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Tax highlights

3 March 2014

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Key developments this week

Bills introduced into Parliament last week: The following Bills were introduced into the House of Representatives last week:

- **Tax and Superannuation Laws Amendment (2014 Measures No. 1) Bill 2014:** This Bill includes proposed amendments to:
  - Introduce penalties to deter and penalise persons who promote illegal early release schemes so as to enable people to access superannuation benefits before they are eligible to do so
  - Introduce administrative directions and penalties for contraventions relating to self-managed superannuation funds including rectification directions, education directions and administrative penalties
  - Phase out the net medical expenses tax offset (NMETO) by the end of the 2018-19 income year. During the 2013-14 to 2018-19 income years the NMETO will be subject to transitional arrangements
  - Update the list of specifically-listed deductible gift recipients.
- **Excise Tariff Amendment (Tobacco) Bill 2014** and **Customs Tariff Amendment (Tobacco) Bill 2014:** The bills amend the Excise Tariff Act 1921 and the Customs Tariff Act 1995 respectively, to:
  - increase rates of excise, and excise equivalent customs duty, on tobacco through a series of four staged increases of 12.5% each, occurring on 1 December 2013, and on 1 September in 2014, 2015 and 2016; and
  - change the basis on which rates of excise, and excise equivalent customs duty, on tobacco are indexed – from a consumer price index (CPI) basis to an average weekly ordinary time earnings (AWOTE) basis. This change is to address the fact that CPI tends to increase at a lower rate than AWOTE, and that without the change additional consumer demand might be encouraged in the longer term by a decline in the duty component of the price of tobacco, relative to wages and salaries. The first AWOTE indexation date is 1 March 2014.

Key superannuation rates and thresholds updated for the 2014-15 income year: The ATO has updated the key rates and thresholds applying in relation to contributions and benefits, employment termination payments, superannuation guarantee and co-contributions for the 2014-15 income year.

- The general concessional contributions cap for the 2014-15 income year is $30,000. (This cap will be temporarily increased to $35,000 for the 2014–15 financial year or a later financial year for individuals aged 49 years or over on the last day of the previous financial year)
- The non-concessional contributions cap for the 2014-2015 income is $180,000 (up from $150,000 in the 2013-2014 income year)
- The superannuation guarantee charge percentage is 9.5% for the 2014-2015 income year (however legislation has been introduced to reduce this to 9.25%).

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Weekly tax news

Business tax

ATO transformation: At the Senate Estimates hearing on 26 February 2014, the Tax Commissioner outlined some of the progress the ATO has made in the last 12 months. In the hearing the Commissioner stated that the ATO had:

- developed over the last six months a whole new, longer term strategic plan for the ATO named the 2020 Vision. 'We did not have any particularly clearly articulated longer term strategy or positioning, and that meant that we were not particularly having a lot of strategic investments in getting to that new position'
- changed the focus; looking more at the interactions that citizens have with the ATO and making these more contemporary
- substantive plans for long term cultural change, with a focus on dealing with issues such as people not necessarily having a great sense of urgency around some of their activities; and around not having a full appreciation of the fact that time costs money.

The approach to consultation has also changed to be on specific issues over a three or six month period with very defined outcomes.

MPs call for employee share scheme (ESS) changes for start-ups: As reported previously in *Tax highlights 28 January 2014*, Treasury has recently been conducting consultation on possible changes to the existing ESS arrangements for start-up companies. *The Australian Financial Review* has reported this week that key members of the Coalition economics and finance policy committee (which considers the Government's economic legislation before it is introduced into Parliament) have organised a meeting of up to two dozen MPs and senators on 3 March 2014 to discuss how to get the ESS reforms on the federal budget agenda for this year. According to the report, the share scheme lobby group Employee Ownership Australia and New Zealand (EOANZ) is expected to brief up to two dozen MPs and senators on the potential reforms that could see share ownership schemes extended to medium-sized firms and start-up companies. EOANZ wants to wind back the 2009 legislation (the changes included the removal of the optional election to be taxed upfront on the discount received on an ESS interest), allow simple measures for start-ups to offer share schemes, encourage succession planning, and reduce prospectus red tape. Mr Tony Smith, chair of the Coalition economics and finance policy committee, told *The Australian Financial Review* that "removing the barriers to greater employee share ownership is a critical step in building enterprise and innovation".

Appeals update – *Task Technology*: The taxpayer has lodged a notice of appeal to the Full Federal Court against the decision of the Federal Court in *Task Technology Pty Ltd v Commissioner of Taxation* [2014] FCA 38. In that case, the Federal Court held that a taxpayer, who was a distributor of software that was developed by a Canadian resident entity, was liable for withholding tax on payments made to the Canadian entity for a percentage of the software and template fees as the payments were considered as 'royalties' under Article 12(3)(a) of the Australia/Canada Double Tax Agreement. For more information, refer to *Tax highlights 10 February 2014*.

Taxation Determination (TD) released:

- TD 2014/1: This TD sets out the Commissioner's view that, a dividend access share arrangement of the type described in this TD is a scheme 'by way of dividend stripping' or 'in the nature of dividend stripping' within the meaning of section 177E of Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936). Previously released as TD 2013/D5. Note that the ATO has indicated that an erratum to TD 2014/1 has been scheduled for release on 5 March 2014.

ATO Interpretative Decision (ATO ID) released:

- ATO ID 2014/8: A sale and buyback of capital works that is deemed to occur in accordance with section 70-110(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) due to a major restructure of the taxpayer's operations gives rise to a construction expenditure area in accordance with section 43-75(3) of the ITAA 1997.

Public hearing on research and development (R&D) bill which proposes to deny large business access: The transcript of the Senate Economics Legislation Committee public hearing on 21 February 2014 regarding Tax Laws Amendment (Research and Development) Bill 2013 has been released. The Committee invited several key parties to give evidence at the hearing including Deloitte R&D partner Serg Duchini. Serg specifically highlighted the following points:

- Deloitte's disappointment in the Government proceeding with denying access to Australian R&D tax incentives for large companies with assessable income exceeding $20 billion
- A potential impact of this reform could be R&D being off-shored to other preferential R&D jurisdictions mainly the Asia Pacific area
- The potential for increased compliance costs and confusion with use of the aggregated assessable income test as opposed to using the well-known test of aggregated turnover
- The lack of substantive industry consultation and resulting in no opportunity to debate and consider credible alternatives.

National Tax Liaison Group (NTLG) meeting – 12 December 2013: The ATO has released the minutes for the NTLG meeting held on 12 December 2013. For a summary of the key messages from the meeting (which were previously released), refer to *Tax highlights 20 January 2014*. Further details released indicate that the ATO will establish a special purpose limited working group to assist with the next phase of the project to simplify compliance by streamlining tax returns for taxpayers with simpler tax affairs. The ATO is expected to consult with the tax profession, individual taxpayers and the OECD in respect of this initiative.

Australia's New Part IVA General Anti-Avoidance Rules: Uncertainty Resumes? If you would like to access this Deloitte DBrief Asia Pacific webcast led by Dwayne Sleep, Ray Conwell and James Fabijancic, please log in to this link to view the archived recording and download slides from the "Downloads and links" box in the lower right hand corner. During the session, the presenters provided valuable insights on the regime that will be critical to taxpayers in their Australian dealings.

Government's commitment to tax reform white paper confirmed: In a keynote address to the 2014 Insurance Council of Australia Regulatory Update Seminar on 28 February 2014, the Assistant Treasurer has confirmed that the Government is committed to having a tax reform white paper for proposals that would potentially go to the next election.

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Employment taxes

ATO ID released:

- ATO ID 2014/9: For the purposes of working out the amount of the reduction of a remote area holiday transport fringe benefit under section 60A of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA), '50% of the gross taxable value' of the fringe benefit is calculated under paragraph 60A(1)(c) of the FBTAA after deducting any recipients contribution.

Draft Taxation Ruling (TR) scheduled for release on 5 March 2014:

- TR 2014/D1: Employee remuneration trust arrangements.

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International tax

Foreign Account Tax Compliance Act (FATCA) agreement expected to be signed soon: During a press conference in Sydney on 22 February 2014, the US Secretary of the Treasury announced that the US and Australia have completed a FATCA agreement in substance and plan to sign it very soon. FATCA requires certain US financial institutions, foreign financial institutions and non-financial foreign entities to report information about offshore accounts and investments held by US taxpayers to the US Internal Revenue Service (IRS). If a foreign financial institution does not comply with the new reporting requirements, a 30% withholding tax will be applied to all income and gross proceeds received from US sources.

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