



## Tax highlights

28 April 2014

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### Key developments this week

**Commission of Audit report release expected this week:** In a [speech](#) on 23 April 2014, the Treasurer advised that the final report of the Commission of Audit would be released this week – now expected to be on Thursday, 1 May 2014 at 2 pm. The Commission's aims were to examine the scope for efficiency and productivity improvements across all areas of Commonwealth expenditure, and to make recommendations to achieve savings sufficient to deliver a surplus of one per cent of GDP prior to 2024. According to the Treasurer, the report:

*“provides a very thorough analysis of the functions and roles of the Commonwealth Government. It also provides a clear look at the challenges ahead in restoring budget sustainability. Finally, it makes 86 recommendations for improving the efficiency of the government sector in Australia and for restoring budget integrity.”*

The Treasurer noted that the report has provided an important perspective for the framing of the May 2014-15 Federal Budget, although it has not been the only consideration.

**Emissions Reduction Fund White Paper released:** On 24 April 2014, the Minister for the Environment released a [White Paper](#) which outlines the Government's final position on the design, implementation and ongoing development of the Emissions Reduction Fund. Very broadly, to participate in the Emissions Reduction Fund, project proponents will register their emissions reduction projects (using an approved method to estimate likely emissions). These projects will then go through a pre-qualification process to ensure that projects can generate the stated emissions reductions within the timeframes indicated.

Project proponents can then participate in an auction (run quarterly, starting from the second half of 2014) to sell emissions reductions on the basis of a price per tonne of carbon dioxide equivalent. The Clean Energy Regulator (Regulator) will set a benchmark price for each auction, above which bids will not be considered.

The successful bidders will then enter into contracts in which the Government agrees to purchase emissions reductions from their projects. The projects will then be undertaken and emissions reductions will be reported to the Regulator who will issue credits to the project proponent. The project proponent will then receive payment from the Regulator for credits at the contract price.

## **GST treatment of motor vehicle incentive payments – Draft GST Ruling (GSTR) released:**

- [GSTR 2014/D1](#): This draft GSTR sets out the Commissioner's view about the goods and services tax (GST) consequences of incentive payments commonly made by motor vehicle manufacturers, importers and distributors (manufacturers) to motor vehicle dealers (dealers). The decision of the Full Federal Court in [AP Group Limited v Federal Commissioner of Taxation \(2013\) FCAFC 105](#) necessitated changes to the view that the Commissioner previously held about motor vehicle industry payments. The draft GSTR analyses a wide range of commonly occurring payments – including fleet rebates, run out model incentives, drive-away support payments, volume target achievement payments, payments for achieving performance targets unrelated to motor vehicles, incentive payments to reimburse financing and bailment costs, and demonstrator support payments – to determine whether each is 'consideration' for a supply made by the dealer (either to the manufacturer or to the customer), or else is received by the dealer without the dealer having made a supply. The draft GSTR identifies the resulting GST obligations and entitlements for manufacturers, dealers and GST-registered customers in relation to each payment type. The ATO has invited comments about the draft GSTR by 6 June 2014, including suggestions of other types of incentive payments in the motor vehicle industry that should be covered by the GSTR and any suggested transitional arrangements.

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## *Weekly tax news*

### **Business tax**

**Appeals update – SPI PowerNet – copyright deductions:** The Commissioner has [lodged](#) a notice of appeal to the Full Federal Court against the decision of the Federal Court in [SPI PowerNet Pty Ltd v Commissioner of Taxation \[2014\] FCA 261](#). In that case, the Federal Court held that a taxpayer was eligible for copyright deductions in relation to drawings, plans and other works under section 124R(5) of the *Income Tax Assessment Act 1936* (ITAA 1936). Deloitte Lawyers will be representing the taxpayer in this appeal.

### **Dividend washing – Taxation Determination (TD) scheduled for release on 30 April 2014:**

- TD 2014/10: Can section 177EA of the ITAA 1936 apply to a 'dividend washing' scheme of the type described in this TD? Previously issued as [TD 2014/D1](#).

As reported previously in *Tax highlights*, in mid-March 2014 the ATO issued a number of letters that advised recipients that the ATO holds information that indicates the recipient (or an associated entity) has participated in a franking credit arrangement where two sets of franking credits have been claimed on what was effectively the same parcel of shares. The ATO indicated that the recipients of these letters should check their records and consider seeking a self-amendment of tax returns or franking credit claims. The ATO recently [advised](#) that the deadline for the self-amendment period without penalties will be included in this final TD (it is expected that the deadline will be four weeks from the date of release).

**Large business bulletin – April 2014:** The ATO's [Large business bulletin](#) for April 2014 includes information on the following topics:

- **External compliance assurance process (ECAP):** The ECAP project is exploring a way

for the ATO to do basic assurance work using existing external compliance assurance processes. ECAP would be available to some public group taxpayers with turnover between \$100 million and \$5 billion. The final draft concept proposal will be considered by the consultative group at the next workshop in late April or early May, with associated papers being made publicly available. It is expected that the ATO will be in a position in late May or early June to make a decision concerning whether or not to proceed to a pilot

- **Guide to taxation of financial arrangements (TOFA):** The [guide to TOFA](#) has been updated to include new sections on pay-as-you-go instalments and tax return disclosures concerning TOFA gains and losses.

#### **ATO Interpretative Decision (ATO ID) released on capital allowances:**

- [ATO ID 2014/16](#): Computer software developed by the taxpayer for conjunctive use within its company group satisfies the definition of in-house software in section 995-1(1) of the ITAA 1997.

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### **Employment taxes**

#### **ATO ID released on FBT meal entertainment:**

- [ATO ID 2014/15](#): For the purposes of section 37AD of the *Fringe Benefits Tax Assessment Act 1986* (the meaning of provision of meal entertainment), an employee's car parking fees reimbursed by the employer is an expense incurred in providing the employee with travel because the fees were incurred as part of the employee's journey.

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### **Individuals and family groups**

**Maximum net asset value test calculation – ‘connected with’ another entity:** The Federal Court has set aside the Administrative Appeals Tribunal's (AAT) decision in [Altnot Pty Ltd and Commissioner of Taxation \[2013\] AATA 140](#) relating to the application of the maximum net asset value (MNAV) test for the purposes of the capital gains tax (CGT) small business concessions under Division 152 of the *Income Tax Assessment Act 1997* (ITAA 1997). For the 2007 income year, the taxpayer company did not include the full amount of a capital gain it derived on the sale of its interest in a carwash business on the basis that it was entitled to reduce the capital gain under the small business retirement exemption in section 152-305 of the ITAA 1997. The Commissioner issued an amended assessment including the full capital gain in the taxpayer's assessable income on the basis that the taxpayer was not entitled to the small business concession as the net value of the taxpayer's CGT assets and the CGT assets of entities 'connected with' the taxpayer exceeded the (then) \$5m threshold required under the MNAV test in section 152-15 of the ITAA 1997.

The AAT found that the 50% interest in a property in Queensland held by a director of the taxpayer (and 50% shareholder and, therefore, an entity 'connected with' the taxpayer) should not be disregarded for the purposes of the MNAV test. However, the AAT considered that the 50% interest in the property held by the director's wife should be disregarded for the purposes of the MNAV test because she did not hold any shares in the taxpayer company and was, therefore, not 'connected with' the company.

In setting aside the AAT's decision, the Federal Court found that the AAT did not consider whether the director's wife was deemed to be 'connected with' the taxpayer by virtue of section 152-30(2)(b) of the ITAA 1997 which required that her connection be determined also by reference to her 'small business CGT affiliates' (i.e. the director) or together with her 'small business CGT affiliates' (i.e. the director). Accordingly, the Court remitted the case back to the AAT for reconsideration – [click to view Commissioner of Taxation v Alnot Pty Ltd \[2014\] FCA 362](#) (13 March 2014).

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### Indirect taxes

**EPBS and \$2 billion+ projects – Removal of AIO officer requirement:** Effective from 17 April 2014, proponents of projects valued at \$2 billion or more ceased to be required to employ an Australian Industry Opportunity (AIO) officer within their procurement team or global supply office as a condition of securing assistance under the Enhanced Project By-law Scheme (EPBS). The AIO officer requirement had only been in place since 1 July 2013 and no explanation has been offered for its removal. AusIndustry has published [revised EPBS Policy and Administrative Guidelines](#) to reflect the change. The EPBS offers eligible Australian project proponents access to customs duty concessions on eligible imports for major projects in the mining, resource processing, agriculture, food processing, food packaging, manufacturing, gas supply, power supply, and water supply industries.

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### State taxes

**Victoria: Stamp duty increase for motor vehicle purchases:** The Victorian Treasurer has [announced](#) that the stamp duty payable on the purchase of a new or used motor vehicle will increase by \$0.40 per \$200 or part thereof, from 1 July 2014. The Treasurer has also announced a \$25 increase to registration fees for light vehicle (<4.5 tonnes), also from 1 July 2014. Legislative amendments to make these changes will be introduced into the Victorian Parliament on Budget day, 6 May 2014.

**ACT: Lease premium duty introduced for long-term commercial leases:** The *Duties Act 1999* (ACT) has been [amended](#), effective 29 April 2014, to change the basis on which duty is charged on long-term commercial leases (i.e. leases that have a term of 30 years or more). The new provisions introduce a premium-based method for determining duty liability, bringing the ACT into line with other jurisdictions in terms of the mechanism for taxing commercial leases that involve a de facto transfer of land. Together with the [Duties \(Commercial Lease with Premium\) Determination 2014 \(No 1\)](#), the new provisions impose a duty liability on long-term commercial leases for which a 'premium' (or consideration other than rent) is paid, if the consideration is more than 25% above market rent for the lease. Where a lease is subject to duty, the entire premium is dutiable, not just the component above the 25% threshold.

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### International tax

**Draft Taxation Determination (TD) released on foreign exchange realisation events:**

- [TD 2014/D10](#): This draft TD sets out the Commissioner's preliminary view that forex realisation event 4 happens 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. The repayment of the loan represents the cessation of an obligation to pay 'foreign currency' (section 775-55(1)(a)) that was incurred in return for receiving an amount of Australian or 'foreign currency' (section 775-55(1)(b)(ix)).

**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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