



## Tax highlights

22 April 2014

### Contents:

#### Key developments

- ATO releases guidance on transfer pricing laws
- Managed funds – arrangements for an Asia Region Funds Passport

#### Weekly Tax News

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

### Key developments this week

**ATO releases guidance on transfer pricing laws:** On 16 April 2014, the ATO issued its highly anticipated first tranche of guidance on the application of Australia's transfer pricing rules. The guidance takes the form of draft Taxation Rulings and Practice Statements, which set out the ATO's views on:

- Its power to reconstruct transactions between related parties (Draft Taxation Ruling [TR 2014/D3](#))
- The transfer pricing documentation an entity should prepare and keep (Draft Taxation Ruling [TR 2014/D4](#)) and Draft Practice Statement Law Administration [PS LA 3673](#)) and
- Penalties applicable to transfer pricing adjustments and transfer pricing documentation requirements (Draft Practice Statement Law Administration [PS LA 3672](#)).

*Comment: The most controversial aspect of the new transfer pricing rules, and the one causing most concern for multinationals, is the ATO's power to 'reconstruct' transactions. TR 2014/D3 confirms the ATO's intention to disregard transactions entered into by entities where they are not 'commercially realistic' or where, in the ATO's view, independent entities would not have entered into them. This takes us into a space fraught with guess work, where ATO officers will be hypothesising about what would have happened in 'the real world'.*

*In preparing transfer pricing documentation, TR 2014/D4 and PS LA 3673 require taxpayers to do much more than was necessary under the old transfer pricing rules. This is because the rules now operate on a self-assessment basis, with the onus on taxpayers to show how they have applied the rules.*

*PS LA 3672 confirms that penalties for taxpayers getting transfer pricing wrong are steep and that the guidelines for remission are tougher than under the old rules. Taxpayers that have no supporting transfer pricing documentation at the time of lodging their tax returns are automatically into a higher minimum base penalty amount of 25 per cent, with no chance of remission.*

*Deloitte is hosting a webinar on this topic on 29 April 2014, featuring Michael Jenkins, Assistant Commissioner, ATO, and partners from Deloitte's National Transfer Pricing practice. If you would like to join our webinar, please contact Louisa Di Mingo on (03) 9671 7412 or via email at [ldimingo@deloitte.com.au](mailto:ldimingo@deloitte.com.au).*

**Managed Funds: Arrangements for an Asia Region Funds Passport:** On 16 April 2014, the Minister for Finance released a [consultation paper](#) on the Asia Region Funds Passport which, once implemented, will provide a multilaterally agreed framework to facilitate the cross border marketing of managed funds across participating economies in the Asia region. The passport was a recommendation of the 2009 report, *Australia as a Financial Centre: building on our strengths* by the Australian Financial Centre Forum.

[Back to top](#)

## Weekly tax news

### Business tax

**Resolve tax disputes more quickly using in-house facilitation:** The ATO has [advised](#) that in-house facilitation is now available to settle disputes. The service is available for disputes in audits and objections involving indirect tax, small business, individual taxpayers, private groups and high wealth individuals.

### Consolidation groups – franking issue: Taxation Determination (TD) released:

- [TD 2014/8](#): A franking credit arises in the franking account of a head company of a consolidated group when a franked distribution is made by an entity that is not a member of the consolidated group to a trust that is a subsidiary member of the consolidated group. This occurs provided that the head company is entitled to a tax offset under Division 207 of the *Income Tax Assessment Act 1997* (ITAA 1997) because of the franked distribution and satisfies the residency requirement for the income year in which the distribution is made.

**Research and Development: Inquiry into the Australian Innovation System:** On 18 March 2014, the Senate referred an [inquiry into Australia's innovation system](#) to the Senate Economics References Committee for inquiry and report. Deloitte has been invited to make a submission to this inquiry. Broadly, the [terms of reference](#) for the inquiry consider the challenges to Australian industries and jobs posed by increasing global competition in innovation, science, engineering, research and education. Submissions to this inquiry are due by 31 July 2014, and the Committee is due to report to the Senate by the first sitting day of July 2015.

**Dividend washing arrangements – extension of self-amendment period:** The ATO has [advised](#) that on 19 March 2014 they issued a number of letters that advised the recipients that the ATO holds information that indicates the recipient, or an entity closely associated with the recipient, participated in a franking credit arrangement where two sets of franking credits have been claimed on what is effectively the same parcel of shares. The ATO has indicated that the recipient of these letters should check their records and consider seeking a self-amendment of tax returns or franking credit claims before 24 April 2014. The ATO has now advised they will extend the self-amendment period without penalties, to a date that will be four weeks from publication of the final Dividend Washing Tax Determination which is still to be advised (currently [Draft Taxation Determination TD 2014/D1](#)).

**Consultation Hub – matters outside scope:** The ATO has [included](#) a list of matters which are considered outside the scope of their consultation process. They have advised that other action has been taken to address these matters.

**Promoter penalty case – *Ludekens & Anor* – special leave hearing transcript:** The [transcript](#) of the hearing at which the High Court [refused](#) the taxpayer's application for special leave to appeal against the Full Federal Court decision in [Commissioner of Taxation v Ludekens \[2013\] FCAFC 100](#) has been released. The Full Court held that each respondent contravened section 290-50(1) of Schedule 1 of the *Taxation Administration Act 1953* in dealing with their respective investors in a particular managed investment scheme and were accordingly liable to civil penalties under the promoter penalty regime.

**[Back to top](#)**

## [Employment taxes](#)

### **Living away from home allowance Taxation Determination released:**

- [TD 2014/9](#): This TD sets out the amounts that the Commissioner considers reasonable for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit for the fringe benefits tax year commencing on 1 April 2014. If the total of an employee's food or drink expenses exceeds the amount the Commissioner considers reasonable, the substantiation provisions under section 31G of the FBTA will apply.

**[Back to top](#)**

## [Individuals and family groups](#)

### **CGT treatment of trustees of testamentary trusts – Practice Statement (PSLA) updated:**

- [PS LA 2003/12](#): The practice statement has been updated to clarify that the cost base and reduced cost base of the asset in the hands of the ultimate beneficiary will be determined by reference to the cost base and reduced cost base of the asset in the hands of the legal personal representative.

**[Back to top](#)**

## [Superannuation](#)

### **Self Managed Superannuation Funds (SMSF) Limited Recourse Borrowing Arrangements**

**(LRBA) in-house Asset Exclusion:** This [legislative instrument](#) was registered on 10 April 2014 and ensures that an investment in a related trust held by a SMSF as a required part of a LRBA is excluded from being an in-house asset of the SMSF in the circumstances where there is a mismatch on the timing of the holding of the asset and the timing of the commencement of the borrowing or the repayment of the borrowing.

**Information on Division 293 tax:** The ATO has [released](#) information on the Division 293 tax which is being introduced in the 2012-13 income year. (Division 293 is a 15% tax on superannuation contributions of individuals earning income greater than \$300,000.)

**[Back to top](#)**

## Indirect taxes

**Opportunity for businesses to recover New Zealand GST costs:** New Zealand's GST law has been changed to allow businesses that are not resident in New Zealand to claim back GST charged on acquisitions made in New Zealand. The [new arrangements](#) took effect from 1 April 2014 and allow qualifying non-New Zealand resident businesses to recover the GST component of business-related goods and services received in New Zealand (e.g. accommodation, meals, training courses, conferences and tradeshows).

To qualify as a non-resident GST business claimant and register under the new arrangements, an Australian entity must:

- be registered for GST in Australia (or if not required to be registered, be carrying out a taxable activity with an annual turnover of more than NZ\$60,000)
- not carry out, or be intending to carry out, a taxable activity in New Zealand, nor be a member of, or intending to become a member of, a New Zealand GST group carrying out a taxable activity in New Zealand
- not be providing services, if it is reasonably foreseeable that the services will be received in New Zealand by an entity that is not registered for New Zealand GST
- receive goods or services in New Zealand
- expect the GST refund claim in its first GST taxable period to exceed \$NZ500.

Under the new arrangements, non-resident GST business claimants can register for GST on a monthly, two-monthly or six monthly basis, and can submit their registration application with their first GST return. Registered non-resident GST businesses must file a GST return for each taxable period, even if only a 'nil' return, attaching supporting tax invoices, proof of payment issued by each supplier and GST calculations. The New Zealand Inland Revenue anticipates paying GST refunds to non-resident claimants within 90 days.

**OECD Global Forum on VAT:** The OECD Global Forum on VAT met in Tokyo on 17-18 April 2014 to discuss progress made in the development of the [OECD International VAT/GST Guidelines](#). The Guidelines are intended to serve as a global standard on the application of VAT/GST to cross-border trade in services and intangibles, by addressing risks of double taxation and unintended non-taxation that result from inconsistencies in the application of VAT/GST to international trade.

The Global Forum endorsed the chapters of the Guidelines that have been prepared to date (i.e. Chapters 1 to 3) These chapters set standards in the areas of VAT/GST neutrality (i.e. taxing private consumption and not businesses), and making VAT/GST on cross-border business to business trade in services and intangibles destination-based (i.e. only taxed in the country of the recipient of the service or intangible). The OECD has encouraged countries to immediately begin using the completed chapters of the Guidelines as a point of reference when evaluating and developing the country's VAT/GST rules and administrative practice.

The Global Forum also urged the OECD to complete its work on the remaining chapters of the Guidelines, including to address the VAT/GST treatment of cross-border supplies of services and intangibles to private consumers, particularly in view of the growth of online shopping. The completed Guidelines are proposed to be ready for presentation to the Global Forum for endorsement at its next meeting in November 2015. Click to view the OECD's [press release](#) and the [Statement of Outcomes](#) for the Global Forum.

**Draft Goods and Services Tax Ruling (GSTR) expected to be released on 23 April 2014:**

- GSTR 2014/D1: Motor vehicle incentive payments.

**Wine Equalisation Tax Ruling (WETR) expected to be released on 23 April 2014:**

- WETR 2014/1: Arrangements of the kind described in [TA 2013/2](#) Wine equalisation tax producer rebate schemes. Previously issued as [WETR 2013/D1](#).

**Back to top**

**International tax**

**OECD – comments published:** The OECD has published comments received in respect of the following discussion drafts of the OECD's [Action Plan on Base Erosion and Profit Shifting](#):

- **BEPS Action 6 – Preventing Treaty Abuse:** This [discussion draft](#) describes the work to be undertaken to prevent treaty abuse, and in particular treaty shopping. Deloitte UK and Deloitte US have lodged submissions on the discussion draft – click [here](#) to view the submissions
- **BEPS Action 1 – Address the tax challenges of the digital economy:** This [discussion draft](#) focuses on the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation. Deloitte UK has lodged a submission on the discussion draft – click [here](#) to view its submission.

**Public consultation – transfer pricing documentation and country by country reporting:** The OECD have [indicated](#) that they will be holding a public consultation on 19<sup>th</sup> May 2014 on the [discussion draft](#) on transfer pricing documentation and the development of a template for country-by-country reporting of income, taxes and economic activity for tax administrations.

**Draft TD expected to be released on 23 April 2014:**

- TD 2014/D10: Does forex realisation event 4 happen to the debtor under section 775-55(1) of the ITAA 1997 on repayment of a loan taken out prior to the effective date of a choice to use the applicable functional currency and denominated in the same non-AUD currency that later becomes the applicable functional currency?

**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](mailto: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](http://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](http://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.