



## Tax highlights

4 August 2014

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### Key developments this week

**ATO Consultation Hub:** The ATO's [Consultation Hub](#) lists the progress of those tax and administration matters on which the ATO consults with the community, industry and the tax profession.

The following **Compliance and Administration** matters are being considered and have progressed in the past month:

- *The ATO approach to reviewing governance and the associated review of PS LA 2004/14* (Access to corporate board documents on tax compliance risk): the final version of the revised practice statement was sent to stakeholders on 1 July 2014
- *The feasibility of use of External Compliance Assurance Process (ECAP) for basic ATO assurance work* (i.e. use of registered company auditors): information sessions for external auditors began on 3 July 2014 with risk and case selection underway for pilot. The first ECAP Steering Group meeting will be held on 5 August 2014
- *Review of ATO pre-lodgment compliance review (PCR) product:* the high level design will be discussed at the Large Business Liaison Group meeting on 11 August 2014
- *NEW: Compliance in focus replacement product* (informing industry of new and emerging compliance risks): the ATO is seeking nominations from the Consultation Steering Group by the end of July 2014
- *NEW: Small Business Newsroom to be established:* this will be the primary outbound channel for all ATO news and updates for small business
- *NEW: Improving private groups and wealthy individuals client experience with ATO:* a co-design consultative working group is being established to meet at the end of August 2014
- *NEW: Guidance for FATCA:* the project team is releasing guidance to assist financial institutions to understand their obligations under the US Foreign Account Tax Compliance Act (FATCA).

The following **International** matters are being considered and have progressed in the past month:

- *Application of new transfer pricing laws (Division 815):* the Division 815 Technical Working Group met on 3 July 2014 and discussed ways to reduce compliance costs and safe harbours
- *Administrative approach to income tax transfer pricing and customs duty:* the first meeting of

a new group, the Transfer Pricing Rules and Customs Valuations Working Group, was held on 27 July 2014.

The following **Capital Allowances** matters are being considered and have progressed in the past month:

- *Capital allowances – Income tax treatment of exploration expenditure and the re-write of TR 98/23*: a joint meeting will be held in August 2014 with the Australian Petroleum Production & Exploration Association (APPEA) and the Minerals Council of Australia (MCA) to seek to obtain agreement on the key principles in the ruling. Industry has already made a submission focusing on LNG aspects. Anticipated issue date of early 2015
- *NEW: A review of the effective life of assets used in the postal services industry*: consultation is in progress.

The following **Trust** matters are being considered and have progressed in the past month:

- *Small business capital gains tax (CGT) concessions and unpaid present entitlements*: further consultation has been deferred pending the outcome of Administrative Appeals Tribunal (AAT) proceedings on 17 July 2014
- *Alienation of income through discretionary trust partners*: draft guidance will be issued in August 2014 allowing for broader consultation.

**Other matters** being considered which have progressed in the past month:

- *Minerals Resource Rent Tax – Cultural heritage payments*: the need for TD 2013/D6 is being reviewed
- *Goods and services tax (GST) treatment of motor vehicle incentive payments*: the final ruling is expected to be finalised by 1 October 2014
- *Superannuation excess contributions tax – contributions reserving*: A meeting was held with the Tax Institute on 24 July 2014 to discuss concerns about the requirement for members to have to object to assessments raised in error due to the limitations of information reported to the ATO by funds.

**New matters which are currently under consideration** to determine if consultation is the best approach to resolve them are:

- Clarification of legislation relating to the taxation of financial arrangements and withholding tax and accruals
- Superannuation contributions for the gainfully employed part-time.

**Matrimonial property proceedings – Taxation Ruling TR 2014/5 released**: The ATO has ruled that money or property transferred by a private company to a shareholder (or associate) pursuant to a Family Court Order may be an ordinary dividend, or a deemed dividend. An order under section 79 of the *Family Law Act 1975* (section 79 order) in matrimonial proceedings may require a private company or a party to the matrimonial proceedings to cause the private company to pay money or transfer property to a party to the matrimonial proceedings. TR 2014/5 states that where the section 79 order requires the payment of money or the transfer of property to a *shareholder* of the private company, the payment or transfer may be assessable (and frankable) as an ordinary dividend. Where

the section 79 order requires the payment of money or the transfer of property to an *associate* of a shareholder, the ruling states the payment of money or transfer of property may be an assessable (and frankable) deemed dividend. The effect of the ruling is that certain payments and transfers of property by a private company to a shareholder (or their associate) made in satisfaction of a section 79 order will be treated by the ATO as taxable. Accordingly, it will be important for parties to matrimonial proceedings to consider carefully the tax consequences of payments and transfers of property from private companies to shareholders and their associates as part of matrimonial property settlements.

The ATO's treatment of the payment of money by a private company under a section 79 order to an associate of a shareholder as a deemed dividend is contrary to several private rulings issued by the ATO in the past. The ATO had previously taken the view that a payment of money made by a private company under a section 79 order to an associate of a shareholder would not be treated as a deemed dividend because it would qualify for the exemption relating to the discharge of an obligation by the private company. This past administrative practice is acknowledged by the ATO and to the extent that the treatment outlined in the ruling regarding deemed dividends is less favourable to the taxpayer, the ruling will not apply to section 79 orders made before the date of release (30 July 2014). Previously issued as [TR 2013/D6](#).

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## [Weekly tax news](#)

### [Business tax](#)

**Prospective application of ATO view of law – draft amended Practice Statement [PS LA 2011/27](#) released:** Matters the Commissioner considers when determining whether the ATO view of the law should only be applied prospectively.

**Tower Limited – Class Ruling [CR 2014/61](#) released:** Off-market share buy-back – Tower Limited.

**Medical practitioners – Class Ruling [CR 2014/62](#) released:** Considers private practice arrangement for Medical Practitioners of the Intensive Care Unit of the Royal Melbourne Hospital.

**Trusts mischaracterising property development receipts as capital gains – Taxpayer Alert [TA 2014/1](#) released:** The ATO has concerns with arrangements where property developers use trusts to return the proceeds from property development as capital gains instead of income on revenue account. The ATO has indicated that it has commenced a number of audits and has made adjustments to increase the net income of a number of trusts.

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### [Individuals and family groups](#)

**Appeal update – [Yazbek](#):** The taxpayers have [appealed](#) to the Federal Court against the decision of the AAT in [Yazbek and Commissioner of Taxation \[2014\] AATA 423](#). The AAT found there was no effective transfer of shares from the taxpayers to a family limited partnership and although the

dividends in respect of the shares were paid to the limited partnership, the dividends had been paid at the taxpayers' direction and were accordingly assessable to the taxpayers.

**Assignment of partnership interest – Decision Impact Statement (DIS) released on *Kelly*:** The Commissioner has released a [DIS](#) concerning the decision of the Full Federal Court in *Kelly v Commissioner of Taxation* [2013] FCAFC 88 which included an issue relating to whether certain interests in a partnership had been effectively and validly assigned to certain trustees. For more information on the Full Court's decision, refer to [Tax highlights 12 August 2013](#).

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## Indirect taxes

**Rental yield adjustment event – Goods and Services Tax Determination [GSTD 2014/3](#) released:** 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 a GST 'adjustment event'. Previously issued as [GSTD 2014/D2](#).

**ATM fees and credit/debit card surcharges – Draft Goods and Services Tax Ruling [GSTR 2014/D2](#) released:** Considers GST treatment of ATM service fees on withdrawals, deposits or electronic transfers and credit card and debit card surcharges imposed by merchants on customers.

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## State & Territory Taxes

**Queensland royalty penalties – amnesty until 31 December 2014:** Shortfalls of royalty liabilities arising under the *Mineral Resources Act 1989* (Qld) or the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) have become subject to substantial penalties (i.e. 75% of the shortfall) following the introduction of a penalty framework on 1 July 2014. A royalty penalty applies to all default assessments and reassessments made from 1 July 2014 onwards where the royalty liability is increased, including for royalty return periods before 1 July 2014.

The Queensland Office of State Revenue (OSR) is currently providing a 6-month [penalty amnesty](#) for voluntary disclosures about royalty shortfalls.

Under the conditions of the amnesty, a penalty will not be imposed on a default assessment or reassessment made for a royalty return period that ended before 1 July 2014 (where the royalty liability increases) if, by 31 December 2014 the taxpayer notifies the OSR about the royalty shortfall using the approved form, including the amount of the shortfall and, before that notice is given, the OSR has not already notified the taxpayer of the shortfall. The amnesty applies to the royalty penalty only, with interest remaining payable on the royalty shortfall amount for the period from the date it was due.

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## International tax

**Commissioner granted freezing order over non-resident's Australian assets:** The Federal Court recently granted the Commissioner a freezing order to restrain the dissipation or removal of certain Australian assets of a company incorporated in Panama and carrying on business in Switzerland: *Commissioner of Taxation v Growth Investment Fund SA, Zero Nominees Pty Ltd and Euros Securities Limited* [2014] FCA 780 (28 July 2014). The order was granted until 26 June 2014, after which a directions hearing was to be held. The Court order indicates that the company has a history of trading in shares in Australian companies and after carrying out an audit of the company's share trading business, the Commissioner issued default assessments for the 2004 to 2013 income years for a total taxation liability (including income tax, penalties and general interest charge) of \$14,272,352.46. The technical merits and details of the facts of the case are not addressed in the Court order.

**Foreign resident capital gains tax regime – administrative treatment:** The ATO has released its [administrative treatment](#) in relation to the proposed amendments to the principal asset test, which broadly are:

- To value mining, quarrying or prospecting information and goodwill together with the mining rights to which they relate
- To prevent the double counting of non-taxable Australian real property assets created as a result or effect of arrangements between entities whose assets are included in the principal asset test.

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. After the new law is enacted, taxpayers will, where applicable, need to review their positions back to the 2012-13 income year.

### **Impact of base erosion and profit shifting (BEPS) in low income countries – report released:**

On 1 August 2014, the OECD released [Part 1](#) of its report to the G20 Development Working Group (DWG) on the impact of BEPS in low income countries. Broadly, the report finds that:

- BEPS has the potential to considerably impact on developing countries' ability to generate savings from their private and public sectors (e.g. through collecting taxes) and reinvest these into domestic productive investments)
- Developing countries often face policy and other conditions (such as limited capacity, experience and skills, as well as lack of information) that impact on their abilities to address BEPS.

Part 2 of this report is to be presented in September 2014 and is to set out how the DWG might assist developing countries meet the challenges of the most relevant BEPS issues they face.

**BEPS discussion at the CA Public Sector Symposium:** On 29 July 2014, the annual Chartered Accountants Australia and New Zealand (CA) [Public Sector Symposium](#) was held at the National Press Club in Canberra. The Public Sector Symposium featured a discussion on international tax reform, particularly focused on base erosion and profit shifting (BEPS).



**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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