



Tax highlights

19 May 2014

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Key developments this week

2014-15 Deloitte Federal Budget Brief: On 13 May 2014, the Treasurer delivered the [2014-15 Federal Budget](#). Deloitte has produced a [Budget Brief](#), which contains an analysis of the Budget papers and implications of the proposed changes for business and taxpayers. Deloitte has also prepared [infographics](#) and a [webinar recording](#) discussing the issues of the 2014-15 Federal Budget.

The Government also released the following media releases concerning the 2014-15 Federal Budget measures, as outlined in the Deloitte Budget Brief:

- [Integrity in the tax system](#) (for further details of the exposure draft legislation released concerning the foreign resident capital gains tax (CGT) regime and the measures relating to multiple entry consolidated (MEC) groups, see [International tax](#) below)
- [Tax receipt for individuals](#)
- [Rephrasing superannuation guarantee](#)
- [Superannuation excess contributions tax](#) (see also [Individuals and family groups](#) below)

Deloitte's tax roadmap: Deloitte has produced a [tax roadmap](#) which sets out a number of the measures that the Coalition Government has committed to legislate (as at 12 May 2014). As well, the tax roadmap shows the complex mix of start dates for various amendments.

Budget repair levy bills introduced into Parliament: [Tax Laws Amendment \(Temporary Budget Repair Levy\) Bill 2014](#) and 14 related bills were introduced into the House of Representatives last week. The Bills propose to introduce a three-year budget repair levy, in the form of additional income tax, payable by Australian resident and foreign resident individual taxpayers at a rate of two per cent of each dollar of their taxable income that exceeds \$180,000, commencing in the 2014-15 income year. The additional income tax rate is also proposed to be incorporated into other tax rates where those rates are based on the top personal marginal tax rate or based on a calculation comprising the top personal rate and the Medicare levy. This includes the fringe benefits tax (FBT) rate which will increase from 47 per cent to 49 per cent with effect from 1 April 2015. The Bills have been referred to the Senate Economics Legislation Committee and a report is due by 16 June 2014.

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Weekly tax news

Business tax

Bill awaiting Royal Assent: The following Bill was passed by both the House of Representatives and the Senate last week and is now awaiting Royal Assent:

- **Tax Laws Amendment (2014 Measures No. 1) Bill 2014** (the measures in this Bill include a new set of rules for determining whether taxpayers who have overpaid goods and services tax (GST) to the ATO are entitled to a refund).

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Employment taxes

Taxation Determination (TD) – car parking threshold for FBT year commencing on 1 April 2014:

- **TD 2014/11:** The car parking threshold for the purposes of section 39A of the *Fringe Benefits Tax Assessment Act 1986* for the FBT year commencing on 1 April 2014 is \$8.26.

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Individuals and family groups

Superannuation excess contributions tax– Government announces option to withdraw excess contributions and releases IGT report: On 13 May 2014, the Finance Minister [announced](#), as part of the 2014-15 Federal Budget, that individuals will be given an option to withdraw excess superannuation contributions together with any earnings on those contributions to avoid superannuation excess contributions tax (ECT) (see the Deloitte [Budget Brief](#) for more information). The Finance Minister also [released](#) the report of the Inspector General of Taxation (IGT) following the IGT's [Review into the ATO's compliance approach to individual taxpayers in respect of superannuation excess contribution tax](#). The IGT made two recommendations directed to the Government regarding the superannuation ECT regime: one is aimed at situations where taxpayers exceed the concessional or non-concessional caps through matters beyond their control or a genuine mistake, whilst the other targets excess non-concessional contributions more generally. The IGT also made nine other recommendations directed to the ATO to improve the administration of the ECT through further ATO assistance being provided to taxpayers in monitoring their contribution levels. The ATO has agreed in full, in part or in principle with eight of these nine recommendations. The ATO has disagreed with a specific recommendation directed at the *de minimis* concession.

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State and Territory taxes

Northern Territory: 2014-15 Territory Budget: The following revenue-related measures were announced in the [Northern Territory's 2014-15 Budget](#) on 13 May 2014:

- Changes to the first home owner grant (FHOG) for transactions involving new homes that were entered into on or after 13 May 2014:
 - the grant will be increased by \$1,000 to \$26,000
 - the \$600,000 threshold on the value or price of a new home will not apply
- Cessation of the FHOG for established homes from 1 January 2015:

- A FHOG will not be available to first home buyers who enter into a contract to buy an established home after 31 December 2014
- Changes to the definition of “new home” (in the *First Home Owner Grant Act*) and “qualifying home” (in the *Stamp Duty Act*, for the purposes of the principal place of residence stamp duty rebate) to include residential premises that have been created through substantial renovations of a building (within the meaning of section 40-75(1)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and to give the Commissioner of Territory Revenue a discretion to declare a home to be a “new home” in prescribed circumstances where it would meet the statutory definition of a “new home” but for the fact that it has previously been sold as a place of residence
- An increase to the maximum amount of bookmaker tax a sports bookmaker is liable to pay for a financial year under the *Racing and Betting Act* (i.e. for 2014-15, the tax is capped at \$555,000, up from \$262,500 for 2013-14).

The announced changes are subject to the passage of the [Treasury Legislation Amendment Bill 2014](#).

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International tax

Improving the integrity of foreign resident CGT regime – exposure draft (ED) legislation

released: On 13 May 2014, the Government released [ED legislation and explanatory material](#) to ensure that the foreign resident capital gains tax (CGT) regime operates as intended by preventing the double counting of certain assets under the “principal asset test” in section 855-30 of Subdivision 855-A of the *Income Tax Assessment Act 1997* (ITAA 1997) (see further below). The Government also issued a related [media release](#) as part of the 2014-15 Federal Budget.

Essentially Subdivision 855-A provides that a foreign resident can disregard a capital gain or loss unless the relevant CGT asset is a direct or indirect interest in Australian real property, or is related to a business carried on by the foreign resident through a permanent establishment in Australia.

The purpose of section 855-30 (principal asset test) is to define when an entity’s underlying value is principally derived from Australian real property, by comparing the market value of its assets that are taxable Australian real property (TARP) against the market value of its assets that are not TARP. (A CGT asset is TARP if it is real property situated in Australia, or is a mining, quarrying or prospecting right if the minerals, petroleum or quarry materials are situated in Australia.)

As the test only has regard to the market value of assets (i.e. does not take into account liabilities), transactions between related entities could result in certain non-TARP assets being valued multiple times within a group distorting the ratio in the test above (e.g. intercompany loans).

This measure was originally announced by the former Government in the [2013-14 Federal Budget](#) and the current Government [announced](#) on 6 November 2013 that it would proceed with this measure.

Broadly, the proposed amendments in the ED provide that, where the assets of two or more entities are included in the principal asset test, the market value of new non-TARP assets arising from transactions between those entities will be disregarded for the purposes of the principal asset test.

The scope of the proposed amendments is broader than that originally announced by the former Government, as it is to apply to entities within an economic structure irrespective of whether or not the entities are members of the same consolidated group or MEC group.

For entities within the same consolidated group or MEC group, the amendments are to apply to CGT events occurring after 14 May 2013. For all other entities, the amendments are to apply to CGT events occurring on or after 13 May 2014. Submissions on the ED are due by 9 June 2014.

It was noted in the explanatory memorandum that in respect of the [second announced measure](#), i.e. to value mining, quarrying or prospecting information and goodwill together with the mining rights to which they relate, the Government has decided to defer the enactment of this amendment pending the outcome of litigation (it is uncertain whether the taxpayer will seek leave to appeal to the High Court against the decision of the Full Federal Court in *Commissioner of Taxation v Resource Capital Fund III LP* [2014] FCAFC 37).

MEC groups – report of tripartite working group: As part of the 2014-15 Federal Budget announcements, the Acting Assistant Treasurer, Senator Cormann, [advised](#) that the Government would not proceed with a proposal to remove inconsistencies in the tax treatment of MEC groups and ordinary tax consolidated groups in line with the report of the tripartite working group.

The working group's [report](#), released on 13 May, examined options to improve the efficiency and equity of the tax system by addressing any systemic tax advantages available to foreign-owned MEC groups, and those groups capable of forming MEC groups, that are not available to Australian-owned ordinary consolidated groups. The working group identified six tax advantages MEC groups have over Australian-owned ordinary consolidated groups which, broadly, are:

1. The ability to retain or reset asset cost bases on entry
2. Deferring the recognition of tax preferred income on progressive acquisitions
3. The ability to apply the pooling rules or exit allocable cost amount method
4. Leveraging eligible tier one companies (ET-1s) to reduce CGT liabilities
5. The interaction between the non-resident CGT exemption and the single entity rule
6. The non-application of the 'all-in' principle to ET-1s.

Whilst noting the availability of general anti-avoidance provisions, the working group also considered options to address some of these identified advantages and recommended further consultation in respect of extending a modified version of the unrealised loss provisions to the assets of ET-1s that join MEC groups, so that the residual unrealised net loss is applied to reduce the tax value of loss assets held by the joining ET-1 (to address advantage 1).

The Government has advised that Treasury will shortly start consultation in respect of this option.

The working group recommended no further development of any options to address advantages 4 and 5 due to a lack of data, possible costs, commercial uncertainties and ineffectiveness. It was also unable to identify any suitable targeted solutions to address advantages 2, 3 and 6, where benefits would outweigh the costs.

The working group also considered [issues relating to the calculation and collection of income tax liabilities of MEC groups](#) and recommended that when timing and resourcing allows, that legislation

should be introduced to clarify that:

- A provisional head company of a MEC group can enter into a tax sharing agreement with other members of the group
- Pay-as-you-go (PAYG) instalments paid by a former provisional head company of a MEC group are attributed to that MEC group.

The media release also appeared to indicate that Treasury will start consultation in respect of these measures.

The working group report indicated that a broader review of consolidated groups in 2015 should consider clarifying how various parts of income tax law could apply to MEC groups in the same way that they apply to consolidated groups. The working group also anticipated that any changes to MEC group arrangements will apply from 1 July 2014.

Public consultation on transfer pricing documentation and country-by-country reporting: On 19 May 2014, the OECD will be holding a [public consultation](#) on the [discussion draft](#) on transfer pricing documentation and country-by-country reporting. The meeting will be broadcast live on the internet and can be [accessed online](#).

OECD BEPS Webcast: On 26 May 2014, the OECD will hold a [webcast](#) to provide an update on the base erosion and profit shifting (BEPS) project. This will include an update on:

- Transfer pricing documentation and country-by-country reporting
- Tax treaty abuse
- The tax challenges of the digital economy
- Hybrid mismatch arrangements.

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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