



Tax highlights

25 August 2014

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Key developments this week

Tax treatment of Bitcoin – ATO releases preliminary views: On 20 August 2014, the ATO released a [guidance paper](#) together with several draft tax determinations and a draft goods and services tax (GST) ruling on the tax treatment of Bitcoin transactions in Australia.

In summary, the ATO's preliminary view is that transactions with Bitcoin are to be treated as akin to barter arrangements, with similar tax consequences. Broadly, the ATO's preliminary views are that:

- Bitcoin is not 'currency' or a 'foreign currency' for Australian tax law purposes: [TD 2014/D11](#)
- Bitcoin is an asset for capital gains tax (CGT) purposes: [TD 2014/D12](#)
- Bitcoin is trading stock when held for the purpose of sale or exchange in the ordinary course of a business: [TD 2014/D13](#)
- The provision of Bitcoin by an employer to an employee in respect of their employment is a property fringe benefit for fringe benefits tax purposes: [TD 2014/D14](#)
- For GST purposes, Bitcoin is not 'money' and the transfer of Bitcoin is a supply, but not a financial supply, for GST purposes: [GSTR 2014/D3](#).

Generally there will be no income tax or GST implications for individuals if they are not in business or carrying on an enterprise and they pay for goods and services in Bitcoin. However, in some circumstances there may be CGT implications.

Businesses need to record the value of Bitcoin transactions as part of their ordinary income. They must also charge GST when they supply Bitcoin and may be subject to GST when receiving Bitcoin in return for goods and services. Records required in relation to Bitcoin transactions include the date of transaction, the amount in Australian dollars (which can be taken from a reputable online exchange), what the transaction was for, and who the other party was (even if this is just their Bitcoin address).

Bitcoin is a crypto-currency that has been touted as an alternative to state-backed currencies. Bitcoin uses a system of open source processes to govern the currency and is primarily supported by a peer-to-peer network. This allows Bitcoin to operate outside the traditional payments system and for exchanges to occur without an intermediary (for further information, see the Deloitte "[Bitcoin: The New Gold Rush?](#)" report and [infographic](#) and the article published by Deloitte University Press [Bitcoin: Fact. Fiction. Future](#)).

According to the [Blockchain](#) website, as of August 2014, there are over 13 million Bitcoin in circulation worldwide, with a total market capitalization of approximately US\$6.7 billion. Based on a seven-day average, it is estimated that there is a transaction volume of approximately US\$50 million of Bitcoin transactions each day. The ATO has estimated that approximately 1,000 businesses use Bitcoin in Australia.

Businesses that are considering accepting Bitcoin, or using Bitcoin, as payment for goods and services now have a clearer idea of the ATO preliminary view of the Australian income tax and GST consequences of the transactions. Note that the ATO has mostly contained its analysis to Australian tax consequences for transactions occurring between Australian residents and has directed its comments to Bitcoin, although the ATO has stated the draft rulings apply more broadly to other crypto-currencies that have the same characteristics.

Senior Assistant Commissioner Michael Hardy [stated](#) that the ATO has consulted extensively with Bitcoin experts, businesses, industry bodies and other external stakeholders to develop this guidance, and taxpayers could seek a private binding ruling if their circumstances are not covered. This consultation on the Australian tax treatment of Bitcoin and other crypto-currencies was undertaken earlier this year and the [ATO Rulings Program](#) (as at 2 July 2014) had indicated that the ATO was drafting one TD to clarify the ATO view regarding whether Bitcoin was a foreign currency for income tax purposes. In the end, the ATO has released four draft TDs and one GST draft ruling covering several tax issues, together with the guidance paper, primarily with the aim, according to the [Consultation Hub](#), of providing final guidance in time for taxpayers to complete their 2013-14 income tax returns. Comments on the draft tax determinations and GST draft ruling can be made until 3 October 2014.

Legislation proposed for introduction in the 2014 Spring sittings: The [list](#) of legislation proposed for introduction in the 2014 Spring sittings (between 26 August and 4 December) has been released. This includes proposed Bills that contain measures to:

- Ensure foreign pension funds can access the managed investment trust withholding tax regime
- Reduce the rates of the tax offsets available through the research and development (R&D) tax incentive
- Introduce an exploration development incentive for shareholders of small mineral exploration companies for greenfields mineral exploration
- Amend the capital gains tax system to provide a look-through treatment for 'earn-out arrangements'
- Amend the *Customs Act 1901* and the *Customs Tariff Act 1995* to implement the Korea-Australia Free Trade Agreement
- Provide the arrangements for replacing the Australian Charities and Not-for-profits Commission, which will be repealed by the [Australian Charities and Not-for-profits Commission \(Repeal\) \(No. 1\) Bill 2014](#).

Comment: Despite good intentions late last year, where the Coalition [announced](#) its plans to proceed with 37 of the 92 announced but un-enacted measures outstanding from the previous Government, less than half of the measures have been introduced to date. Some of the delay may have been due to priorities given to election promises and Budget announcements, or announced reviews into the legislation such as TOFA.

We have seen legislation in relation to thin capitalisation, dividend washing, the foreign resident CGT regime, tobacco excise and limiting the research and development incentive, but the Government still has not introduced important legislation in relation to the CGT regime, loss recoupment rules, TOFA, consolidation, managed investment trusts, the investment manager regime and third party reporting. A number of measures such as third party reporting, managed investment trusts and the offshore banking unit regime changes have had their start dates delayed by a year or more.

Two of the backlogged measures are proposed for introduction into the Spring sittings listed above, being measures allowing foreign pension funds to access the MIT withholding tax regime, and amending the CGT system to provide a look through treatment for earn-out arrangements. We would expect to see further legislation introduced in relation to other announced but un-enacted measures as the sittings progress.

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Draft legislation program for the Senate this week: According to the [draft legislation program](#), debate is scheduled to resume in the Senate on the following Bills this week:

- [Tax Laws Amendment \(Research and Development\) Bill 2013](#): Broadly, this Bill proposes to deny companies with aggregated assessable income of \$20 billion or more for an income year access to the R&D tax incentive
- [Omnibus Repeal Day \(Autumn 2014\) Bill 2014](#): This Bill proposes to amend or repeal legislation across ten portfolios as part of the Government's plan to cut unnecessary legislation and regulation.

ATO data matching programs: The Commissioner published gazette notices containing details of the following data matching programs to be conducted by the ATO:

- [Banking Transparency Strategy](#): The ATO will request and collect the account details of customers from specified banks in order to identify Australian resident taxpayers with offshore bank accounts which may evidence undeclared income and/or gains for the income years ended 30 June 2012 to 2015
- [Taxable Government grants and payments](#): The ATO will acquire details of entities receiving taxable grants and payments from various Federal, State and Territory and Local Government departments, agencies and authorities, with a view to identifying non-compliance with lodgment and payment obligations under taxation law.
- [Music industry royalty payments](#): The ATO will acquire details of entities collecting and distributing music royalty payments for the 2011 to 2013 income years from the specified sources, with a view to identifying non-compliance with registration, lodgment, reporting and payment obligations under taxation law.

Transcript of hearing into tax disputes: The [transcript](#) from the 14 August 2014 hearing into tax disputes that was held by the House of Representatives Standing Committee on Tax and Revenue in Melbourne has now been published. A focus of the Committee was the ATO's dispute resolution process and whether an independent review process outside of the ATO would be a better outcome for the parties. The Committee also met in Sydney on 18th August, however a transcript is not yet available for this hearing.

Mining – PRRT Taxation Ruling TR 2014/6 scheduled for release on 27 August 2014: This ruling will consider the meaning of 'involved in or in connection with exploration for petroleum' for the purposes of section 37(1)(a) of the *Petroleum Resource Rent Tax Assessment Act 1987*. This ruling was previously issued as [TR 2013/D4](#).

Class ruling CR 2014/66 issued on demerger: Demerger of Kogi Iron Limited by TGP Australia Limited.

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[Individuals and family groups](#)

Intra-private group loan not deemed dividend to shareholder: As part of a lengthy decision covering several goods and services tax and income tax issues relating to three taxpayers, the AAT has rejected the Commissioner's contention that loans made by one private company to another company, both of which had a common sole shareholder, could be treated as a loan made by the private company to the shareholder and consequently assessable to the shareholder as a private company deemed dividend. The Commissioner had argued that the loans from the private company to the other company were "transferred" or "redirected" to become loans from the private company to the shareholder. The AAT found there was no suggestion that the other company paid to the shareholder any of the moneys it had received or that the shareholder would assume responsibility to repay the loan. Further the AAT rejected the Commissioner's contention that the payment by the private company to the other company was for the "benefit" of the shareholder and therefore deemed to be a payment to the shareholder for the purposes of the deemed dividend rules. According to the AAT, the companies were separate legal entities, distinct from their sole shareholder and director and there was no reason to read the phrase "for the benefit of the entity" in the deemed dividend rules as having any different meaning to the accepted legal concept of a payment for the benefit of a party. Consequently, there were no payments made by the private company to or for the benefit of the shareholder, and no loans to the shareholder, which could attract the operation of the deemed dividend rules – click to view [The Taxpayers and Commissioner of Taxation \[2014\] AATA 572](#) (14 August 2014).

Darling special leave hearing transcript: The [transcript](#) of the hearing at which the High Court [refused](#) the taxpayer's application for special leave to appeal to the High Court against the Full Family Court decision in [Commissioner of Taxation & Darling \[2014\] FamCAFC 59](#) has been released. The Full Family Court set aside the Family Court decision in [Commissioner of Taxation & Darling and Anor \[2013\] FamCA 118](#) and allowed the Commissioner to obtain documents in a husband and wife's Family Court proceedings in relation to an audit of the husband's affairs.

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Superannuation

Superannuation contributions tax ATO ID released: [ATO ID 2014/27](#) states that payments made by a member to their unfunded defined benefits provider in respect of surcharge payable under *the Superannuation Contributions Tax (Assessment and Collection) Act 1997* are not contributions made to obtain superannuation benefits.

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Draft [GSTD 2014/D3](#) issued on supply of passenger transport: The ATO has released its preliminary view that 'destination outside Australia' for the transport of a passenger by sea under item 1(a) and item 4 of section 38-355(1) of the *A New Tax System (Goods and Services Tax) Act 1999* is a specific physical location outside Australia stopped at by the ship where that location is significant to the passenger, having regard objectively to the facts and circumstances at the time the transport is purchased.

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International tax

G20 – expected progress on BEPS this year: In a [special address](#) to the ICRIER International Conference on 21 August 2014, Barry Sterland, the Australian G20 Finance Deputy, stated that there are high expectations that the G20 will start to deliver tangible actions to combat tax avoidance and evasion this year, with aims to:

- Make substantial progress under the ambitious two year Action Plan on Base Erosion and Profit Shifting (BEPS), by delivering against 7 of the 15 action items
- Set out a clear pathway for implementation of the Common Reporting Standard
- Work with developing countries to ensure they benefit from efforts to strengthen our tax systems.

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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