



## Tax highlights

20 January 2014

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### Key developments this week

#### Draft Taxation Determinations (TDs) released:

- [TD 2014/D1](#): This draft TD sets out the Commissioner's preliminary view that section 177EA of the *Income Tax Assessment Act 1936* (ITAA1936) will generally apply to a 'dividend washing' scheme of the type as described in paragraphs 2 to 10 of this draft TD
- [TD 2014/D2](#): This draft TD sets out the Commissioner's preliminary view that item 50(5) of Part 4 of Schedule 3 to *Tax Laws Amendment (2012 Measures No.2) Act 2012* only operates to apply the original 2002 law to the 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, was served on the head company before 12 May 2010
- [TD 2014/ D3](#): This draft TD sets out the Commissioner's preliminary view that the exception to the pre rules in item 50(3)(a) of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No.2) Act 2012* does not apply to an assessment (for the later income year) in the circumstances where:
  - The head company applied the original 2010 law in respect of the joining entity in calculating the tax loss for an income year (the earlier income year)
  - A nil assessment for that earlier income year was deemed to have been served on the head company by the Commissioner on or after 12 May 2010 and on or before 30 March 2011 that satisfied the conditions in item 50(3)(a)
  - The Commissioner was advised by the head company that the amount of the tax loss was subsequently reduced (but not to zero) and as a result, the Commissioner subsequently issued a notice of amended assessment after 29 June 2012
  - The head company considers whether the tax loss can be deducted in a later income year
  - The head company's income tax return for that later income year when lodged, is deemed to be an assessment (the assessment for the later income year), notice of which is deemed to have been served after 29 June 2012
- [TD 2014/ D4](#): This draft TD sets out the Commissioner's preliminary view that the interim rules continue to apply to all of the claims in a notice of assessment that satisfies the

requirements of item 50(3)(a) of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No.2) Act 2012*, including any of those claims which are later altered in a notice of amended assessment served on or after 29 June 2012

- [TD 2014/ D5](#): This draft TD sets out the Commissioner's preliminary view that the pre rules will apply, by virtue of item 50(5) of Part 4 of Schedule 3 to the *Tax Laws Amendment (2012 Measures No.2) Act 2012*, only to the extent that the subsequent amendment request alters an existing claim that relates to the application of section 701-55(6) of the original 2002 law in respect of the joining entity
- [TD 2014/D6](#): This draft TD sets out the Commissioner's preliminary view that the interim rules do not apply to a new claim that is included in a notice of amended assessment served on or after 29 June 2012 even 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 the original notice of assessment.

**ATO Dispute management plan 2013-14:** The ATO has released its [Dispute management plan 2013-14](#) which has a specific focus on debt-related disputes including disputed assessments, preference claims and other disputed entitlements and liabilities.

*Comment: It is perhaps a sign of the economic times that governments at local, state and federal levels seem to be devoting more resources to debt collection activities. Whereas the focus of the ATO dispute management plan for 2012-2013 was tax and superannuation disputes (in respect of audit, review and objection matters), the 2013-14 plan has a specific focus on disputes relating to debt. Specifically, and perhaps reiterating the ATO's "good management" requirement, the plan advocates a consideration of the "effective, efficient, ethical and economical use of Commonwealth resources" when resolving disputes. These slight shifts in ATO policy (and culture) should be kept in mind when engaging with ATO representatives in respect of disputes.*

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## Weekly tax news

### Business tax

**National Tax Liaison Group (NTLG) meeting – 12 December 2013:** The ATO has [released](#) key messages from the NTLG meeting held on 12 December 2013. The topics discussed at the meeting include:

- *ATO response to Australian Public Service Commission independent capability review:* The ATO will launch its new strategic direction and accompanying program of change in March 2014
- *New approach to support Treasury with policy formulation and implementation:* The Integrated Tax Design business line now includes a new Policy Integration Team to lead policy input with the ATO business lines. The new team brings together ATO expertise in law design, revenue costing and forecasting and design services generally. The ATO's new framework to support Treasury includes:
  - Improved processes to identify issues that may require a Government policy response
  - Risk assessing those issues and then prioritising them

- Feeding intelligence to Treasury about the risks the ATO is seeing in the tax and superannuation systems
- On prioritised issues, preparing comprehensive action briefs for Treasury that have a solution-based approach.

Where appropriate, the Integrated Tax Design business line will consult with the private sector. The new Consultation Steering Group will be used to facilitate such consultation.

- *ATO approach to alternative dispute resolution (ADR) and settlements:* There is a significant focus on ADR within the ATO. The independent review of large market income tax audits was introduced to assist in resolving areas of disagreement with taxpayers. The ATO reported that five reviews have been finalised, with a further six cases currently being reviewed. The ATO also reported that settlements are working well with the middle market and that for the small business market, various initiatives implemented over the past few years have improved the ATO's capability to resolve disputes via settlement negotiations
- *Transforming Tax Technical Decision Making (TTTDM) project:* The TTTDM project's post implementation review commenced in July 2013 and is expected to be completed in March 2014. One change made by the TTTDM project is to allow precedential decisions rated as 'low risk' to be made by appropriate staff in Compliance (previously all such decisions had to be escalated to Law regardless of risk or complexity)
- *Consultation arrangements:* The new consultation system is now broadly up and running. A post-implementation review of the new consultation arrangements will be undertaken by an independent reviewer in June 2014. The ATO Consultation Hub and Treasury are making a joint submission to the Board of Taxation in relation to the operation of the Tax Issues Entry System (TIES)
- *The NTLG and its role:* The NTLG will discuss matters of strategic importance to the tax and superannuation systems and will receive reports from the Stewardship Forums, Consultation Steering Group and ATO Consultation Hub. The role, purpose and function of the NTLG will be considered at the NTLG meeting in March 2014
- *Streamlined tax returns:* The ATO will introduce a new online substantially pre-prepared tax return from 1 July 2014 for individual taxpayers with non-complex tax affairs (taxpayers with investment properties, capital gains and losses and foreign income and non-residents will not be eligible to use the new service).

**Test Case Litigation Register:** The ATO Test Case Litigation Register has been [updated](#) to include approval for test case funding for the following:

- A Full Federal Court case testing the income tax treatment of money awarded to a taxpayer as settlement of a legal action, specifically whether the money would be considered an indemnity payment under section 20-20 of the *Income Tax Assessment Act 1997* (ITAA 1997).

**Post-implementation review on previous changes to tax laws:** On 15 January 2014, the Department of Finance and Deregulation released Treasury's findings on its post-implementation review of the:

- Application of the [non-commercial loss rules](#) to high income earners
- Tightened eligibility for tax concessions for [employee share schemes](#) (ESS)
- Introduction of a statutory flat rate for [FBT on motor vehicles](#).

Broadly, the reviews indicated that measures met their objectives and the changes had only minimal impacts on business. The Government will continue to consult with stakeholders on the impacts of the ESS measure.

**Capital allowances – effective lives review:** The ATO has [announced](#) that it will review the effective lives of scientific medical and pharmaceutical research assets

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## [Employment taxes](#)

**FBT return lodgement date change:** The ATO has [advised](#) that the tax agent lodgement due date for 2014 FBT returns has changed to 25 June 2014 for electronic returns.

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## [Individuals and family groups](#)

**Small Business Liaison Group meeting – 6 November 2013:** The ATO has released the [minutes](#) of the Small Business Liaison Group meeting held on 6 November 2013. Items discussed include:

- *The work that the ATO has been doing in the development of its 2020 vision:* In the future, the ATO will make greater use of natural systems (e.g. exploring the possibility of using business software to generate the data required to meeting business tax obligations), work across the government (e.g. involvement in myGov by early 2014), and use analytics more effectively to support the intended move to real-time, on-line interactions
- *Update to ATO Tax 2013 mobile application:* The update will provide services to small business, including the ability to determine if a worker is an employee or contractor for tax and superannuation purposes
- *An overview of the ATO Co-Design Centre:* This facility, located in new ATO premises in Brisbane, is a state of the art design and usability centre that supports the ATO's goal of making the tax system easier, cheaper and more personalised for taxpayers. Recently the facility has been used to undertake the co-design and user testing of ATO products and services such as the ATO mobile app and the Superannuation Guarantee charge and statement tool.

**Appeals update – SCCASP Holdings:** 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](#) is [scheduled](#) to be heard by the High Court on 14 February 2014. 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.

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## [Superannuation](#)

**Transitional arrangements to the Superannuation Data and Payment Standards 2012:** The ATO has [released](#) a consultation draft of Schedule 1 – Transitional arrangements to the Superannuation Data and Payment Standards 2012. The draft changes relate to extending the timeframe for

transitional arrangements and establishing an induction process to support the implementation of employer contributions in the standard. Comments on the draft schedule are due by 20 January 2014.

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### [Indirect taxes](#)

#### **Goods and services taxation determination (GSTD) scheduled for release on 22 January 2014:**

- GSTD 2014/1: Can you object to a private ruling that the Commissioner makes on the way in which section 105-65 of Schedule 1 to the *Taxation Administration Act 1953* applies or would apply to you?

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### [International tax](#)

**OECD – comment received on artificial avoidance of Permanent Establishment (PE) status:** The OECD has [published](#) comments received in response to its [invitation](#) for comments to identify strategies that allegedly result in the artificial avoidance of PE status.

**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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