



## Tax highlights

11 August 2014

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### Key developments this week

**Beneficiary loan write-off – no bad debt deduction:** The Administrative Appeals Tribunal (AAT) has upheld the Commissioner's objection decision denying a taxpayer, who was a beneficiary of a family trust, a bad debt deduction for the write-off of amounts which the trustee had determined to distribute to the taxpayer in the 2005 and 2007 income years but which remained unpaid.

According to the AAT, for a bad debt deduction to be allowed there must be a continuing identity between the money brought to account by the taxpayer as assessable income and the debt subsequently written off. In this case, the amount assessable to the taxpayer was his entitlement to his share of the trust income for the relevant income years. However, what was written off was of an entirely different character being, according to the terms of the trust deed, a loan at call (or "an investment Mr Pope chose to make in the business of the Trust") – click to view [Pope and Commissioner of Taxation \[2014\] AATA 532](#) (4 August 2014).

*Comment: Pope's case was anticipated to be precedential, in relation to a particular issue regarding the application of the capital gains tax (CGT) small business concessions, namely whether or not an unpaid present entitlement to a beneficiary of a trust is a liability and, if so, whether it relates to an asset of the trust for the purposes of the small business concessions.*

*Unfortunately the decision does not appear to assist in resolving the issue, as in Pope's case, the relevant trust deed provided that where the trustee resolves to distribute income to a beneficiary, but not pay it immediately, the income should be set aside for the benefit of the beneficiary and that amount would constitute an 'at call' loan. According to the terms of the relevant trust deed, the taxpayer's unpaid present entitlement (UPE), therefore, lost its character at the time that it was set aside and effectively converted to an "at call" loan. Based on that factual background, whether a deduction for a bad debt can be claimed in respect of an UPE became a moot point in Pope's case.*

*Notably, the provisions of the relevant deed in Pope's case are not representative of the majority of trust deeds. As such, the issue is still unresolved. At the time of writing, the ATO has not provided any further insight as to how it plans to progress the UPE issue in the context of the CGT small business concessions.*

**Global Forum on Transparency releases latest compliance ratings:** On 4 August 2014, the Global Forum on Transparency and Exchange of Information for Tax Purposes [published](#) 13 new peer review reports and compliance ratings for 10 jurisdictions (including Indonesia and Mexico). The reports assess a country's legal and regulatory framework for transparency and exchange of information.

*The Global Forum is the continuation of a forum which was created in the early 2000s in the context of the OECD's work to address the risks to tax compliance posed by tax havens. The original members of the Global Forum consisted of OECD countries and jurisdictions that had agreed to implement transparency and exchange of information for tax purposes. In September 2009, the Global Forum was restructured in response to the G20 call to strengthen implementation of internationally agreed standards of transparency and exchange of information in the tax area. The Global Forum now has over 120 member jurisdictions.*

*All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, undergo peer reviews of their legal and regulatory framework for the exchange of information in tax matters and the implementation of the standard in practice. The peer review process evaluates the compliance of a jurisdiction to the international standard regarding the availability, access and exchange of information for tax purposes. The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party.*

*The peer review process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes. With the release of the latest batch of reviews, the Global Forum has now completed 143 peer reviews and assigned [compliance ratings](#) to 64 jurisdictions that have undergone Phase 2 reviews.*

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## [Weekly tax news](#)

### [Business tax](#)

**Implementation of the Government's deregulation agenda:** The Government has issued [Statements of Expectations](#) to regulators, outlining its expectation that the regulators take into account the Government's broad policy framework (including its deregulation agenda) in conducting their operations. In response, the regulators have each issued [Statements of Intent](#) confirming that they will implement the Government's deregulation agenda.

In particular, the [ATO's response](#) included the following key commitments:

- Delivering on the Government's deregulation agenda by developing a 'light touch or no touch' income tax experience for individuals, as well as moving towards a tailored reporting regime for businesses
- Working with Treasury to enable the best possible functioning of the tax and superannuation systems by providing advice based on the ATO's practical experience as administrator

- Transparency and accountability in relation to their administration of the tax and superannuation systems.

In line with the ATO's Statement of Intent, the Commissioner [announced](#) two new initiatives to make life easier for small business at the 12th National Small Business Summit 2014 on 8 August 2014:

- [Small business newsroom](#): a new online news service launched on 8 August to provide a 'one stop online shop' for taxpayers to receive tax and superannuation news and alerts
- [Web-chat service](#): a tool which allows small business owners to have a real-time, online conversation with an ATO customer service officer, expected to be piloted from October.

**Class ruling [CR 2014/64](#) issued on equity incentive plan:** Merger of Life Technologies Corporation, Thermo Fisher Scientific Inc and Polpis Merger Sub Co – Life Technologies Corporation 2009 Equity Incentive Plan.

**Class Ruling [CR 2014/65](#) issued on transfer payments:** Treatment of transfer payments to employees of Macquarie Generation following the sale of business to a private sector entity.

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## [Individuals and family groups](#)

**Lump sum settlement not a transitional termination payment:** The AAT has upheld the Commissioner's objection decision denying a taxpayer, who received a lump sum settlement from his employer, the right to concessionary treatment under the transitional eligible termination payment provisions (for payments received as a result of employment entitlements in place before 10 May 2006).

According to the AAT, the taxpayer failed to establish that the lump sum could be apportioned to attribute the payment to his redundancy entitlement and that this entitlement was in force at 9 May 2006. It was impossible to determine the basis for the settlement and it was not appropriate for the AAT to make a determination on such matters. In obiter comments, the AAT did however concede it was possible that a transitional termination payment may be made following a court order or negotiated settlement provided there was a sufficiently direct nexus between the payment and a pre-10 May contractual entitlement which was the subject of the order or settlement – click to view [CDPJ and Commissioner of Taxation \[2014\] AATA 535](#) (5 August 2014).

**Transcript of Hearing into Affordable Housing now available:** The [transcript](#) from the 30 July 2014 hearing held by the Senate Economics References Committee into affordable housing has now been published. Part of the focus of the Senate questioning was whether the availability of tax concessions such as the capital gains tax discount and negative gearing, increased the cost of affordable housing. Treasury was also asked to provide figures on notice of the cost of negative gearing to revenue.

**Self-managed superannuation fund (SMSF) trustee responsibilities:** In an [address](#) to the Australian Investors Association Annual National Conference on 5 August 2014, the Assistant Deputy Commissioner, Compliance, Strategy, Risk and Delivery, Superannuation outlined the ATO's view of what is involved in being a trustee of an SMSF, the new penalty regime that came into force on 1 July 2014 and the risks around related party transactions.

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## Non-profit organisations

**Meaning of 'public benevolent institution' – Decision Impact Statement (DIS) released on *Hunger Project*:** The Commissioner has released a [DIS](#) concerning the decision of the Full Federal Court in [Commissioner of Taxation v Hunger Project Australia \[2014\] FCAFC 69](#). The issue in that case was whether the taxpayer was a 'public benevolent institution' within the meaning of section 57A(1) of the *Fringe Benefits Tax Assessment Act 1986*. The Full Court was of the view that the ordinary or contemporary meaning or understanding of a 'public benevolent institution' is broad enough to encompass an institution, like the taxpayer, which raises funds for provision to associated entities for use in programs for the relief of hunger in the developing world. The fact that such an institution does not itself directly give or provide that relief, but does so via related or associated entities, is no bar to it being a 'public benevolent institution'.

The ATO has stated that it will adopt the decision and reasoning of the Full Court and will consider necessary amendments to Taxation Ruling [TR 2003/5](#) which considers income tax and fringe benefits tax in respect of public benevolent institutions.

**Draft Taxation Ruling TR2014/D5 scheduled for release on 13 August 2014:** This ruling will consider special conditions for various entities whose ordinary and statutory income is exempt.

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## Indirect taxes

**ATO GST consultative forum minutes available:** [Minutes](#) for the GST States and Territories Industry Partnership meeting on 17 March 2014 have been released.

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## International tax

**BEPS Action 11 – Methodologies to collate and analyse BEPS data:** On 4 August 2014, the Organisation for Economic Co-operation and Development (OECD) [invited input](#) as part of its consultation process on BEPS Action 11 – Establishing methodologies to collect and analyse data on BEPS and the actions to address it. The OECD seeks information as to possible indicators, potential methodologies and available data for estimating the scale and impact of BEPS. Comments are due by 19 September 2014.

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