



## Tax highlights

24 March 2014

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### Key developments this week

**OECD discussion drafts on hybrid mismatch arrangements:** As part of the OECD’s base erosion and profit shifting project, the OECD has [released](#) two discussion drafts on proposals to neutralise the effect of hybrid mismatch arrangements, which are arrangements exploiting differences in the tax treatment of instruments, entities or transfers between two or more countries.

The [first discussion draft](#) sets out recommendations for the design of domestic rules to neutralise the effect of hybrid mismatch arrangements.

The [second discussion draft](#) discusses the impact of the OECD model tax treaty on those rules and sets out recommendations for the development of model treaty provisions to clarify the treatment of hybrid entities.

The OECD seeks public input on both discussion drafts and to this end has requested that comments be submitted by 2 May 2014. A public consultation meeting is then scheduled to be held in Paris on 15 May 2014.

**Annual review of draft effective lives for common depreciation items:** The ATO is [seeking](#) comments on a draft list of recommendations proposed to be made as part of an ongoing review of Table B of [TR 2013/4](#). Table B lists the ATO’s estimate of effective life for depreciating assets.

**Preventing “dividend washing” – exposure draft (ED) legislation released:** On 24 March 2014, the Government released [ED legislation and explanatory material](#) concerning proposed amendments to prevent “dividend washing”. This follows the Government’s [announcement](#) on 6 November 2013 that it intends to proceed with this measure. Broadly, dividend washing refers to an arrangement under which a taxpayer may obtain multiple franking credits in respect of a single underlying economic interest. To dividend wash, an entity sells an interest after becoming entitled to receive a fully franked distribution in respect of that interest, then shortly after purchases a new and substantially identical interest that also provides an entitlement to another fully franked distribution. The ED legislation proposes to:

- Deny an entity the benefits of any additional franking credits that an entity receives as a

result of dividend washing

- Provide an exception for individuals whose annual franking credit entitlement is below \$5,000.

The amendments are proposed to apply to distributions made on or after 1 July 2013. Submissions on the ED legislation are due on 14 April 2014.

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## *Weekly tax news*

### **Business tax**

**Bills receive Royal Assent:** The following Bills received Royal Assent on 18 March 2014:

- [Tax and Superannuation Laws Amendment \(2014 Measures No. 1\) Bill 2014](#)
- [Excise Tariff Amendment \(Tobacco\) Bill 2014](#) and [Customs Tariff Amendment \(Tobacco\) Bill 2014](#).

**Bill on the move:** The following Bill was passed by the House of Representatives last week (with one Government amendment) and will now move to the Senate:

- [Export Market Development Grants Amendment Bill 2014](#).

**Bills introduced:** The following Bills were introduced into the House of Representatives last week:

- [Clean Energy Finance Corporation \(Abolition\) Bill 2013 \[No. 2\]](#): This Bill proposes to abolish the Clean Energy Finance Corporation (CEFC) and provide transitional provisions which transfer the CEFC's existing contractual assets and liabilities, both investment and otherwise, to the Commonwealth
- [Omnibus Repeal Day \(Autumn 2014\) Bill 2014](#): As part of the Government's plan to cut \$1 billion in red tape every year, this Bill proposes to repeal legislation across ten portfolios. There will be two parliamentary repeal days every year, with the first one scheduled to be held in the House of Representatives on 26 March 2014. The Government's Cutting Red Tape website provides a [consolidated list](#) of deregulation initiatives announced by the Government as part of the 2014 Autumn Repeal Day
- [Paid Parental Leave Amendment Bill 2014](#): This Bill proposes to remove the requirement for employers to provide Government funded parental leave pay to their eligible long-term employees. From 1 July 2014, employees will be paid directly by the Department of Human Services (DHS), unless an employer opts in to provide parental leave pay to its employees and an employee agrees for their employer to pay them
- [Australian Charities and Not-for-profits Commission \(Repeal\) \(No. 1\) Bill 2014](#): This is the first of two Bills that proposes to repeal the Australian Charities and Not-for-profits Commission (ACNC).

**Progress of Bills relating to the repeal of the carbon tax:** The [Clean Energy Legislation \(Carbon Tax Repeal\) Bill 2013](#) and related bills were debated in the Senate last week. These Bills were negated at the third reading stage and will no longer proceed. The [Climate Change Authority \(Abolition\) Bill 2013](#) and [Clean Energy Finance Corporation \(Abolition\) Bill 2013](#) were previously negated at the second reading stage in the Senate.

**Senate Economics Legislation Committee R&D report released:** The Senate Economics Legislation Committee has recommended in their [report](#) that the [Tax Laws Amendment \(Research and Development\) Bill 2013](#) be passed. Aside from reviewing the content of the submissions made, the Committee's comments were:

- The Committee was provided with evidence that supports the contention that the R&D incentive could be better targeted and given the need to strengthen the Budget position, the Committee supports the Bill
- The retrospective nature is not problematic given the changes have been widely foreshadowed
- The upcoming tax reform white paper will be useful to consider wider consultation but this does not mean the R&D incentive cannot be amended in the meantime
- They will further consider the concept of assessable income in light of certain industries such as life insurance companies and petrol retailers.

**Appeals update – Howard – High Court hearing transcript:** The [transcript](#) of the taxpayer's appeal to the High Court against the decision of the Full Federal Court in [Howard v Commissioner of Taxation \[2012\] FCAFC 149](#) is now available. The taxpayer's application for special leave to appeal to the High Court was [granted](#) to the extent that it related to the Full Federal Court's decision that an award of damages was not received by him as trustee and had the character of assessable income in his hands. For a summary of the Full Federal Court decision, refer to [Tax highlights 5 November 2012](#).

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## [Employment taxes](#)

### **Taxation Determinations (TDs) scheduled for release on 26 March 2014:**

- TD 2014/3: Housing fringe benefits - For the purposes of section 28 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986), what are the indexation factors for valuing non-remote housing for the fringe benefits tax (FBT) year commencing on 1 April 2014?
- TD 2014/4: FBT record keeping exemption - For the purposes of section 135C of the FBTAA 1986, what is the exemption threshold for the FBT year commencing on 1 April 2014?
- TD 2014/5: Loan & motor vehicle fringe benefits - What is the benchmark interest rate to be used for the FBT year commencing on 1 April 2014?
- TD 2014/6: Motor vehicle fringe benefits - What are the rates to be applied on a cents per kilometre basis for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car for the FBT year commencing on 1 April 2014?

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## [Individuals and family groups](#)

### **Taxation determination (TD) released on the value of trading stock taken for private use:**

- [TD 2014/2](#): This TD provides an update of amounts that the Commissioner will accept as estimates of the value of goods taken from trading stock for private use in the 2013-14 income year by taxpayers in certain businesses

**Small business consultation panel:** The ATO is [inviting](#) Australian small business owners to apply to join it's new small business consultation panel. The ATO states that the panel will explore

opportunities to reduce the time it takes for business operators to comply with their employer, super and tax obligations so they can get back to the important job of running their small business.

**Applying small business CGT concessions:** The ATO has [provided](#) tools and guides to help taxpayers applying CGT concessions against the sale or disposal of a small business asset such as property, shares, collectables or precious metals.

**Compliance activity – superannuation guarantee obligations:** The ATO [advised](#) that it is working with the management advice and consulting, hairdressing and beauty, and clothing retailing industries to ensure they meet their super guarantee obligations. Audit activity focusing on these industries is to start in July 2014.

**Small Business Concessions- Decision impact statement (DIS) released on *Gutteridge*:** The Commissioner has released a [DIS](#) concerning the decision of the Full Federal Court in [Gutteridge and Commissioner of Taxation \[2013\] AATA 947](#). In that case, the Administrative Appeals Tribunal (AAT) 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 *Income Tax Assessment Act 1997* (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. For a summary of the AAT's decision, refer to [Tax highlights 14 January 2014](#).

The ATO accepts the AAT decision, however they do not accept that the 'reasonable expectation' test in section 328-125(3) of the ITAA 1997 can be substituted with an 'accustomed to act' test in all cases. It depends on an examination of all the circumstances of a case. The ATO has indicated that if there is no history at all of a trustee having acted on the directions of another, there may nonetheless be an expectation that they would act on the directions of a particular person, were such directions to be given.

**Sustaining the Superannuation Contribution Concession – exposure draft (ED) legislation released:** On 20 March 2014, Treasury advised the release of ED legislation and explanatory material concerning a proposed methodology for determining defined benefit contributions for Division 293 tax purposes (at the time of writing, Treasury had not posted the full text of the legislation and explanatory material on its website, however, when released, the materials are expected to be available [here](#)).

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## [Non-profit organisations](#)

**Understanding Financial Reports of not-for-profits:** CPA Australia has [released](#) a guide to help users better understand the not-for-profit financial reporting system.

**Registering charities:** The ATO has [indicated](#) that all 30 June balancing charities must submit their 2013 Annual Information Statements to the ACNC by 31 March 2014.

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## State and Territory taxes

**Queensland: Building and construction levy calculations based on GST-inclusive costs of projects:** The Queensland Magistrates Court has confirmed a decision of the Queensland Building and Construction Industry Authority that **GST-inclusive** project costs are to be used when calculating the industry training levy, long service leave levy and work health and safety levy imposed on entities undertaking building and construction work in Queensland. The levies are imposed by the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld). Under the Act, the three levies are calculated as a specified percentage of the “cost of building and construction work”, a phrase defined as “the total of all costs that relate to the work directly or indirectly”.

The taxpayer contended that the term ‘cost’ in this context must be construed as meaning the **actual** cost to the entity undertaking a project. As such, the taxpayer said, the GST component included in the price of acquisitions or importations for the project should necessarily be excluded as part of the ‘cost’ to the extent that the entity was able to claim an offsetting GST input tax credit. The magistrate rejected this contention, noting that while it would appear to be “inappropriate” to impose the levies on the GST component of contract prices paid or payable in relation to a project, the Act makes no distinction of the type of cost incurred and, accordingly, all costs are included when determining the levies payable. The magistrate stated that whatever input tax credits that the taxpayer is entitled to recover in respect of project acquisitions or importations are “immaterial” to the cost.

The magistrate also confirmed the Authority’s finding that amounts paid by the taxpayer to acquire overseas various goods that were manufactured outside Australia and then imported here for incorporation into the taxpayer’s project also formed part of the “cost of building and construction work” and were subject to the levies. The magistrate also considered a further issue about whether the taxpayer was responsible for levies on all costs associated with compliance with various conditions of a project’s approval imposed by the Queensland and Commonwealth Governments. The magistrate concluded that the taxpayer should not be subject to levies on costs of approval-related work that it did not need to do (e.g. costs paid to local authorities towards the construction of roads and social infrastructure) – click to view [Australia Pacific P/L v Building and Construction Industry Authority \[2014\] QMC 004](#).

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## International tax

**UK Budget 2014:** The Chancellor of the Exchequer delivered his Budget to the UK Parliament on 19 March 2014. To view Deloitte’s comprehensive commentary of the UK Budget 2014, click [here](#). To access the full text of key announcements, Budget documents and other information, refer to the UK Government [Budget 2014](#) page. A [document](#) which sets out the detail of each tax policy measure announced at Budget 2014 is also available on the UK Government website.

**Foreign Account Tax Compliance Act (FATCA):** The ATO has [released](#) an information page regarding FATCA which includes some useful links to the IRS and US Dept. of Treasury website.

### **Draft Taxation Ruling (TR) scheduled for release on 26 March 2014:**

- TR 2014/D2: The application of the foreign income tax offset limit under section 770-75 of the

ITAA 1997 to foreign currency hedging transactions.

**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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