Deloitte.

Tax highlights

7 April 2014

Contents:

Key developments this week

Commissioner wins appeal – assessment of Caymans limited partnership on capital gain not precluded by Australia/US DTA: The Full Federal Court has upheld the Commissioner's appeal against the decision of the Federal Court in *Resource Capital Fund III LP v Commissioner of Taxation* [2013] FCA 363. The taxpayer, RCF, was a Cayman limited partnership. The matter related to an assessment issued to RCF in respect of a net capital gain of $58.25 million arising on the sale by RCF of ordinary shares in St Barbara Mines Limited (SBM), an ASX-listed company which conducted a gold mining enterprise in Australia. Approximately 97% of the limited partners in RCF were US residents. Under Australian tax law, RCF was treated as a company or taxable entity, whereas under US tax law, RCF was treated as fiscally transparent.

The case has important implications for non-residents investing into Australia, especially where investing through a limited partnership or into shares in mining or other resource companies.

At first instance, Edmonds J held that:

- The Double Tax Agreement between Australia and the United States ("the US DTA") treated the gain not as derived by RCF but as derived by the partners of RCF, and that as a result, there was an inconsistency between the *International Tax Agreements Act 1953* (ITAA 1953) and the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* (ITAA). The conclusion was that the ATO was precluded from issuing an assessment to RCF and that it was the limited partners in RCF that the ATO was "authorised to tax" ("the DTA issue"), and
- (if it were necessary to decide) RCF's membership interest in SBM did not pass the "principal interest test" in section 855-30 of the ITAA 1997 because the market values of SBM's non "taxable Australian real property" ("TARP") assets exceeded the market values of SBM's TARP assets, and therefore the shares were not "taxable Australian property" ("the TAP issue"). Importantly, Edmonds J held that, "It is clear from the text of s 855-30(2) that the 'principal asset test' requires the separate determination of the market value of each of the entity's assets; not the determination of the market value of all its TARP assets as a class and the determination of the market value of all its non-TARP assets as a class".

The Full Federal Court did not agree with either of these conclusions. In respect of the DTA issue, the Full Court held:

- The assessment of RCF (the limited partnership) was not precluded by the US DTA/the ITAA 1953
- "RCF is an independent taxable entity in Australia and liable to tax on Australian sourced income and the DTA does not gainsay RCF's liability to tax" (note that "gainsay" is defined as deny or contradict)
- "It may be open to argument by the US partners that they should obtain the benefits of the DTA ... as discussed in the Commentary (about which we express no view) but that consideration is a separate issue to the question of whether the effect of the provisions of the DTA was to allocate the liability for the tax on the gain differently to the Assessment Act".

In respect of the TAP issue, although the primary judge held that the 'principal asset test' required the separate determination of the market value of each of the entity's assets, according to the Full Court:

> "In our opinion it is implicit that to determine where the underlying value resides in SBM's bundle of assets, the market value of the individual assets making up that bundle are to be ascertained as if they were offered for sale as a bundle, not as if they were offered for sale on a stand-alone basis… It follows that the assets should be valued on the basis of an assumed simultaneous sale of SBM's assets to the same hypothetical purchaser, not as stand-alone asset sales".

No decision was made by the Full Court as to whether, under this different valuation approach, the shares in SBM would be TAP, although the Full Court said that:

> "… it would seem that in light of our reasons, the Commissioner would be successful in the appeal on the second issue. However ... the Court will give the parties the opportunity to consider these reasons and to indicate to the Court whether any issue remains to be determined, particularly as to final calculations".

Click to view *Commissioner of Taxation v Resource Capital Fund III LP* [2014] FCAFC 37 (3 April 2014).

Comment: The Full Court held that the relevant inconsistency was simply between the US domestic law treatment of RCF (fiscally transparent) and the Australian domestic law treatment of RCF (a taxable entity). The Court did not find any inconsistency between the ITAA and the US DTA. As a result, the assessment provisions in the ITAA were unaffected. The conclusion was based on the conclusion that RCF was neither a resident of the US nor of Australia such that the US DTA did not apply to the gain in the hands of RCF.

The Full Court found it unnecessary to give any consideration to the wider issue of the application of tax treaties in the context of fiscally transparent partnerships. As noted above, the Court simply noted that "it may be open to argument by the US partners that they should obtain the benefits of the DTA ... as discussed in the Commentary (about which we express no view)" , but that is a separate matter to where to "allocate" the liability for tax (which was with RCF). In our view, there is no particular inference to be drawn from the absence of a detailed analysis of the OECD Commentary on the application of tax treaties and fiscally transparent partnerships. In the relevant circumstances, it was just not necessary to address that matter.

On the TAP issue, the Full Court considered that the approach argued by RCF of a valuation of assets on a stand-alone basis was "artificial". The appropriate methodology was an assumed simultaneous sale of all of SBM's assets to the same hypothetical purchaser. As to how this will affect the TAP conclusion, the Full Court said that the hypothetical purchaser could expect to acquire the mining information and the plant and equipment (both non-TARP assets) for "less than their recreation costs with little or no delay". The inference from this is that a larger part of the overall value of the underlying assets of SBM would be allocated to the mining rights (being a TARP asset). This aspect of the case highlights the challenges of dealing with valuation issues in tax matters. Firstly, it is necessary to ensure that the correct valuation methodology is being applied and the next step is to seek to apply that methodology to the, invariably competing, views of the valuation experts.

It should be noted that in the 2013-14 Federal Budget, the former Labor Government announced an amendment to the principal asset test, which will value mining, quarrying or prospecting information and goodwill together with the mining rights to which they relate. This is one of the measures that the Coalition Government has announced will proceed (Measure No.9) and is proposed to apply to capital gains tax (CGT) events with effect from 14 May 2013.

Consultation hub – list of matters under consultation updated: The ATO has updated its list of matters under consultation. To view the current list of consultation matters and their progress including consultation in respect of :

- Feasibility and potential operation of statutory remedial powers for the Commissioner of Taxation
- ATO approach to reviewing governance and access to corporate board documents on tax compliance risk; and
- Tax transparency legislation, refer to *Business tax* below.

FATCA announcement – implications for Australian financial institutions: On 2 April 2014, the United States Internal Revenue Service (IRS) released Announcement 2014-17 regarding the US Foreign Account Tax Compliance Act (FATCA). The announcement provides guidance to foreign financial institutions (FFIs) in jurisdictions that have not signed an intergovernmental FATCA agreement, but that have reached an agreement in substance with the United States on the terms of an intergovernmental agreement (IGA). Importantly, Australia is listed as one of those countries and is now treated as having an IGA in effect. The complete list is available here.

Announcement 2014-17 also provides that the global intermediary identification number (GIIN) of a registering FFI will be included on the 2 June IRS FFI List if the FFI's registration is finalised by 5 May 2014, rather than 25 April 2014, as originally announced. In addition, Announcement 2014-17 provides that the GIIN of a registering FFI will be included on the 1 July FFI List if the FFI's registration is finalised by 3 June 2014.

Back to top

Weekly tax news

Business tax

Bills on the move: The following Bill was passed by the House of Representatives and has now moved to the Senate:

- **Clean Energy Finance Corporation (Abolition) Bill 2013 [No. 2]**.

Parliament now in recess: Parliament is now in recess for approximately six weeks and will resume for the Winter sittings on Tuesday, 13 May 2014 (the 2014-15 Federal Budget will also be delivered on that day) – click to view the 2014 Parliamentary sittings timetable.

Consultation Hub – new list of matters under consideration: The ATO has listed new matters which are currently under consideration to determine if consultation is the best approach to resolve them:

- Clarification of the ATO's view of the potential double taxation issue in regard to CGT Event E4 and ATO ID 2012/63 (which deals with CGT event E4 and expenses deductible for taxation purposes in a different year to that for trust law purposes)
- Clarification on the ATO's view on what constitutes a valid notice issued by the Commissioner and what form and substance the notice should take and the when and how it should be issued
- Confirmation of the ABN application process and the Commissioner's proof of identity requirements for non-resident associates.

Consultation Hub – list of matters under consultation updated: The ATO has updated its list of matters under consultation. The current list of consultation matters and their progress is as follows:

Trusts	Progress
Alienation of income through discretionary trust partners – consultation on TA 2013/3 for the purpose of producing guidance in an online publication	No further advised progress: A draft of a revised publication was to be circulated to the Professional Firms' Working Group for comment prior to a further meeting of the Group in March 2014 (not circulated to date)
Small business capital gains tax (CGT) concessions and unpaid present entitlements – technical clarification of calculation of trust's maximum net asset value	The issue was discussed with members of the Trust Reform and Compliance Group on 3 March 2014
Australian custodians' tax return obligations in respect of trustee liabilities under section 98 of the ITAA 1936- consideration of streamlined lodgement and processing procedures	No further advised progress
Income tax consolidation	**Progress**
Guidance on the application rules to the rights to future income amendments	UPDATED: A meeting was held with tax practitioners on 31 March 2014 to further

	discuss the comments received on the draft taxation determinations TD 2014/2 - TD 2014/D6
International	**Progress**
Application of the new transfer pricing laws (Division 815 of the *Income Tax Assessment Act 1997* (ITAA 1997)) – consultation on new rulings and practice statements	UPDATED: A meeting of the Division 815 Technical Working Group was held on 14 March 2014. The meeting considered a discussion paper, *Options to simplify transfer pricing documentation.* The ATO provided a progress report on two draft public rulings • Transfer pricing: documentation requirements • Transfer pricing: the application of s815-130 ITAA 1997; and two Law Administration Practice Statements • Administration of transfer pricing penalties for income years commencing on or after 29/6/13 • Guidance for transfer pricing documentation that were considered by the Public Rulings Panel on 11 March 2014. These are on target to be issued on 16 April 2014.
Treatment of forex gains and losses arising from hedging transactions for the purpose of applying the foreign income tax offset (FITO) limit – provision of further guidance	TR2014/D2 was published on 26 March 2014
Attribution and inter-branch derivatives – discussion of TR 2001/11 and TR 2005/11 and banking industry practice	UPDATED: A workshop was held on 11 March 2014 with an ATO draft discussion paper issued to working group members of the ABA. The ABA is currently considering the draft discussion paper
Application of Subdivision 820-D of the ITAA 1997 to ADIs and its interaction with the consolidation regime and APRA's prudential standards	UPDATED: The working group is exploring alternative methods and interpretations available under the current law and have engaged a prudential expert and Counsel to assist in this process
Market support payments – consultation in respect of rulings TD 2013/D3(superseded) & TD 2014/D7	UPDATED: The ATO are currently considering the comments submitted in respect of TD2014/D7.
2014 International Dealings Schedule (IDS) and 2014 IDS Instructions – consultation on changes	Consultation is continuing.

Taxation Exemptions for Foreign Governments (Sovereign Immunity)- consultation on guidance in the form of a practice statement	UPDATED: Meeting held on 6 March 2014. The meeting agreed that examples of guidance required will be submitted to the ATO by 21 March 2014.
Capital allowances	**Progress**
Income tax treatment of exploration expenditure – develop the ATO view of exploration and prospecting in the context of a rewrite of TR 98/23	Matter is being discussed with industry
Resource Rent Tax	**Progress**
PRRT - Meaning of exploration – consultation on TR 2013/D4	Final ruling expected 25 June 2014
Minerals Resource Rent Tax (MRRT): Cultural heritage payments	Final tax determination is on hold following the government's announcement that it will seek to repeal the MRRT law from 1 July 2014.
Indirect taxes	**Progress**
Inform the industry of the ATO's compliance focus in respect of the wine equalisation tax (WET) producer rebate	UPDATED: The ATO met with the Wine Makers Federation Board on 5 March 2014 to discuss the ATO's compliance strategy. Matter will be completed by April 2014
WET earlier producer rebate – consult to determine practical difficulties	UPDATED: A discussion paper with focusing questions was circulated on 29 January 2014 with responses requested by 28 February 2014. Responses are now being examined to determine the next steps.
Superannuation	**Progress**
Apportionment of expenses incurred by a superannuation entity only partly in gaining its assessable income – consultation on draft ruling TR 2013/D7	Consultation will continue until final ruling issued.
Other Matters:	**Progress**
Guidance on ensuring that a partner in a limited partnership is not subject to double taxation – guidance on administration of section 94M(2) of the ITAA 1936	Industry bodies and tax professionals have been invited to participate in consultation.
Feasibility and potential operation of statutory remedial powers for the Commissioner of Taxation – working group will examine statutory remedial power (SRP) for the Commissioner to address technical deficiencies in the law in a manner that is favourable to the taxpayer	UPDATED: A series of meetings were held in February and March 2014 following the establishment of a tripartite limited-life working group.

Compliance	Progress
ATO approach to reviewing governance and the associated review of PS LA 2004/14 (Access to corporate board documents on tax compliance risk)	UPDATED: Following feedback received in the workshops, further revision of the draft Practice Statement PSLA 2004/14 has occurred. Comments and approval will now be requested on the revised draft from relevant senior compliance leaders within the ATO. Following this a further meeting with externals will take place to table the final draft version.
Use of standardised accounting data to improve compliance case selection	Commenced consultation with pioneering users of XBRL for financial reporting
Feasibility of use of External Compliance Assurance Processes for basic ATO assurance work e.g. use of registered company auditors	UPDATED: Last meeting held on 24 March 2014 which went through progress to date and outlined the way forward
Other	**Progress**
NEW: Tax secrecy and transparency legislation: how limited tax information of certain entities which the Commissioner must make publicly available under Sections 3C-3E Part 1A of the *Taxation Administration Act 1953* is published	Consultation is in Progress with the Large Business Liaison Group, the Minerals Council and other relevant bodies.

ATO data matching programs: The Commissioner published gazette notices containing details of the following data matching programs to be conducted by the ATO:

- Online selling: The ATO will request and collect online selling data relating to registrants that sold goods and services of a total value of $10,000 or greater for the 2011-12 and/or 2012-13 income years. The ATO expects that records relating to between 15,000 and 25,000 individuals per financial year will be matched
- Queensland State Government taxable Grants Payments data matching program: The ATO will acquire details of entities receiving taxable payments and grants from the Queensland State Government for the 2010-11, 2011-12 and 2012-13 income years. The Gazette Notice notes that records matched under this program will exceed 5,000 individuals
- Childcare Service and Educator Payments data matching program: The ATO will acquire details of entities receiving taxable Childcare Service and Educator Payments from the Department of Education for the 2011-12 and 2012-13 income years. The Gazette Notice notes that records matched under this program will exceed 12,000 individuals throughout Australia.

These details will be electronically matched with certain sections of ATO data holdings to identify non-compliance with lodgment and payment obligations (as well as registration and reporting obligations in respect of online selling) under the taxation law.

Interaction of taxation of financial arrangements (TOFA) and the consolidation regime: The ATO has outlined its compliance approach to two of the issues on the interaction of the taxation of financial arrangements (TOFA) and the consolidation regime which were raised in the former National Tax Liaison Group TOFA Working Group. The two issues relate to:

- Section 701-55(5A) of the ITAA 1997 and pre-1 July 2010 financial arrangements
- Section 715-375(2) of the ITAA 1997 and pre-1 July 2010 financial arrangements.

Test Case Litigation Register: The ATO Test Case Litigation Register has been updated as of 25 March 2014.

Back to top

Employment taxes

Fringe benefits tax (FBT) returns – information from the ATO website:

- Changes to lodging FBT returns this year
- FBT return 2014
- FBT return 2014 instructions.

Back to top

Individuals and family groups

Variation to remove the requirement to withhold from payments for certain US resident entertainers and sport persons: This Legislative instrument was registered on 3 April 2014 and removes the requirement to withhold from payments made to entertainers and sportspersons who are residents in the United States when working in Australia in circumstances where no income tax is payable in Australia on the relevant income.

ATO Test Case – Partner in receipt of an amount is not treated as an assessable recoupment: The Full Federal Court has unanimously allowed the taxpayer's appeal against the decision of the Administrative Appeals Tribunal (AAT) in *Batchelor and Commissioner of Taxation* [2013] AATA 93 and held that an amount received by a partner in a partnership under a Deed of Settlement was not an assessable recoupment under section 20-20(2) of the ITAA 1997.

In this case, the taxpayer, in her capacity as partner in a partnership, contributed $55,500 towards a deposit for the purchase and development of a retirement village. The taxpayer claimed a deduction as a partnership loss, in respect of the $55,500. This amount was allowed in accordance with an erroneous view of the law expressed in TR94/24 (now withdrawn).and was not in dispute by the parties.

The contract for the purchase and development of the property was repudiated and, under a Deed of Settlement, the deposit was refunded to the partners. The taxpayer's share of the amount refunded was $47,927 and this amount was not returned as assessable income. The Commissioner issued the taxpayer a notice of amended assessment, pursuant to which an amount of $47,927 was included as assessable income. For a summary of the AAT decision, refer to *Tax highlights 4 March 2013.*

In considering the earlier decision, the Court noted that the proceedings before the AAT had been conducted based on a number of assumptions that may not have been justified on the facts. The AAT did not explore any of the issues concerning the entitlement of the deduction, nor whether the partnership had commenced business, or the proper construction of the payment.

One of the issues on appeal was whether the amount refunded under the Deed of Settlement was an assessable recoupment under section 20-20(2) of the ITAA 1997, or alternatively, a taxable capital gain under section 110-45(2)(a) of the ITAA 1997. The majority of the Full Court noted that, in order for section 20-20(2) of the ITAA 1997 to apply, the taxpayer must receive the recoupment for a loss or outgoing by way of insurance or indemnity. The Full Court held that the refund under the Deed of Settlement, was not a receipt of insurance or indemnity as it was not an amount from a person who was obliged to make good a loss caused by another. The Full Court also considered the taxpayers argument that she was not entitled to the original deduction and therefore section 20-20 of the ITAA 1997 was not engaged. In obiter comments the majority noted that the Commissioners arguments were unlikely to be correct, however Wigney J dissented, and considered that there was no basis for reading into the plain words of the statute "have deducted", to consider whether a deduction is properly made.

In terms of whether the amount was a taxable capital gain, it was held that a refund of an amount previously paid is unlikely to produce a capital gain under section 110-45(2)(a) of the ITAA 1997. The Full Court set aside the AAT's decision and remitted proceedings back to the AAT for redetermination – click to view *Batchelor v Commissioner of Taxation* [2014] FCAFC 41 (3 April 2014).

Back to top

Superannuation

Taxation determination (TD) expected to be released on 9 April 2014:

- TD 2014/7: In what circumstances is a bank account of a complying superannuation fund a segregated current pension asset under section 295-385 of the ITAA 1997?

Back to top

Indirect taxes

Draft GST Determination released:

- GSTD 2014/D1: This GSTD sets out the Commissioner's preliminary view about the circumstances in which the supply of a credit card facility is GST-free under paragraph (a) of Item 4 in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The GSTD provides that the supply will be GST-free to the extent it is intended that the cardholder will use the facility to undertake a transaction when they are physically outside Australia, provided the cardholder's location outside Australia is integral to the relevant use of the credit card facility. For 'card-present' transactions when the cardholder is overseas, he or she must be physically present to tender the card as payment and make the purchase. For 'card-not-present' transactions, the use of the rights in the credit card facility will only be for use outside Australia in those circumstances where the cardholder enters into the transaction when he or she is physically outside Australia and his or her presence outside Australia is integral to the relevant use of the credit card facility.

No common law action available for recovering mistakenly paid customs duty: The High Court has dismissed an appeal by a taxpayer seeking to recover, outside the statutory time limit, almost $550,000 of customs duty and GST erroneously overpaid by him on the importation of a yacht. The taxpayer's appeal was against the decision of the Queensland Court of Appeal in *Thiess v Collector of Customs & Ors* [2013] QCA 054.

The taxpayer imported a yacht into Australia in December 2004. The import entry for the yacht was made by the taxpayer's customs agent using the Australian Customs Service (Customs) computerised entry system. The customs agent mistakenly understated the gross tonnage of the yacht in the entry, with the result that Customs' system automatically calculated the duty payable by applying the 5% duty rate instead of the 0% rate, with a flow on effect for the GST calculation. The customs agent paid the duty and GST amount (as calculated by Customs' system) on the taxpayer's behalf, in order to have the yacht released from Customs' control. Being unaware of his error, the customs agent did not dispute the amount calculated or 'pay under protest'. The taxpayer did not discover the mistake and the overpayment of duty and GST until after the time allowed in the *Customs Act 1901* (Act) for seeking a duty refund had expired.

In the Queensland Supreme Court, the taxpayer sought to recover the overpaid amount as money had and received, relying on it having been paid under a mistake of fact, or alternatively as a claim for restitution in equity or equitable compensation. Certain questions of law were reserved for the Court of Appeal to determine. The Court of Appeal held that the Commonwealth had lawful defences to the taxpayer's claim, namely section 167(4) of the Act in respect of the duty amount and section 36 of the *Taxation Administration Act* 1953 in respect of the GST amount. Section 167(4) commences with the words "*No action shall lie for the recovery of any sum paid to the Customs as the duty payable in respect of any goods, unless*…" and goes on to specify time limits applying in two alternative circumstances involving duty payments made under protest. The Court of Appeal rejected the taxpayer's contention that section 167(4) had no application to the circumstances of the yacht's entry.

On appeal, the High Court ruled that section 167(4) operates to bar all actions for the recovery of duty paid to Customs, regardless of whether a dispute as to the amount or rate of duty payable on the goods arose at the time of payment, subject to just two exceptions –

- actions under section 167(2) for the recovery of duty paid under protest pursuant to section 167(1), that are commenced within the 6 month period specified in section 167(4); and
- any action to enforce entitlements under section 163 (i.e. the provision that provides generally for Customs to allow refunds, rebates and remissions of duty, including situations where duty was paid "through manifest error of fact or patent misconception of law").

The legislative scheme of the Act, said the Court, is inconsistent with the implication of any further exceptions. The Court found that the legislative history supported this. In particular, the amendment of section 167 in 1910 to introduce a section 167(4) (in substantially similar terms to the current version) as a bar to actions for the recovery of duty. This amendment occurred shortly after a decision of the High Court in which two justices expressed the view that an action was available at common law outside the operation of section 167 as originally enacted. It followed from the High Court's finding about the taxpayer's inability to recover the customs duty amount, that he was not able to recover the GST amount – click to view *Thiess v Collector of Customs* [2014] HCA 12.

GST and retirement villages: supply of "residential premises" includes communal facilities and services: The AAT has decided that a retirement village (RV) operator (taxpayer) is entitled to a lower level of input tax credits than the taxpayer contended.

At issue in this dispute was the extent to which the acquisitions made by the taxpayer in relation to the development, construction and operation of its RVs relate to the making of input taxed supplies for GST purposes. It was not in dispute that the taxpayer made input taxed supplies of "residential premises" to RV residents, pursuant to the lease agreement the taxpayer entered into with each resident. However, it was necessary for the AAT to decide what the supply of "residential premises" encompassed in the context of a RV.

The AAT rejected the taxpayer's argument that the "residential premises" supplied by the taxpayer in this context were confined to the independent living unit (ILU) exclusively occupied by a resident, together with any additional facilities or services that were necessary for the convenient use and occupation of the ILU as a place of residence (specifically, paths, driveways and immediate gardens).

The AAT agreed with the Commissioner that "residential premises" should be given a broad construction for GST purposes in the context of the RV lease agreement. The AAT found that "residential premises" is not limited to an ILU but extends to include all facilities and services that are integral, ancillary or incidental to the lease of the ILU. For example, tennis courts, swimming pools and other communal recreation and leisure facilities within the bounds of the RV, and services such as a village bus and an emergency monitoring service. The AAT accepted that the composite nature of the supply made under the lease meant that the communal facilities and services (the integral, ancillary or incidental parts) should have the same GST treatment as the input taxed supply of the ILU (the main part).

The AAT also rejected the taxpayer's alternative argument that if the additional facilities and services are components of the supply of "residential premises", they are to be carved out of the input taxed treatment of the supply by section 40-35(2)(a) of the GST Act because they are not "to be used predominantly for residential accommodation".

The AAT affirmed the Commissioner's decision that the taxpayer's overall "creditable purpose", taking into account certain taxable supplies that the taxpayer also made in the RV, was 13%. The AAT also decided how a small number of the taxpayer's expenses should be characterised (i.e. whether referable only to input taxed supplies, or referable to both taxable and input taxed supplies and therefore apportionable), and remitted the matter back to allow the parties to reach agreement on the rest of the taxpayer's expenses – click to view *Living Choice Australia Limited and Commissioner of Taxation* [2014] AATA 168 (28 March 2014)

Malaysian GST – Bill introduced: The Goods and Services Tax Bill 2014 was introduced into the Malaysian Parliament on 31 March 2014. It is proposed that the GST will replace the sales tax and service tax currently imposed under the *Sales Tax Act 1972* and the *Service Tax Act 1975* respectively. Although neither the start date nor the rate of GST is specified in the Bill, the Government announced in the 2014 Budget that the GST would commence on 1 April 2015, at a rate of 6%.

The Bill does not identify the supplies that are proposed to have zero-rated or exempt treatment, but rather, provides for these to be determined by Ministerial order. Based on the 2014 Budget announcement, it is anticipated that zero-rated supplies will include basic foods stuffs, water and electricity supplied to domestic consumers, and exported goods and services. Further, exempt (i.e. input taxed) supplies are anticipated to include residential property (sale and rental), land used for agricultural purposes, certain financial services, certain passenger transport services, highway/bridge tolls, private education services and private health services.

The Bill provides that the GST shall not apply to supplies made by the Federal and State Governments of Malaysia (except where a Ministerial order is made to the contrary), nor to supplies made by local authorities and statutory bodies in respect of their regulatory and enforcement functions. It is anticipated that these supplies will include Government-provided health services and school education, and the issuance of licences, passports, etc.

Click to view the Deloitte IndirecTV™ episode outlining the features of the proposed GST, as announced in the 2014 Budget, and the steps that Australian businesses with Malaysian operations should be taking.

Draft goods and services taxation determination (GSTD) expected to be released on 9 April 2014:

- GSTD 2014/D2: 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 GST Act?

Quarterly Business Activity Statements (BAS) – information from the ATO website:

- Lodge your quarterly paper BAS by 28 April or go online to get more time.

Back to top

International tax

Update on BEPS project – webcast: On 2 April 2014, the OECD broadcast a webcast providing an update on the base erosion and profit shifting (BEPS) project. This included an update on:

- Transfer pricing documentation and template for country-by-country reporting
- Tax treaty abuse
- The tax challenges of the digital economy
- Hybrid mismatch arrangements
- Consultation with developing countries.

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
Tel: +61 (0) 2 9322 7251