



Tax highlights

14 January 2014

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Key developments this week

ATO compliance program 2013-14 updated: The ATO has [updated](#) its compliance program, *Compliance in focus 2013-14*, to include final results of its compliance activities and collections for 2012-13 and its planned activities for 2013-14. The ATO's planned activities for 2013-14 include:

Review and audit activity	Number planned
Large business – income tax	250 risk reviews, 60 audits and 50 pre-lodgment compliance reviews
Profit shifting – large business and medium enterprises	125 risk reviews and 26 audits
Trusts Taskforce and trusts lodgment compliance	5,000 data matching cases and approximately 700 income tax reviews and audits (over the next four years)
Activity related to tax havens (data has revealed extensive use of complex offshore structures by wealthy individuals, companies and their advisers)	680 reviews and 115 audits
Medium enterprises – income tax	1,000 reviews and audits
Highly wealthy individuals (>\$30M)	500 income tax reviews and audits
Wealthy individuals (\$5M-\$30M)	1,000 income tax reviews and audits
GST – industry focus including mining, financial and insurance services	2,400 cases
Data matching	Over 640 million transactions
Lodgment compliance – detection	3.4 million compliance actions focused on taxpayers who consistently lodge late or not at all

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	
Awareness and application of trust-specific anti-avoidance rules (section 100A of the <i>Income Tax Assessment Act 1936</i> (ITAA 1936)) – developing published guidance	A draft fact sheet was sent to members of the Trust Reform and Compliance Group for comment on 9 December 2013.
Alienation of income through discretionary trust partners – consultation on TA 2013/3	Draft publication is to be circulated in January to the Professional Practice Structures Working Group NTLG and further meeting scheduled in late February 2014
Small business CGT concessions and unpaid present entitlements – technical clarification	NEW ISSUE: consultation is expected to occur in early 2014
International	
Application of the new transfer pricing laws (Division 815) – consultation on new rulings and practice statements	First meeting of the Division 815 Technical working group held on 17 December 2013
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	Matter to be completed by January 2014
Attribution and inter-branch derivatives – discussion of TR 2001/11 and TR 2005/11 and banking industry practice	Consultation process was agreed with the Australian Bankers Association on 9 December 2013
Application of Subdivision 820-D to ADIs and its interaction with the consolidation regime and APRA's prudential standards	
Market support payments – consultation in respect of TD 2013/D3	A second draft TD was expected to be issued on 18 December 2013 but is now planned for release on 29 January 2014
2014 International Dealings Schedule (IDS) and 2014 IDS Instructions – consultation on changes	NEW ISSUE
Taxation of financial arrangements	
Application of recent amendments to the TOFA rules – identify and prioritise issues requiring interpretative products as a result of amendments in <i>Tax and Superannuation Laws Amendment (2013 Measures No 2) Act 2013</i>	Matter expected to be completed by the end of January 2014

Capital allowances	
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 will be discussed with industry in early 2014
Resource Rent Tax	
PRRT: Meaning of exploration – consultation on TR 2013/D4	Final ruling expected first half of 2014
PRRT: apportionment of deductible expenditure – developing published guidance	Completed – guidance has now been published on the ATO website
PRRT: look-back approach to starting base – developing published guidance	Completed – guidance published on the ATO website
PRRT: Apportionment of PRRT payments for procured services – developing published guidance	NEW ISSUE: expected to be completed in January 2014
Indirect taxes	
Inform the industry of the ATO's compliance focus in respect of the WET producer rebate	
GST of moveable home estates – consultation on GSTR 2013/D2	Completed – draft ruling has been withdrawn
Superannuation	
Limited recourse borrowing arrangements – in-house asset exclusion – consultation on draft legislative instrument	
In what circumstances is an asset of a complying superannuation fund a segregated current pension asset – consultation on TD 2013/D7	Completed – draft taxation determination has been withdrawn
Apportionment of expenses incurred by a superannuation entity only partly in gaining its assessable income – consultation on draft ruling	NEW ISSUE: Draft ruling TR 2013/D7 issued on 4 December 2013
Advice	
Amending PS LA 2008/3 to expand the circumstances in which the ATO can provide administratively binding advice – ATO may expand the range of existing written advice products	
Miscellaneous	
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	NEW ISSUE

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

NEW ISSUE: Associations will be invited to nominate representatives in December/January with a meeting to be scheduled in February 2014 after the establishment of a tripartite limited-life working group

2014-15 Pre-Budget submissions: The Government has [invited](#) submissions from individuals, businesses and community groups on their priorities for the 2014-15 Federal Budget. Submissions are due by 31 January 2014.

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Weekly tax news

Business tax

Bills receive Royal Assent: The following Bills have received Royal Assent and are now law:

- [Customs Amendment \(Anti-Dumping Commission Transfer\) Bill 2013](#)
- [Import Processing Charges Amendment Bill 2013](#).

Tax Laws Amendment (2013 Measures No. 1) Regulation 2013: This [regulation](#) was registered on 16 December 2013 and makes a number of amendments to taxation and superannuation regulations, which includes inserting the annual 'cents per kilometre' rates for calculating tax deductions for car expenses for the 2013-14 income year in Part 2 of Schedule 1 to *the Income Tax Assessment Regulations 1997*. The published rates for the 2013-14 year for the following categories of vehicles (as defined) are as follows:

- Small cars: 65 cents per kilometre
- Medium cars: 76 cents per kilometre
- Large cars: 77 cents per kilometre.

Legislative instrument – *Taxation Administration Act 1953* – PAYG withholding: This [instrument](#) was registered on 2 January 2014 and enables a variation to the amount of withholding required by a payer under the pay as you go (PAYG) withholding system for payees who make occasional donations to a deductible gift recipient under an occasional workplace giving arrangement.

First "repeal day" to cut red and green tape: On 13 January 2014, Leader of the House, Christopher Pyne, and Parliamentary Secretary to the Prime Minister, Josh Frydenberg [announced](#) that the Government's first "repeal day" has been scheduled for the House of Representatives on 26 March 2014 and will follow the introduction of an omnibus red tape reduction bill and a series of specific deregulation bills on 19 March 2014. Mr Frydenberg indicated that the first suite of deregulation bills followed extensive consultation with business and the not-for-profit sector and that the repeal day will also include the bulk-repeal of more than 8000 pieces of redundant legislation.

Coalition may wind back corporate tax disclosure policy: On 3 January 2014, *The Australian Financial Review* (AFR) reported that the Government may wind back recent changes requiring the Commissioner to publish details of tax paid by large companies. According to the article, the Assistant Treasurer has indicated that he has major concerns about the new disclosure rules which were introduced by the former Labor Government. The AFR article stated that the Government is “expected to decide soon on whether it will try and wind back the change”.

Joining entity was an associate “before the joining time”: The Federal Court has dismissed the taxpayer’s appeal from the Commissioner’s objection decision regarding an adverse private ruling that GasNet Australia Trust (GNAT) was an associate of the taxpayer “just before the joining time” within the meaning of section 705-47(5)(b)(i) of the *Income Tax Assessment Act 1997* (ITAA 1997). As a result, the tax cost setting amount for certain depreciating assets held by GNAT (the joining entity), including a high-pressure gas transmission network and a liquid natural gas storage facility that were subject to the operation of Division 58 of the ITAA 1997, would be reduced under section 705-47(2) to the joining entity’s terminating value of the assets.

The taxpayer was a unit trust and the head company of a tax consolidated group. GNAT was also the head entity of a consolidated group which held privatised assets. Between 2 and 3 October 2006, the taxpayer’s group had acquired 50% of the stapled securities in GNAT following a series of on-market acquisitions and as a result of GNAT security holders accepting the taxpayer’s offer to acquire their shares as part of a takeover bid. Subsequently, the taxpayer acquired 100% of the shares of GNAT on 20 December 2006 which the parties agreed was the tax consolidation ‘joining time’. The tax cost setting amount for the privatised assets exceeded GNAT’s terminating value of those assets. The issue was whether GNAT was “not an associate” of the taxpayer “just before the joining time” and, if so, the taxpayer’s tax cost setting amount for the high-pressure gas transmission network and a liquid natural gas storage facility that GNAT held for more than two years would not be reduced to the terminating value of the assets.

In reaching its decision, the Federal Court did not accept the taxpayer’s construction of the phrase “just before the joining time” in section 705-47(5)(b)(i) of the ITAA 1997. The taxpayer had submitted that the words were to be construed as qualified by an expression such as “otherwise than by reason of the process or act of joining”. The Court considered that these words could not be implied by a process of statutory construction and, further, would give rise to their own uncertainties involving the subjective assessment of what the process of acquisition or joining was in a particular case. According to the Court, the matter to be decided was the legal meaning and application of section 705-47(5)(b)(i) by reference to the language of the instrument viewed as a whole and it was not permissible to reason from an identified mischief to the result that, if the mischief is not present, then the statutory provision was engaged such that GNAT was not an associate of the taxpayer “just before the joining time”. The Court concluded that there was no ambiguity that GNAT became an associate of the taxpayer’s consolidated group at the time that 50% of GNAT shares were acquired. Accordingly, the conditions for the exception in section 705-47(5)(b)(i) were not satisfied and the cap under section 705-47(2) of the ITAA 1997 applied to reduce the tax cost setting amounts of the depreciating assets to GNAT’s terminating value for the assets – click to view [Australian Pipeline Limited as Responsible Entity for the Australian Pipeline Trust v Commissioner of Taxation \[2013\] FCA 1372](#) (18 December 2013).

Appeals update:

- **Howard:** The taxpayer's appeal against the the Full Federal Court decision in [Howard v Commissioner of Taxation \[2012\] FCAFC 149](#) is [scheduled](#) to be heard by the High Court on 4 March 2014. The Full Federal Court held that an award of equitable damages received by the taxpayer in the 2005 income year was assessable income, as were trust distributions received from a non-resident trust estate by the taxpayer in the 2006 income year
- **Desalination Technology:** The Commissioner has a [lodged](#) a notice of appeal to the Federal Court against the decision of the AAT in [Desalination Technology Pty Ltd and Commissioner of Taxation \[2013\] AATA 846](#). In that case, the AAT held that a taxpayer was entitled to a tax offset in respect of research and development (R&D) expenditure on the basis that the expenditure was "incurred" within the meaning of section 73B(14) of the ITAA 1936.

Decision impact statements (DIS) released – Crown Insurance Services: The Commissioner has released a [DIS](#) concerning the decision of the Full Federal Court in [Commissioner of Taxation v Crown Insurance Services Ltd \[2012\] FCAFC 153](#). In that case, the Full Federal Court dismissed the Commissioner's appeal from the AAT decision in which it was held that the taxpayer was not an Australian resident for the purposes of section 6(1)(b) of the ITAA 1936, and further, the source of the non-resident taxpayer's income was the insurance contracts, which were made and performed in Vanuatu and, accordingly, the income derived during the relevant years was not derived from Australian sources. The Commissioner's special leave application to appeal to the High Court was refused. For a summary of the Full Federal Court decision, refer to [Tax highlights 12 November 2012](#).

The ATO notes, that the decision by the AAT was one of fact and will have no precedential effect. The ATO considers that the AAT decision has no application beyond the particular circumstances of the case and that *Nathan v Federal Commissioner of Taxation* (1918) 25 CLR 183 is still to be regarded as the leading case on source of income.

Decision impact statements (DIS) released – Macquarie Bank Limited: The Commissioner has released a [DIS](#) concerning the decision of the Full Federal Court in [Macquarie Bank Limited v Commissioner of Taxation \[2013\] FCAFC 119](#). In that case, the Full Federal Court dismissed the applicants' application for leave to appeal and held that, while the practice statement may set out the Commissioner's position about the circumstances in which he will apply retrospectively a different view about the operation of the law, any failure by the Commissioner to comply with his view in the practice statement will not alter the taxpayer's liability upon an assessment or the Commissioner's duty to assess upon the correct view of the law. For the full summary of the Full Federal Court decision, refer to [Tax highlights 4 November 2013](#).

The ATO notes that the decision by the Full Federal Court confirms its understanding that when the Commissioner has formed the view that the tax law imposes a liability on a particular taxpayer, the Commissioner has a duty to assess the taxpayer in accordance with that view. Further, in the light of the Full Court's comments that [PS LA 2011/27](#) might not be read as only applying to action and compliance action in circumstances where resource allocation decisions are being made, the ATO will review the wording of the practice statement to clarify its intended operation.

Draft guidance note on dividends – consultation paper released: On 10 January 2014, the Takeovers Panel released a [consultation paper](#) on its draft guidance note on dividends. The draft guidance note clarifies 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.

Comments on the draft guidance note are due by 28 February 2014.

Draft Taxation Determinations (TDs) scheduled for release on 15 January 2014:

- TD 2014/D1: Can section 177EA of the ITAA 1936 apply to a 'dividend washing' scheme of the type described in this TD?
- TD 2014/D2: Does item 50(5) of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No 2) Act 2012* only apply to protect particulars that form part of a head company's assessment for an income year in respect of a joining entity if the latest notice of assessment for that income year, which relates to section 701-55(6) of the original 2002 law in respect of that joining entity, is served on the head company before 12 May 2010?
- TD 2014/D3: If:
 - A head company lodged a tax return (or otherwise received an assessment) during the interim period
 - The assessment covered a joining time in the pre period
 - The assessment covered an application of some element of the original 2010 law (for example claiming a rights to future income (RTFI) deduction)
 - The head company had a carry-forward tax loss for the relevant year, would a subsequent adjustment to the tax loss (for example to adjust the RTFI claim based on a revised valuation of the RTFI asset or the more limited scope of the RTFI provisions) remove the application of the interim rules?
- TD 2014/D4: If the conditions in item 50(3)(a) of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No 2) Act 2012* are satisfied and the interim rules apply to an assessment and, on or after 29 June 2012, that assessment was amended to alter a claim made under the original 2010 law, do the interim rules apply to the altered claim?
- TD 2014/D5: If the conditions in item 50(5) of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No 2) Act 2012* are satisfied and the original 2002 law applies to an assessment, will a subsequent request by the head company to amend that assessment result in the pre rules applying, by virtue of item 50(6), to the entire assessment or only to the subsequent amendment request?
- TD 2014/D6: If the conditions in item 50(3)(a) of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No 2) Act 2012* are satisfied and the interim rules apply to an assessment and, on or after 29 June 2012 that assessment is amended to include a new claim which was not previously made in the assessment, do the interim rules apply to the new claim?

ATO Public Rulings Program – business tax draft and final rulings – updated as at 1 January 2014:

Draft rulings scheduled for release in the next two months	
Topic	Planned issue date
Are the capital support payments described in this Determination deductible under section 8-1, section 40-880, section 230-15(2) or section 230-15(3) of the ITAA 1997.	29 January 2014
Is Bitcoin a 'foreign currency' for the purposes of Division 775 of the ITAA 1997?	26 February 2014
Final rulings scheduled for release in the next two months	
Topic	Planned issue date
Commercial software developers: derivation of income from agreements for the right to use proprietary software and the provision of related services	26 February 2014
Is the dividend access share arrangement of the type described in this Taxation Determination a scheme by way of or in the nature of 'dividend stripping' within the meaning of section 177E of Part IVA of the ITAA 1936?	26 February 2014

Large business bulletin – December 2013: The ATO's [Large business bulletin](#) for December 2013 includes information on the following topics:

- **Tackling base erosion and profit shifting (BEPS):** An update on the ATO's involvement in sharing information about how multinational enterprises operate in the digital economy and collaborating with representatives of the Joint International Tax Shelter Information Centre, as well as Australia's participation in several OECD working parties and task forces to address BEPS-related issues. The ATO notes that, while preventing BEPS, it also needs to maintain a balance that encourages successful businesses to continue operating in Australia
- **Advance pricing arrangement (APA) program:** The APA program is being updated to ensure it reflects changes in the global economy, the community and the ATO's broader profit-shifting work. Key changes include conducting additional upfront workshops with internal experts to address whole-of-tax code issues, and the selective use of more-frequent transfer pricing review panels
- **Reportable tax positions (RTPs):** For the 2012-13 income year, 162 taxpayers were required to lodge a RTP schedule. The ATO is currently reviewing the disclosures made.
- **Large Service Team (LST):** The LST replaces the former Key Client Manager Hub to provide a single entry point for large businesses that do not have an ATO relationship manager. The LST can provide large businesses with services for administrative enquiries across income tax, GST and excise. They are also the ATO contact point for matters arising from lower consequence risk differentiation framework letters that are currently being issued.

Business Communicator – December 2013: The [December 2013 edition of Business Communicator](#) (the ATO's news bulletin for businesses with an annual turnover between \$2 million and \$250 million) is now available.

Additional method for monthly PAYG instalments: The ATO has [released](#) information on a simplified method for calculating PAYG instalments on a monthly basis.

Information on R&D tax incentive:

- AusIndustry has released the [R&D tax incentive information bulletin for December 2013](#)
- The ATO has released an [R&D tax incentive – clawback adjustment guide](#) to determine when to make a clawback adjustment and how to calculate it.

Administrative treatment – loss carry back: The ATO has [released](#) its administrative treatment in relation to the proposed repeal of the loss carry back provisions for the income year 2013-14. The ATO has stated that taxpayers who lodge a return for the 2013-14 income years can self-assess under the existing law. Once the repeal provisions are enacted, the ATO will amend the company tax return to disallow the claim for the loss carry-back tax offset for the 2013-14 income year. No shortfall penalties will apply and interest attributable to the shortfall will be remitted to nil.

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[Employment taxes](#)

Taxpayer's appeal against assessment on discount under an employee share scheme (ESS) dismissed: The Federal Court has dismissed the taxpayer's appeal against the AAT decision in [Watsford and Commissioner of Taxation \[2012\] AATA 815](#) which found that the Commissioner had correctly included in the taxpayer's assessable income in the 2007 income year the amount of a discount from the market value of shares acquired on the exercise of options under an ESS. For background facts and a summary of the AAT's decision, refer to [Tax highlights 26 November 2012](#).

The Court found that, aside from one question, none of the questions in the amended Notice of Appeal were questions of law, and accordingly the Court had no jurisdiction under section 44 of the *Administrative Appeals Tribunal Act 1975* (Cth) to make orders in respect of the AAT's decision. In reaching this conclusion, the AAT noted that, none of the questions in the amended Notice of Appeal challenged the AAT's construction of a provision of the ITAA 1936, but instead, some of the questions went to the manner in which the AAT applied the relevant statutory provisions to the facts as found. The one question of law related to whether the AAT erred in its construction of Term A of the Terms and Conditions of the issue of the options to the taxpayer in holding that Term A did not require the directors of the company to make any determination extending the expiry date of the options before they expired. The Court found that, the AAT's construction of the Options Terms and Conditions, read with the Rules, was correct. The result of this construction was that, after the termination of the taxpayer's employment, the Board retained a discretion to allow him to exercise the options previously granted to him, notwithstanding the termination of his employment (subject to a five year limit). Further, in the event that any or all of the other questions in the amended Notice of Appeal should be considered to raise questions of law, the Court concluded that they should in their terms, also be answered adversely to the taxpayer – click to view [Watsford v Commissioner of Taxation \[2013\] FCA 1389](#) (20 December 2013).

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Individuals and family groups

'Puppet director' of corporate trustee not a controller for CGT small business concessions:

The Administrative Appeals Tribunal (AAT) has held that a Trust, of which the husband and wife taxpayers were the beneficiaries, was entitled to the capital gains tax (CGT) small business concessions under Division 152 of the ITAA 1997 in respect of a capital gain made on the sale of assets by the Trust, as the Trust was not controlled by the taxpayers' daughter within the meaning of section 328-125(3) of the ITAA 1997 and accordingly, assets held by entities connected with the daughter were not relevant in determining the Trust's entitlement to the CGT small business concessions.

The Trust carried on a business of sourcing properties for conducting childcare businesses. When the trustee company was incorporated in 2005, the taxpayers' daughter was the sole director and shareholder of the company. The daughter was also the sole director and shareholder of a separate Company which operated the child care facilities. The main issue before the AAT was whether the daughter of the taxpayers was a "controller" of the Trust under section 328-25(4) of the ITAA 1997 and, if so, the CGT small business concessions would not apply to the Trust as the child care Company would be a connected entity of the Trust and the maximum net asset value (MNAV) of the CGT assets of both the Trust and the Company exceeded the MNAV threshold at the time of the CGT event in question.

In reaching its decision the AAT held that in order to determine whether the daughter was a controller of the (discretionary) Trust for the purposes of section 328-125(3) of the ITAA 1997, it was necessary to determine whether there was a reasonable expectation that the Trust would be accustomed to act in accordance with the daughter's wishes and that expectation could be formed if, having regard to all the actual circumstances of the case, the Trust was accustomed to act in that way. In that regard, the AAT said that it is necessary to undertake a critical assessment of the way in which the Trust was managed, i.e. an enquiry into the activities and decision making and the circumstances in which they occurred, not an enquiry into occupation of officers or terms of instruments per se. The AAT concluded that the Trust did not act in accordance with the daughter's wishes and she was a mere 'puppet director' as her father alone was the person who controlled the Trust. The daughter was acting as a director of the trustee company in circumstances where the trustee could be removed at the will of another person who regarded himself as bound by the decisions of the father. As the father was the sole controller of the Trust, the company which the daughter controlled was not a connected entity of the Trust, and the Trust was entitled to the CGT small business concessions – click to view [Gutteridge and Commissioner of Taxation \[2013\] AATA 947](#) (24 December 2013).

ATO Practice Statement Program – individuals and family groups – updated 7 January 2014:

Practice statement scheduled for release within the next two months	
Topic	Planned issue date
Deceased estates: To clarify and convert Chapter 32 of the ATO Receivables Policy into a practice statement	9 January 2014 but delayed

Non-profit organisations

Charities Act 2013 to commence from 1 January 2014: On 4 December 2013, the House of Representatives amended the [Social Services and Other Legislation Amendment Bill 2013](#) to include a measure that delays the commencement of the *Charities Act 2013* by nine months, from 1 January 2014 to 1 September 2014. However, by the conclusion of the Spring Parliamentary Sitting, the Bill had not passed the Senate. Accordingly, the *Charities Act 2013* will continue to have a commencement date of 1 January 2014.

Not-for-profits – information from the ATO website: The ATO has released the following information for not-for-profits following the changes recently enacted in the *Charities Act 2013* and *Charities (Consequential Amendments and Transitional Provisions) Act 2013*, which will take effect from 1 January 2014:

- [Income tax guide for non-profit organisations](#)
- [Instructions for endorsement as a tax concession charity](#) and [Endorsement review worksheet](#) to determine whether an organisation is still entitled to endorsement as an income tax exempt charity
- [Changes to ancillary fund model deeds](#): to update the definition of the types of entities to which public and private ancillary funds can distribute.

Registering a charity: The Australian Charities and Not-for-profits Commission (ACNC) has advised that they have [updated](#) their online application form for registering a charity to include the changes to the definition of 'charity' brought in from 1 January 2014 by the *Charities Act 2013*.

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Superannuation

Superannuation – increases to the lost member small account threshold – exposure draft (ED) legislation released: On 16 December 2013, Treasury released [ED legislation and explanatory material](#) to give effect to the Treasurer's [announcement](#) on 6 November 2013 that the Government would proceed with superannuation reforms relating to the transfer of lost member accounts to the ATO. The account balance threshold below which small lost member accounts will be required to be transferred to the Commissioner will increase from \$2,000 to \$4,000 from 31 December 2015, and from \$4,000 to \$6,000 from 31 December 2016. Submissions on the ED are due by 3 February 2014.

Division 293 tax notices of assessment: The ATO has [advised](#) that it will be issuing Division 293 tax notices of assessment for the 2012-13 income years from early February 2014. This Division calculates the additional 15% tax liability imposed on concessional superannuation contributions made for individuals earning income in excess of \$300,000.

ATO Public Rulings Program – superannuation draft ruling and determination – updated as at 1 January 2014:

Draft ruling scheduled for release in the next two months	
Topic	Planned issue date
Expenses incurred by a superannuation entity in complying with superannuation laws	12 March 2014
Final determination scheduled for release in the next two months	
Topic	Planned issue date
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?	26 February 2014

More flexibility in the superannuation system: On 27 December 2013, *The Australian Financial Review* reported that the Federal Government may be considering options to introduce more flexibility into superannuation contribution payments. According to the article, the Assistant Treasurer Arthur Sinodinos wants to look at tax and superannuation policies to create a more flexible system which is better adapted to the life cycle of people. The Association of Superannuation Funds of Australia has indicated that in order to achieve flexibility the Government could consider introducing a life time contribution cap of \$1 million to \$2 million as opposed to the current annual contribution caps. A life time cap will allow people to contribute to their superannuation when it is suitable for them and still be able to benefit from tax concessions.

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Indirect taxes

Customs Amendment (Infringement Notices) Regulation 2013: This regulation amends the *Customs Regulations 1926* to prescribe certain matters for the purposes of the implementation of the new customs infringement notice scheme (i.e. under which a person who is alleged to have committed an offence of strict liability or of absolute liability against the *Customs Act 1901* may be required to pay a penalty specified in an infringement notice as an alternative to prosecution). This regulation creates the framework for the use of such infringement notices. It provides that an infringement notice may only be issued within 12 months of the offence being detected or four years of the offence being committed, whichever period ends first. It also sets out the offences for which an infringement notice may be issued, what must be included in an infringement notice, the effect of paying an infringement notice, the process for seeking withdrawal of an infringement notice, and the process for seeking to extend the period for payment of the penalty. The regulation commences on 1 February 2014.

Practice Statement (PS) released

- **PS 2013/4 (GA):** This PS is relevant to fuel tax credit claimants. It sets out the percentage of taxable fuel that the Commissioner accepts as a fair and reasonable apportionment of the fuel used in various categories of heavy vehicles for powering auxiliary equipment of those vehicles.

Draft Luxury Car Tax Determination (LCTD) released

- [LCTD 2013/D1](#): This draft LCTD is relevant to cars acquired under a hire purchase agreement. It provides that the luxury car tax value for such a car does not include the consideration provided for the supply of credit under the agreement.

Draft Goods and Services tax Ruling (GSTR) withdrawn

- [GSTR 2013/D2](#): This draft GSTR was withdrawn by the Commissioner on 20 December 2013. The draft GSTR set out the Commissioner's preliminary view that 'moveable home estates' (MHE) were no longer sufficiently similar to caravan parks to qualify as such for GST purposes and to thereby enable MHE operators to apply a concessional rate of GST to their supplies of long-term accommodation to residents under Division 87 of the *A New Tax System (Goods and Services Tax) Act 1999*. The withdrawal of the draft GSTR follows a period of public consultation and the ATO's consideration of the widespread community concern expressed about the changed GST treatment being proposed.

ATO Public Rulings Program – indirect tax draft and final rulings – updated as at 1 January 2014:

Draft rulings scheduled for release in the next two months	
Topic	Planned issue date
GST: Development lease and similar arrangements	12 February 2014
Is the supply of brokerage services, that facilitates the sale or purchase of financial products traded on overseas securities and futures exchanges, GST-free under paragraph (a) of item 4 in section 38-190(1) of the GST Act	26 February 2014
In what circumstances is the supply of a credit card GST-free, or partly GST-free under paragraph (a) of item 4 in section 38-190(1) of the GST Act?	26 February 2014
Foreign currency products – paragraph (a) of item 4 in section 38-190(1) of the GST Act	26 February 2014
Final rulings scheduled for release in the next two months	
Topic	Planned issue date
Restriction on GST refunds: Can you object to a private ruling that the Commissioner makes on the way in which section 105-65 of Schedule 1 to the <i>Taxation Administration Act 1953</i> applies or would apply to you?	22 January 2014
Where real property is acquired by exercising a call option, does the call option fee form part of the consideration for the acquisition for the purposes of subsection 75-10(2) of the GST Act?	5 February 2014 (but is noted as delayed).

International tax

ATO initiatives regarding BEPS: Late last year at the Macquarie University and Deloitte International Forum, Deputy Commissioner Mark Konza delivered a [speech](#) on the ATO's actions to support Australia's commitment to addressing the base erosion and profit shifting (BEPS) issue. One of the ATO's priority areas for 2013-14 is to drive collaborative approaches on international tax measures to ensure jurisdictions get their fair share of tax. In particular, the ATO has dedicated resources to examine the areas of base erosion, profit shifting, and the implications of the development of e-commerce and digital business. The ATO has undertaken a number of activities, including:

- Several audits in e-commerce industries
- Facilitating a workshop to share information about how multinational enterprises operate in the digital economy
- The International Structuring and Profit Shifting compliance program which uses risk filtering and profiling to identify tax cases for review
- Consultation with industry stakeholders on the OECD's proposed new global standard for automatic exchange of information.

ATO Interpretative Decision (ATO ID) released:

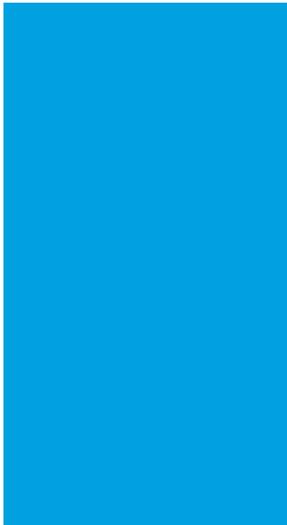
- [ATO ID 2013/67](#): This ATO ID provides that a termination payment is 'exempt from income tax under the law of the foreign country' for the purpose of section 83-240(1)(f) of the ITAA 1997 if it is received in consequence of termination of engagement on qualifying service on an approved project in relation to a foreign country which does not impose income tax on the payment. (Subdivision 83-D deals with termination payments that arise out of foreign employment.)

ATO Public Rulings Program – international tax related draft ruling – [updated as at 1 January 2014](#):

Draft ruling scheduled for release in the next two months	
Topic	Planned issue date
Is a UK resident company, which beneficially owns a dividend paid by an Australian resident company to another Australian resident company as the nominee shareholder for the UK resident company, a company which 'holds directly' at least 10 per cent of the voting power in the Australian resident company paying the dividend for the purposes of Article 10.2(a) of the UK Convention?	12 March 2014

OECD – public comments received on tax challenges of the digital economy: The OECD has [published](#) comments received in response to its request for input regarding the [Tax Challenges of the Digital Economy](#).

Update on the BEPS Action Plan – live webcast: The OECD's Centre for Tax Policy and Administration will provide an update on the BEPS Action Plan via a live [webcast](#) on 23 January 2014.



United States – Foreign Account Tax Compliance Act: The Internal Revenue Service (IRS) has issued a notice to provide [guidance](#) for foreign financial institutions (FFI) entering into a FFI agreement with the IRS to be treated as “participating FFIs”. The notice also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) on complying with the terms of an FFI agreement.

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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