice Statement scheduled for release on 30 July 2014:

- PS LA 2010/3: Apportionment for the purposes of the *Fuel Tax Act 2006*.

Back to top

State & Territory Taxes

WA: Changes to land tax primary production exemption

The Western Australian Department of Treasury has [invited public comment](#) on proposed amendments to the *Land Tax Assessment Act 2002* (WA). The amendments, in [draft Land Tax Assessment Amendment Bill \(No. 2\) 2014](#), are intended to modernise and simplify the operation of the primary production exemption. Among other things, the amendments would introduce simpler exemption requirements, clarify the application of the exemption in cases where land is used for primary production and secondary processing, and extend the exemption to cases where land is used for primary production by another family member. The closing date for submissions about the proposed amendments is 8 August 2014.

Back to top

International tax

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

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