



Tax highlights

17 February 2014

Contents:

Key developments

- OECD releases global standard for automatic exchange of financial account information
- Appeals update – *Dickinson/Fabig*
- Public Rulings Program updated

Weekly Tax News

- Business tax
- Employment taxes
- Individuals and family groups
- Non-profit organisations
- Superannuation
- Indirect taxes
- International tax

Key developments this week

OECD releases global standard for automatic exchange of financial account information: On 13 February 2014, the OECD released its new [single global standard for the exchange of financial account information](#). The OECD's new global standard calls upon jurisdictions to obtain information about taxpayers' accounts with financial institutions and to automatically exchange that information with the tax authorities of other jurisdictions annually. Thus, under the automatic exchange of information protocols, information about a foreign investor's account with a financial institution would be automatically reported back to the investor's home jurisdiction on an annual basis.

Broadly, the new standard applies to accounts held at a range of financial institutions, including banks, custodians, brokers and certain collective investment vehicles and insurance companies. The financial information to be reported includes all types of investment income as well as account balances and the proceeds of sales from financial assets.

The standard has two components: a common reporting standard (CRS) which contains the reporting and due diligence procedures to be followed by financial institutions, and a model competent authority agreement which contains the detailed rules on the exchange of information. The OECD notes that countries will need to change their domestic legislation to adopt the CRS.

The new standard is expected to be endorsed at the G20 finance ministers' meeting to be held in Sydney during 22–23 February 2014. The OECD states that it will produce a detailed commentary on the new standard and further technical guidance for the implementation of the standard by mid-2014.

Appeals update – *Dickinson/Fabig*: The High Court has [refused](#) the taxpayer's application for special leave to appeal against the Full Federal Court decision in [Commissioner of Taxation v Fabig \[2013\] FCAFC 99](#). The Full Federal Court allowed the Commissioner's appeal, overturning the Administrative Appeals Tribunal's decision in [Dickinson and Commissioner of Taxation \[2013\] AATA 25](#) and [Fabig and Commissioner of Taxation \[2013\] AATA 26](#) and held that capital gains tax scrip-for-scrip roll-over relief was not available to two taxpayers who received a percentage of the consideration for the sale of shares that differed from the percentage of shares they held in the company. For more information, refer to [Tax highlights 2 September 2013](#).

Public Rulings Program updated: The Public Rulings Program has been updated as at 5 February 2014. It includes new items such as the goods and services tax (GST) consequences of motor vehicle incentive payments. For an update on the Public Rulings Program, refer to [Weekly tax news](#) below.

[Back to top](#)

[Weekly tax news](#)

[Business tax](#)

Amendments to the Farm Management Deposits (FMDs) scheme – exposure draft (ED)

legislation released: On 12 February 2014, Treasury released [ED legislation and explanatory material](#) to give effect to the Treasurer's [announcement](#) on 6 November 2013. The Government will amend the FMDs scheme by increasing the off-farm income threshold from \$65,000 to \$100,000 and eliminating the tax consequences of withdrawing and immediately redepositing FMDs. The changes are proposed to take effect from 1 July 2014.

Business Communicator – February 2014: The [February 2014 edition of Business Communicator](#) (the ATO's news bulletin for businesses with an annual turnover between \$2 million and \$250 million) is now available.

ATO Public Rulings Program – business tax draft and final rulings – updated as at 5 February 2014:

Final rulings and determinations 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 but delayed
NEW ITEM: Draft ruling recently added to Public Rulings Program	
Topic	Planned issue date
Can the exemption in section 820-39 of the ITAA 1997 apply to the special purpose finance entity established as part of the 'securitised licence structure' utilised in social infrastructure Public Private Partnerships?	26 March 2014

[Back to top](#)

Employment taxes

ATO Public Rulings Program – employment tax related draft ruling – updated as at 5 February 2014:

Draft ruling scheduled for release in the next two months	
Topic	Planned issue date
Employee remuneration trust arrangements	12 March 2014 but delayed

Back to top

Individuals and family groups

Appeals update – SCCASP Holdings: The High Court has [refused](#) the taxpayer's application for special leave to appeal against the Full Federal Court decision in [SCCASP Holdings Pty Ltd as trustee for the H&R Super Fund v Commissioner of Taxation \[2013\] FCAFC 45](#). The Full Federal Court held that a resolution to distribute a capital gain from a trust was 'special income' derived by a self-managed superannuation fund (SMSF) under former section 273(6) of the ITAA 1936 even though the amount was actually not received by the SMSF or applied or dealt with in any way on its behalf. For more information, refer to [Tax highlights 20 May 2013](#).

ATO Practice Statement Program – individuals and family groups – updated as at 6 February 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

Back to top

Non-profit organisations

ATO Public Rulings Program – non-profit organisations – updated as at 5 February 2014:

NEW ITEM: Draft ruling recently added to Public Rulings Program	
Topic	Planned issue date
Special conditions for various exempt entities under Subdivision 50-A of Part 2-15 of the ITAA 1997	13 August 2014

ATO Practice Statement Program – non-profit organisations – [updated as at 6 February 2014:](#)

Practice statement scheduled for release within the next two months	
Topic	Planned issue date
Administration of penalties for failure to comply with Ancillary Fund Guidelines	20 February 2014

[Back to top](#)

[Superannuation](#)

ATO Interpretative Decisions (ATO IDs) released:

- [ATO ID 2014/2](#): Each income stream payment to a deceased estate, from an exempt public sector superannuation scheme, is treated as a superannuation lump sum death benefit for the purposes of Subdivision 302-C of the ITAA 1997 on the facts sets out in the ATO ID
- [ATO ID 2014/3](#): The requirements of section 272-80(3) of Schedule 2F to the ITAA 1936 are not satisfied if the trustee of a trust specifies an individual in a family trust election who is deceased at the time of making the election, as the individual must be alive at the time of the election
- [ATO ID 2014/5](#): Amounts paid by the trustee of a superannuation fund to a fund member are a superannuation income stream benefit under section 307-70(1) of the ITAA 1997 where the amounts are attributable to an account balance of the member and the trustee has agreed to protect part of the member's account balance for an agreed period of time.

ATO Public Rulings Program – superannuation draft ruling and determination – [updated as at 5 February 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

[Back to top](#)

Indirect taxes

ATO Public Rulings Program – indirect tax draft rulings – updated as at 5 February 2014:

Draft determination scheduled for release in the next two months	
Topic	Planned issue date
Are payments made by a supplier of a rental guarantee that is supplied with a taxable supply of real property, an adjustment event for the supply of the real property?	9 April 2014 but delayed
NEW ITEM: Draft ruling recently added to Public Rulings Program	
Topic	Planned issue date
GST consequences of motor vehicle incentive payments	28 May 2014

[Back to top](#)

International tax

Dutch Supreme Court – no debt treatment of preference shares for participation exemption: On 7 February 2014, the Dutch Supreme Court issued two landmark decisions regarding the distinction between debt and equity for Dutch tax purposes. Based on the decisions, an instrument which is considered capital from a legal perspective will also be treated as capital for the application of the participation exemption. Deloitte Netherlands has issued a tax alert which sets out the facts of the cases and the Supreme Court's decision – click [here](#) to view. (Generally, participation exemptions operate by reducing or exempting dividends or capital gains on shares owned in a company, where ownership in the shares is over a certain threshold and/or a certain proportion of the company assets are used in an active business).

ATO Public Rulings Program – international tax related draft rulings – updated as at 5 February 2014:

Draft rulings and determinations scheduled for release in the next two months	
Topic	Planned issue date
Foreign income tax offset: deductions that are 'reasonably related to' amounts of ordinary or statutory income from a non-Australian source	26 March 2014 but delayed
Transfer pricing – the application of section 815-130 of the ITAA 1997	16 April 2014
Transfer pricing – documentation	16 April 2014
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	12 March 2014

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?

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

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the “Deloitte Network”) is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

This document and the information contained in it is confidential and should not be used or disclosed in any way without our prior consent.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/au/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

About Deloitte

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte's approximately 170,000 professionals are committed to becoming the standard of excellence.

About Deloitte Australia

In Australia, the member firm is the Australian partnership of Deloitte Touche Tohmatsu. As one of Australia's leading professional services firms, Deloitte Touche Tohmatsu and its affiliates provide audit, tax, consulting, and financial advisory services through approximately 5,400 people across the country. Focused on the creation of value and growth, and known as an employer of choice for innovative human resources programs, we are dedicated to helping our clients and our people excel. For more information, please visit our web site at www.deloitte.com.au.

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Touche Tohmatsu Limited

© 2014 Deloitte Tax Services Pty Ltd.