



2010-11 Compliance focus on Fuel and Excise

The Australian Taxation Office (ATO) released its *Compliance Program for 2010-11* on 8 July 2010, which details the ATO's key risk areas and the strategies it plans to adopt to target those risks. Being aware of the ATO's areas of focus may help taxpayers focus their own efforts on the areas which the ATO considers to be more risky.

Snapshot of the ATO's Excise and Fuel Tax Credit 2010-11 compliance activities

The major focus this year is on supporting large market clients, providing clarity on their obligations and targeting potential non-compliance in the fuel tax and excise environment. Highlights include:

- Focus on large entities subject to mergers, acquisitions or demergers, with an emphasis on the residual effect of new systems and staffing. Particular issues might include who is claiming the fuel tax credits during the business transitional period (ensuring no double claiming for example when an acquisition occurs).
- Utilisation of system based auditing methodologies. The ATO is now using

more sophisticated and automated methodologies for ensuring fuel tax claims match with the raw fuel purchases data processed through a taxpayer's systems.

- Emphasis on reviewing a number of taxpayers involved in the development of major resource projects. With the recent expansion of large-scale infrastructure and resources projects in Australia, the ATO is focused on ensuring that only those engaged in eligible activities (mining for example) are claiming at the full fuel tax credit rate.
- A continued focus on ensuring that fuel tax credits are claimed by the correct entity whenever contractor arrangements involve the provision of fuel. This can be a difficult area for taxpayers to get right, when large-scale projects involve contractors accessing fuel and there is no clear contractual guidance as to whether the contractor is using the fuel on its own behalf. The ATO continues to question whether related or contracted parties have identified the proper claimant of any fuel tax credit. In these situations, it is possible that more than one entity has claimed fuel tax credits for the same fuel.

Going forward, we expect the ATO to continue their focus on fuel tax credit claims in the resource and infrastructure sectors. As the fuel tax credit system has now been in place for four years, the ATO may be less concessionary in its treatment of errors. With this four-year anniversary, claimants may also experience missed opportunities to claim for fuel tax suffered more than four years ago (this is the first time that the system has been restricted to claiming within four years).

Inside this issue

2010-11 Compliance focus on Fuel and Excise	1
Appetite for Change	2
Communicating with your company board	5
No tax, no risk: another Part IVA loss for the Commissioner	6
Corporate tax developments	7
International developments	8
Goods and Services Tax (GST) Developments	10
Personal and expatriate taxation	11
State taxes	12
Legislation update	12
Other news	13

For further information, please contact your usual PricewaterhouseCoopers adviser or:



Gary Dutton, Executive Director
Phone: +61 7 3257 8783
gary.dutton@au.pwc.au



Bill Cole, Director
Phone: +61 3 8603 6043
bill.cole@au.pwc.au



Darryl Daisley, Executive Director
Phone: +61 8 9238 3341
darryl.daisley@au.pwc.com



Suzi Russell, Partner
Phone: +61 2 8266 1057
suzi.russell@au.pwc.com



Russell Wilkinson, Director
Phone: +61 2 8266 2168
russell.wilkinson@au.pwc.au

Appetite for Change

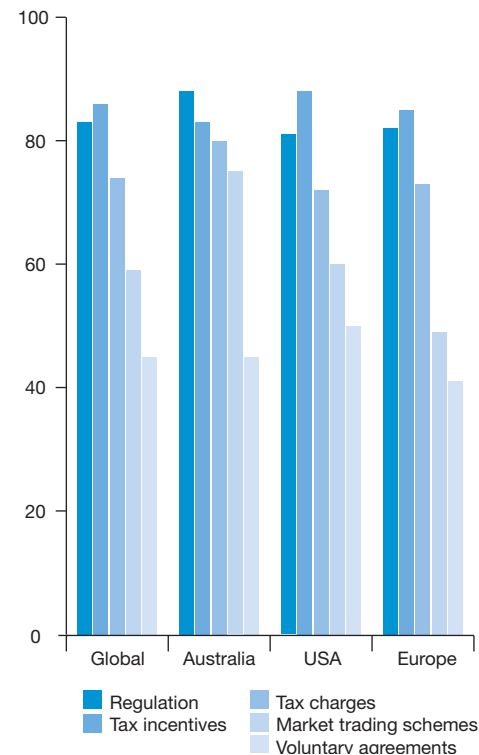
The recently launched PricewaterhouseCoopers *Appetite for Change* survey provides an overview of attitudes in the international business community towards environmental regulation, legislation and taxes. The survey revealed some key Australian company sentiments and comprised of almost 700 interviews in 15 countries, with executives responsible for setting company environmental policy and strategy.

Continuing the trend of previous surveys, the Australian companies surveyed believe that they will be under increased pressure over the next few years to be seen as ‘green’. One fifth of surveyed Australian companies are responding to this pressure by focussing on the way in which their green credentials are perceived by key stakeholders. This finding is significant when compared with overseas companies, of which only two per cent share this view with their Australian counterparts.

The survey also revealed that Australian companies are far more likely than their overseas counterparts to believe that market trading schemes are an effective tool for encouraging business to reduce its environmental impact. Moreover, respondent Australian companies are

far more likely to expect carbon trading to have an impact on their businesses in the medium term. This is despite the prevailing view that regulation, tax incentives and tax charges are the most effective tools for encouraging business to reduce its environmental impact.

Efficacy of tools to reduce environmental impact – a corporate perspective



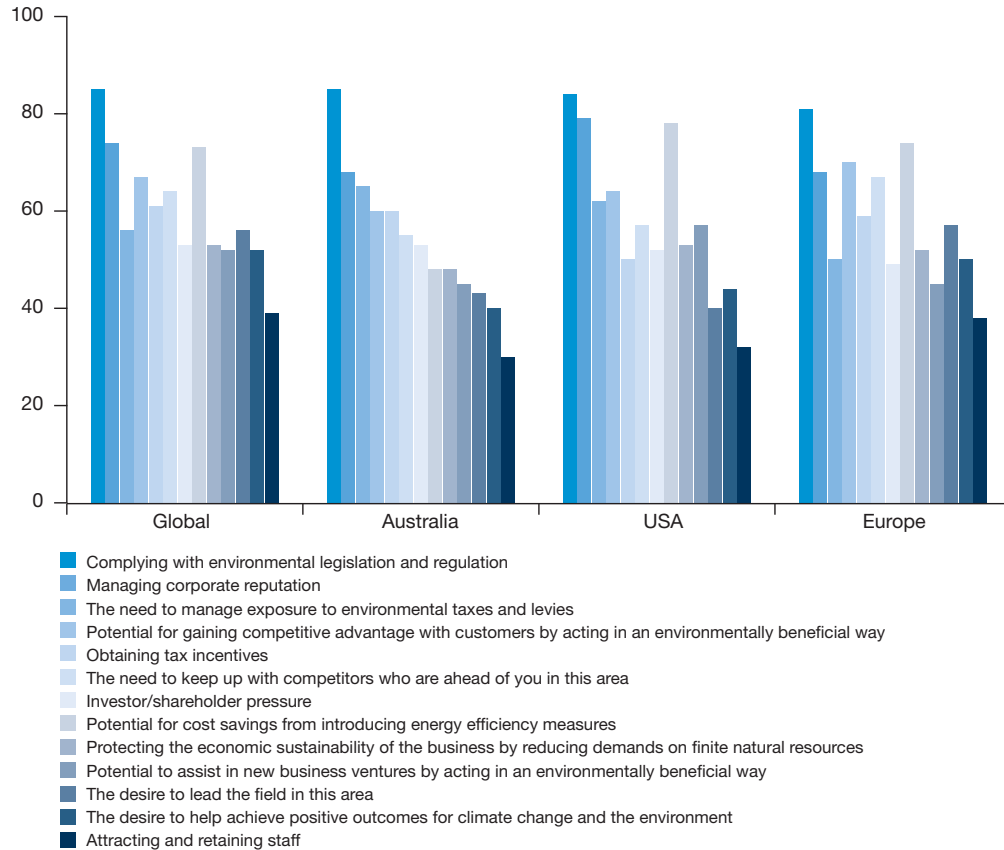
Respondents were asked their opinion as to how effective each of the above tools are / would be at encouraging their business to reduce its environmental impact even though the survey had already uncovered broad-based opinion that the existing environmental taxes, regulations and incentives are ineffective, inconsistent and unclear.

As distilled in the adjacent table, businesses would like to see a combination of “carrots” (tax incentives) and “sticks” (regulation and tax charges) as encouragement to reduce their environmental impact. Carbon taxes, market trading schemes and incentives all have widespread support in the business community.

Business leaders believe that stable, properly enforced policies protect fair competition and facilitate long-term planning. To this end, respondents commented that the ideal regulatory environment would provide a ‘baseline’ of regulations allowing all companies to operate at the same regulatory level across jurisdictions whilst minimising compliance costs. In an Australian context, baseline regulations would take the form of a single national scheme replacing divergent state and territory based laws and regulations.



The following table uncovered further attitudes towards regulation, and the most influential factors in managing exposure to environmental taxes and levies.

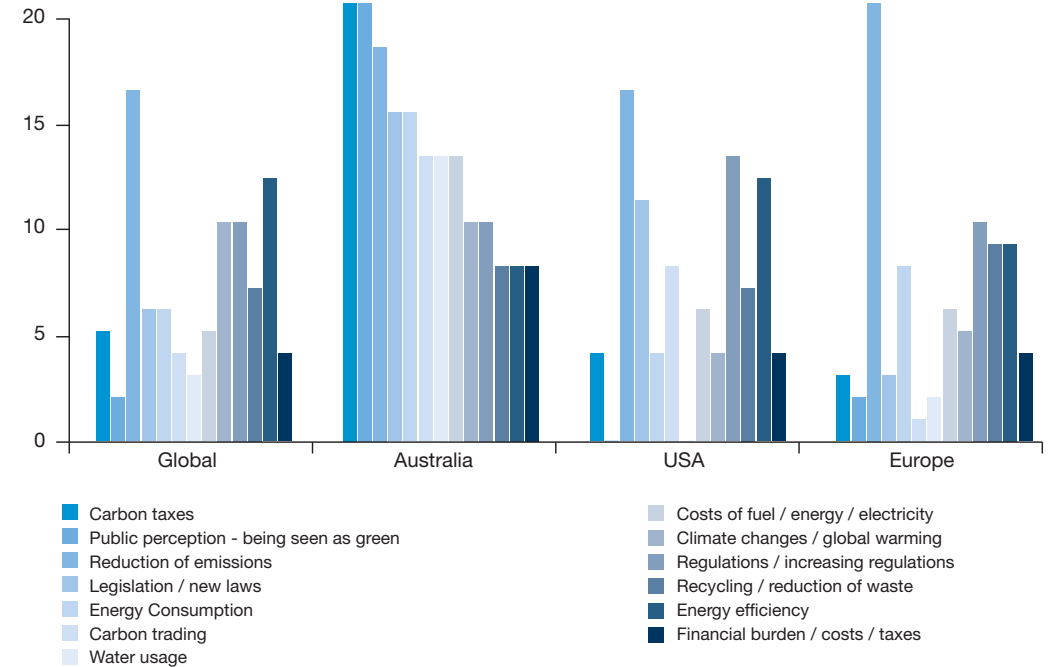


60 per cent of Australian companies feel that current policy is effective in providing signals to business on the need to assess its environmental impact and energy usage. This result is significantly higher than the global

average of 44 per cent. In addition, 53 per cent of Australian respondents feel that Government policy is effective in encouraging business to significantly change its environmental behaviour.

In relation to climate change sentiment, Australian companies scored higher, on average, for every major indicator, apart from energy efficiency, as revealed in the following table.

The top climate change related issues that companies anticipate will have the greatest impact on the way they do business in the next 2-5 years



In relation to tax incentives, 18 per cent of Australian companies feel that the current available tax incentives are sufficiently motivating to make businesses change their behaviour, while 93 per cent believe the Government needs to offer more incentives to support investment in environmentally beneficial activities, processes and new technologies.

20 per cent of respondent Australian companies believe it is clear what tax incentives exist and how to apply for them, compared to 32 per cent globally. However, 73 per cent of surveyed companies feel that meeting the criteria required by current tax incentives is too onerous to make the incentives worth applying for.



It is clear that corporate executives are now responding to a growing regulatory and policy network aimed at combating environmental threats and climate change. In Australia, this trend is even more pronounced.

Back in the lead-up to the 2007 election, the major political parties in Australia committed to introducing an emissions trading scheme (ETS). Fast forward to today, and another election campaign. Prime Minister Gillard has unveiled her climate change plans, which include a 150-person citizens assembly to work on a consensus for climate change and a crackdown on dirty power plants, a \$1 billion investment into “greening” the electricity grid and also further investment into green technology. This seems a world away from a formal ETS and reaction to this by Australian businesses and the public has been mixed, with many feeling that this is not enough to tackle the issues. What is certain is that the climate change debate is hotting up again and we can expect to see this as a key political agenda item over the next few months, whether or not any real action is taken by the (new) government.

For further information, please contact your usual PricewaterhouseCoopers adviser or:



Suzi Russell, Partner
Phone: +61 2 8266 1057
suzi.russell@au.pwc.com



Liza Maimone
Phone: +61 (3) 8603 4150
liza.maimone@au.pwc.com

Communicating with your company board

In last month's *TaxTalk* we looked at the tax governance aspects of the Large Business and Tax Compliance booklet released by the Australian Taxation Office (ATO). Given the need for in-house tax professionals to inform their governance board of this publication and its relevance for their organisation, this month we discuss communication between the tax function and the board. Obviously these principles are equally valid for reporting to other stakeholders, such as the audit committee.

Seize the opportunity!

Typically tax issues are not well understood by directors and senior executives who do not have a tax background. The value that a well-run tax function can add to a business is greater than many people realise. Any chance to demystify the tax affairs of the organisation, and emphasise the strategic and financial importance of good tax management, should be regarded as a great opportunity.

Some key things to consider before you present include:

- What content is for the board's information, and what content requires their approval (i.e. what empowerment

do you need and is this distinction clear to the board)?

- What risks should the board be aware of (e.g. disputes with revenue authorities, potential law changes and so on)?
- How should achievements be communicated (e.g. value protected or created, efficiencies gained, and so on)?

Format of communication

Recognising which issues and information need to be flagged is only one part of implementing an effective communication strategy. How the message is conveyed to the various internal stakeholders can be just as important. Tax departments should take time to understand what their audience wants. Organisations will have different preferences regarding length and format of information.

Some factors to consider include:

- How much information should be provided? Should it be in written form, or is a brief slide presentation the best method for the stakeholder? Can you capture your message within an 'elevator pitch'?

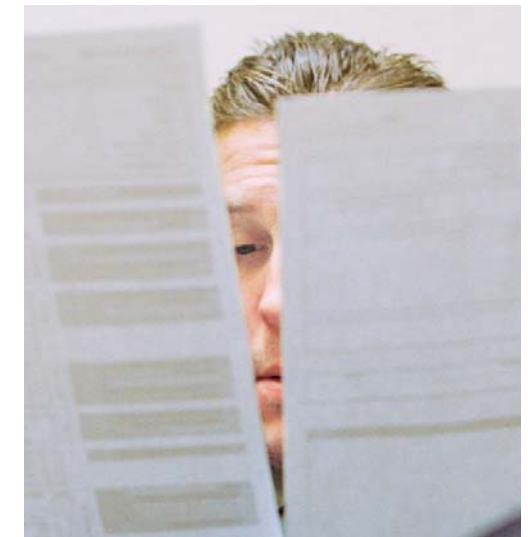
- What level of technical detail is appropriate for your audience? Should you eliminate jargon, section numbers and so on from your presentation?
- Should diagrams such as traffic lights, matrices and graphs be used to illustrate the progress of a matter, or to show the level of risks for certain issues?
- Should you circulate and discuss your presentation with certain individuals beforehand?
- Should you use the same format when distributing information so that it can be used effectively for year on year or quarterly comparison purposes?
- How are other internal departments communicating with the board? Are you tied to a certain corporate format, or can you leverage successful methods that your colleagues use?

Do you have alignment with the board?

Having organisational clarity around the role of the tax function is a key component for tax departments in meeting internal expectations within their organisation. Ensuring that the

board understands and approves your tax strategy and tax risk framework is essential.

It is critical to define the limits of the tax function's responsibilities, and to make sure that these are communicated within the organisation. Otherwise expectation gaps might exist between what the tax function perceive their responsibilities are, and what the board expects. Similarly, the Head of Tax needs to understand what his delegated authorities are, and when he needs to seek approval, or bring matters to the board's attention.



Australian Taxation Office access to board papers

Tax managers should bear in mind that board papers, internal correspondence and minutes of meetings are frequently requested by the ATO during audits and risk reviews. Ambiguous wording of documents should be avoided. Where appropriate, organisations should ensure that procedures are in place to protect information under legal professional privilege or the ‘accountants’ concession’.

Closing the expectation gap with the ATO

The release of the new Large Business and Tax Compliance booklet has highlighted the ATO’s increased expectations of good tax corporate governance. The ATO expects tax risk management to operate both at the board level and at the day-to-day operational level. The ATO encourages robust board and corporate decision-making processes for major transactions, and corporate strategies that incorporate appropriate coverage of tax matters. Furthermore, the ATO expect the board to understand their organisation’s risk rating, whether there are any major tax disagreements, and whether potential tax liabilities have been adequately provided for.

These expectations place an increased onus on tax functions to communicate effectively with their board on their tax affairs. Heads of Tax may wish to use the ATO booklet as a prompt to revisit their internal tax governance framework and methods of communication, and to decide if they wish to close any expectation gaps that may exist with both the ATO and their internal stakeholders.

For more information please contact your usual PricewaterhouseCoopers advisor or:



Tim Cox, Partner
Phone: +61 3 8603 6181
tim.cox@au.pwc.com



Grant Stewart, Partner
Phone: +61 2 8266 2644
grant.stewart@au.pwc.com



Kathy Pettitt, Director
Phone: +61 2 8266 8449
kathy.pettitt@au.pwc.com



Damian Morrin, Director
Phone: +61 3 8603 4780
damian.morrin@au.pwc.com



Michael Flanderka, Director
Phone: +61 7 3257 8335
michael.flanderka@au.pwc.com

No tax, no risk: another Part IVA loss for the Commissioner

The Commissioner of Taxation has suffered another loss in a Part IVA anti-avoidance case, with the Full Federal Court unanimously dismissing the Commissioner’s appeal in *Commissioner of Taxation v News Australia Holdings Pty Ltd* [2010] FCAFC 78. At issue was a \$1.5 billion capital loss arising from a global restructure.

The appeal focused on the test of whether the taxpayer had the dominant purpose of obtaining a ‘tax benefit’ (paragraph (b) of section 177D of the *Income Tax Assessment Act 1936*). The Commissioner’s main appeal ground was that the Administrative Appeals Tribunal (the Tribunal), which made the original decision in the dispute in favour of the taxpayer, had mistakenly taken account of the taxpayer’s subjective intentions or motives in entering the transactions, rather than considering those intentions objectively.

The Full Court noted that it can be difficult to identify the difference between a subjective and an objective intention, but it held that the Tribunal had properly considered the factors specified in paragraph (b) of section 177D objectively.



Importantly for taxpayers, the Full Court said that objective intention must be established by evidence. In this case, the evidence put forward by the taxpayer showed that it intended that the restructure satisfy its “no tax, no tax risk” policy. The Commissioner said that this was subjective evidence that should have been disregarded. The Full Court held that it was objective evidence which accorded with the taxpayer’s subjective intention.

Further, the Full Court said that “[it is] hardly surprising if objective intention in fact accords with the person’s subjective intention”. This reinforces that the objective purpose test must be applied in the context of the taxpayer’s actual circumstances, and

not against some artificial context that the Commissioner might suggest. It also shows how the burden of proof can be shifted back towards the Commissioner once a taxpayer puts forward strong factual evidence.

Also of interest to taxpayers who may have to consider commencing proceedings against the Commissioner, is the regard the Full Court had to the findings and deliberations of the Tribunal. The Tribunal's factual findings (for instance that the restructure would not have proceeded if it breached the "no tax, no tax risk" policy) were critical to the Full Court finding in favour of the taxpayer. As this and other recent cases show, the Tribunal has become a viable option for hearing significant tax cases. Other attractions for going to the Tribunal may include confidentiality during the proceedings, no costs orders and differences in pre-trial procedures when compared to the Federal Court.

For more information please contact your usual PricewaterhouseCoopers advisor or:



Michael Bersten, Partner
Phone: +61 2 8266 6858
michael.bersten@au.pwc.com



Paul McNab, Partner
Phone: +61 2 8266 5640
paul.mcnab@au.pwc.com



Chris Sievers, Partner
Phone: +61 3 8603 4208
chris.sievers@au.pwc.com

Corporate tax developments

Taxation Ruling on pre-sale dividends

In Taxation Ruling TR 2010/4, which was issued on 30 June 2010, the Commissioner sets out his view on when a dividend will be included in the capital proceeds from a disposal of shares that happens under a contract or a Scheme of Arrangement. TR 2010/4 was previously issued in draft as TR 2009/D5 and is substantially the same as the draft.

Specifically, the Ruling explains when a dividend declared or paid by an Australian resident company (target company) to a resident shareholder (vendor shareholder) who has disposed of shares in the target company under a contract of sale will constitute capital proceeds under the capital gains tax (CGT) provisions. The Ruling also explains the consequences for the vendor shareholder under section 118-20 of the *Income Tax Assessment Act 1997* (the anti-overlap provision) where a dividend forms part of the capital proceeds from a disposal of shares and being a dividend is also assessable income of resident taxpayers.

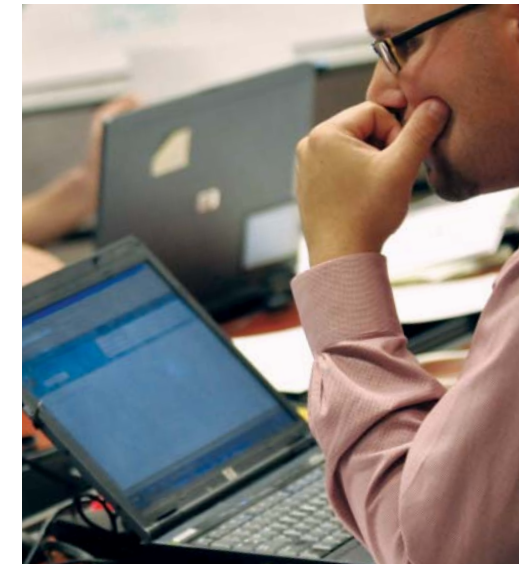
The Ruling does not deal with share buy-backs, nor does it consider the CGT consequences for resident shareholders

who dispose of shares in non-resident companies, or non-resident shareholders who dispose of shares in resident companies.

In relation to a CGT event involving the sale of shares under contract, TR 2010/4 states that a dividend will be capital proceeds for CGT purposes if any one or more of the following circumstances is present:

- the vendor shareholder is entitled under the contract to refuse to complete the transfer if the dividend is not declared by the target company or if the dividend is not paid by the target company, or
- the vendor shareholder is entitled to refuse to complete the transfer if a purchaser or third party does not finance or facilitate payment of the dividend, or
- the vendor shareholder has bargained for any other obligation on the part of the purchaser to bring about the result that the dividend shall be received by the vendor shareholder.

Similarly, a dividend will be capital proceeds happening in respect of a disposal of shares under a Scheme of Arrangement if the vendor shareholders'



acceptance of the Scheme of Arrangement (by the requisite majority vote) is conditional upon one or more of the following circumstances being present:

- the dividend being declared by the target company, or
- the purchaser or a third party financing or facilitating payment of the dividend, or
- the purchaser or a third party being obliged to bring about the result that the dividend will be received by the vendor shareholders.

While generally the anti overlap rule will ensure that the dividend is not double taxed (i.e. by being taken into account

in calculating a capital gain as well as being included in assessable income), an effect of treating a dividend as included in capital proceeds for CGT purposes is that the dividend is taken into account in determining whether there is a capital loss on disposal of the shares.

From a purchaser's perspective, TR 2010/4 concludes that a dividend paid by the target company to vendor shareholders will not be part of the first element of the CGT cost base of the shares for the purchaser as it will not be money the purchaser paid, or property it gave, or is required to pay or give, in respect of acquiring the shares.

The Ruling applies both before and after its date of issue.

For more information please contact your usual PricewaterhouseCoopers advisor or:



Ronen Vexler, Partner
Phone: +61 3 8603 3337
ronen.vexler@au.pwc.com



David Ireland, Partner
Phone: +61 2 8266 2883
david.ireland@au.pwc.com



Tom Seymour, Partner
Phone: +61 7 3257 8623
tom.seymour@au.pwc.com



Scott Bryant, Partner
Phone: +61 8 8218 7450
scott.bryant@au.pwc.com



Frank Cooper, Partner
Phone: +61 8 9238 3332
frank.cooper@au.pwc.com

International developments

Treasury discussion paper released for CFC rules

On 16 July 2010, the Assistant Treasurer released for public comment a discussion paper that represents the latest step towards reforming the Controlled Foreign Company (CFC) rules.

Submissions can be made on the discussion paper by 31 August 2010.

For further information see our *TaxTalk* Special edition: CFC and foreign income changes – Second Consultation paper issued by Treasury.

Government to update Australia-India tax treaty

On 15 July 2010, the Assistant Treasurer announced that Australia and India will shortly commence discussions to update their existing tax treaty. In making the announcement, the Assistant Treasurer said that “the existing treaty was signed in 1991 and these latest discussions will provide an opportunity to make any necessary updates to accommodate modern business practice and current international treaty policy”.

Interested parties may make submissions to the Department of Treasury (with respect to enhancement of the existing treaty) by 13 August 2010.

Treaties Committee to examine twenty new treaties

Federal Parliament's Treaties Committee has commenced an inquiry into 20 treaties tabled in the Parliament during June 2010.

The treaties being examined by the Committee are the:

- Exchange of Letters Constituting an Agreement with New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement
- Exchange of Letters Constituting an Agreement with New Zealand to amend Annex G of the Australia New Zealand Closer Economic Relations Trade Agreement
- Tax Information Exchange Agreements with the following countries: Anguilla, Bahamas, Belize, Cayman Islands, Dominica, Grenada, Principality of Monaco, Saint Christopher (Saint Kitts) and Nevis, Saint Lucia,



Saint Vincent and the Grenadines, Samoa, San Marino, Turks and Caicos Islands, Vanuatu and the Kingdom of Netherlands, in respect of Aruba

- Agreements with Samoa and Kingdom of Netherlands, in respect of Aruba on the Allocation of Taxing Rights with respect to Certain Income of Individuals and to establish a Mutual Agreement Procedure in respect of Transfer Pricing Adjustment, and
- Convention on Limitation of Liability for Maritime Claims.

United Kingdom Budget

The United Kingdom (UK) Budget was handed down on 22 June 2010. Main points of interest from the UK Budget are:

- The phased reduction in the rate of corporation tax from 28 per cent to 24 per cent over the next four years.
- Capital allowances – writing down allowance (WDA) on main pool to be reduced from 20 per cent to 18 per cent and from 10 per cent to 8 per cent on the special rate pool for periods ending on/after 1 April 2012 (oil and gas ring fence activities will retain existing capital allowance treatment). Also the maximum limit of the annual investment allowance

has been reduced from £100,000 to £25,000.

- Further anti-avoidance rules are being proposed to stop profits on loans/derivatives from falling out of account for tax by way of accounting de-recognition (with effect from 22 June 2010). No other specific anti-avoidance legislation seems to have been issued.
- The Government announced that it intends to examine whether the option of a general anti-avoidance rule (GAAR) should form one element of strengthened defences to avoidance risk.
- The Government has indicated that new controlled foreign company (CFC) rules will be legislated in spring 2012 with a consultation over the summer on interim improvements to be legislated in spring 2011. The Government also indicated that it intended to move to a more territorial basis for taxing the profits of foreign branches (including considering retention of branch loss relief) to be consulted on in summer 2010, and a further consultation reviewing the taxation of intellectual property.
- The long-promised draft legislation on capital distributions has been published. Broadly, ‘distributions’ within the old rules will not be precluded from being exempt under the dividend exemption by virtue only of being of a capital nature. In particular, distributions from reserves arising from a reduction in capital are within the dividend exemption – and this has been made retrospective to 1 July 2009.
- The standard rate for value added tax (VAT) will increase from 17.5 per cent to 20 per cent from 4 January 2011.
- Personal allowance for individuals under 65 years of age will increase to £7,475, but the basic rate limit will be reduced so that higher rate taxpayers will not benefit. The changes will have effect from 6 April 2011.
- The Capital Gains Tax (CGT) rate will increase from 18 per cent to 28 per cent for higher rate tax payers. The 18 per cent rate will remain, where a taxpayer’s total income (including gains) does not exceed the upper limit of the income tax basic rate band. For trustees and personal representatives of deceased persons, the rate is increased from 18 per cent to 28 per cent. The rate of CGT for gains qualifying for entrepreneurs’ relief will remain at 10 per cent. However, the lifetimes limit on gains qualifying for entrepreneurs’ relief will be increased from £2 million to £5 million. Annual exemption limits will remain at

£10,100. The changes will have effect from 23 June 2010.

- A Bank Levy will be introduced from 1 January 2011. It is proposed that the levy will apply to the global consolidated balance sheet of UK banking groups and building societies, the aggregated subsidiary and branch balance sheets of foreign banks and banking groups operating in the UK, and the balance sheets of UK banks in nonbanking groups. The proposal is that the levy will be set at a rate of 0.07 per cent, with a lower initial rate of 0.04 per cent in 2011.

For more information please contact your usual PricewaterhouseCoopers advisor or:



Peter Collins, Partner
Phone: +61 3 8603 6247
peter.collins@au.pwc.com



Mark O'Reilly, Partner
Phone: +61 2 8266 2979
mark.oreilly@au.pwc.com



Graham Sorensen, Partner
Phone: +61 7 3257 8548
graham.sorensen@au.pwc.com



Amanda Hocking, Partner
Phone: +61 8 8218 7082
amanda.hocking@au.pwc.com



Frank Cooper, Partner
Phone: +61 8 9238 3332
frank.cooper@au.pwc.com



Alistair Hutson, Partner
Phone: +61 8 8218 7467
alistair.hutson@au.pwc.com

Goods and Services Tax (GST) Developments

Decision for the taxpayer on GST and multi-party arrangements

The majority of the Full Federal Court found for the taxpayer in *Commissioner of Taxation v Secretary to the Department of Transport (Victoria)* [2010] FCAFC 84, concerning the GST treatment of amounts paid by the Department of Transport (DoT) to taxi operators who provided transport services to Victorian residents with disabilities. The Court held that the DoT was entitled to input tax credits for the GST component of the payments made to taxi operators on the basis that:

- the DoT acquired from the taxi operator a service, being the transport of disabled residents, and
- the supply of the service to the DoT was a taxable supply, which was made for consideration (being the payment made by the DoT to the taxi operator).

This is a significant decision with potentially broad ramifications, particularly in the government sector.

Entities involved in multi-party arrangements should consider their position in the light of this case,

particularly in circumstances where they pay an amount (e.g. rebate / subsidy / concession) to another party and are not claiming any input tax credits, while the other party is remitting GST.

Margin scheme and anti-avoidance

In *The Taxpayer and Commissioner of Taxation* [2010] AATA 497, the Administrative Appeals Tribunal (AAT) found partly for the Commissioner and partly for the taxpayer in a case concerning the application of the GST margin scheme and anti-avoidance provisions to arrangements for the sale of residential units by a GST group.

The representative member of the GST group, a property developer, transferred two partly completed developments to its wholly owned subsidiaries (which were members of the GST group). The parties agreed that the sale was a supply of a going concern. The completed residential units were subsequently sold using the margin scheme, with the representative member of the group being the named vendor in the majority, but not all, of the contracts for sale.

The issues in this case were:

- the appropriate consideration for the acquisition when calculating the margin on the supplies of the completed residential units (i.e. whether it should be based on the sale price between the representative member and the subsidiaries, or whether the GST group should be treated as a single entity, so that the consideration should be determined by reference to the price originally paid by the property developer), and
- whether the Commissioner was entitled to make a declaration that the GST anti-avoidance provisions applied.

On the first issue, the AAT held that for supplies up to and including 16 March 2005 (after which date the margin scheme provisions were amended to incorporate a look-through approach), the taxpayer was entitled to apply the margin scheme on the basis that the consideration for the acquisition was the sale price between the representative member and the subsidiaries. The AAT was of the view that there was no 'single entity rule' for GST purposes, so as to take all supplies and acquisitions within a GST group out of the GST system.

For supplies on and from 17 March 2005, the margin for each supply was the amount by which the consideration for the supply exceeded an approved valuation as at 1 July 2000, and the taxpayer should be given the opportunity to produce to the Commissioner approved valuations of each development.

With respect to the anti-avoidance issue, the AAT concluded that for supplies up to and including 16 March 2005, made pursuant to contracts completed by the representative member, the anti-avoidance provisions should apply. This was on the basis that the dominant purpose and the principal effect of the scheme was to obtain a tax benefit (being a reduction in the consideration for the acquisition and therefore the GST payable).

The AAT set aside the Commissioner's anti-avoidance declaration in respect of supplies up to and including 16 March 2005, made pursuant to contracts completed by each of the subsidiaries.

GST administration reform update

- The Assistant Treasurer has announced the release of a discussion paper on reforms to the GST financial supply provisions. The discussion paper outlines proposed changes

announced by the Government in the 2010-11 Federal Budget. The closing date for submissions is 30 August 2010.

- *A New Tax System (Goods and Services Tax) Third Party Adjustment Note Information Requirements Determination (No 1) 2010*, registered on 16 June 2010, outlines the information that must be included in a Third Party Adjustment Note under subsection 134-20(1)(d) of the GST legislation. Division 134 was inserted by *Tax Laws Amendment (2010 GST Administration Measures No 1) Act 2010* to create an adjustment in situations where an entity (the payer, e.g. a manufacturer) supplying things for re-sale makes a monetary payment to a third party (the payee, e.g. a consumer) in connection with the payee's acquisition of those things.

Interest-free loans received by developers of retirement villages

In Draft Goods and Services Tax Ruling, GSTR 2010/D1 (Draft Ruling) issued on 9 June 2010, the Commissioner sets out his preliminary views on the implications of interest-free loans (ingoing contributions) received by a developer of a retirement village tenanted under a 'loan/lease arrangement'.

In particular, this Draft Ruling considers:

- the relevance of ingoing contributions in determining the consideration for the supply by sale of a retirement village to a purchaser, and
- the extent to which input tax credits are available for creditable acquisitions or importations made by the developer to construct or develop the village.

The Draft Ruling has not been well-received by the retirement village industry, as the views expressed by the ATO are not in line with the industry position, nor the way that retirement villages are currently valued.

For more information please contact your usual PricewaterhouseCoopers adviser or:



Patrick Walker, Partner
Phone: +61 2 8266 1596
patrick.walker@au.pwc.com



Ken Fehily, Partner
Phone: +61 3 8603 6216
ken.fehily@au.pwc.com



Kevin O'Rourke, Partner
Phone: +61 2 8266 3114
kevin.orourke@au.pwc.com



Michelle Tremain, Partner
Phone: +61 8 9238 3403
michelle.tremain@au.pwc.com



Amanda Hocking, Partner
Phone: +61 8 8218 7082
amanda.hocking@au.pwc.com

Personal and expatriate taxation

Extension of drawdown relief for account-based pensions

On 30 June 2010, the Assistant Treasurer and the Minister for Financial Services, Superannuation and Corporate Law jointly announced that the Government will continue to support self-funded retirees by extending the drawdown relief currently provided for account-based superannuation pensions to the 2010-11 year.

Currently, it is a requirement that minimum payments be made from a superannuation account-based pension at least annually. Minimum payments are determined by age and the value of the account balance as at 1 July each year. The minimum annual payment rule is designed so that retirees draw down on their superannuation capital over their retirement. This rule recognises that superannuation is designed as a retirement savings vehicle with substantial tax concessions.

According to the announcement, the drawdown relief will be the same as in the past two years, in the form of a 50 per cent reduction in the minimum payment amounts for account-based, allocated and market linked pensions.



The relief will require amendments to the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Accounts Regulations 1997*. With the dissolving of Federal Parliament, it will be necessary to closely monitor the making of these regulations by the new Parliament.

Reasonable travel and overtime meal allowance expense amounts for 2010-11

On 30 June 2010, the Commissioner of Taxation issued Taxation Determination TD 2010/19 which sets out what

the Commissioner considers to be 'reasonable amounts' for the *substantiation exception* for the 2010-11 year of income, in relation to claims made for:

- overtime meal allowance expenses – for food and drink in connection with overtime worked and where a meal allowance has been paid under an industrial instrument
- domestic travel allowance expenses – accommodation, food and drink, and incidentals that are covered by the allowance
- travel allowance expenses for employee truck drivers – food, drink and incidentals that are covered by the allowance, and
- overseas travel allowance expenses – food, drink and incidentals that are covered by the allowance.

This Determination applies to deductions claimed for work-related losses and outgoings incurred during the 2010-11 income year.

For more information please contact your usual PricewaterhouseCoopers advisor or:



Mike Forsdick, Partner
Phone: +61 2 8266 5767
mike.forsdick@au.pwc.com



John Sullivan, Partner
Phone: +61 2 8266 3216
john.william.sullivan@au.pwc.com



State Taxes

ACT: removal of duty on transfers of unquoted marketable securities

The Australian Capital Territory (ACT) Revenue Office has published details on its web site about the removal of duty on transfers of unquoted marketable securities. Any dutiable transaction where the agreement for transfer or the transfer (whichever is earlier) of unquoted marketable securities occurs after 30 June 2010 is not liable to ACT duty. The exception is where the landholder provisions in the duty legislation of the ACT are triggered – which will potentially

be the case where the company or unit trust (or a downstream entity) holds land, land and buildings or leases in the ACT. The removal of duty on unquoted marketable securities complements the earlier removal of duty on transfers of marketable securities listed on a recognised stock exchange.

For more information please contact your usual PricewaterhouseCoopers advisor or:



Barry Diamond, Partner
Phone: +61 3 8603 1118
barry.diamond@au.pwc.com



Angela Melick, Partner
Phone: +61 2 8266 7234
angela.melick@au.pwc.com



Stefan DeBellis, Executive Director
Phone: +61 7 3257 8781
stefan.debellis@au.pwc.com

Legislation update

The calling of a Federal Election has curtailed the Government's legislative program because all Bills before Parliament at that time lapse. If the elected Government wishes to legislate the measures contained in the lapsed Bills, the revised Bills will need to be introduced into the new Parliament.

Below is a list of tax-related Bills before Parliament as at 17 July 2010, when the Federal Election was called. As discussed above, these Bills have lapsed:

- *International Tax Agreements Amendment Bill (No 2) 2010*, introduced into Parliament on 23 June 2010 to give effect to the Second Protocol amending the Double Taxation Agreement (DTA) between Australia and Singapore.
- *Superannuation Legislation Amendment Bill 2010*, introduced into Parliament on 24 June 2010, proposes a number of superannuation-related amendments including:
 - transitional relief for funds claiming tax deductions for total and permanent disability (TPD) insurance premiums

- allowing the trustee of a regulated superannuation fund to acquire an asset in specie from a related party of the fund following the breakdown of a member's relationship, and
- to improve the operation of the superannuation sections of the income tax legislation (as announced in the 2010-11 Federal Budget).
- *Tax Laws Amendment (2010 Measures No 4) Bill 2010*, introduced into Parliament on 23 June 2010, proposes to amend the *A New Tax System (Goods and Services Tax) Act 1999* in relation to certain third party payment adjustments and to make a number of changes to the income tax law, including in relation to:
 - the capital gains tax (CGT) treatment of water entitlements and termination fees
 - foreign currency gains and losses
 - amendments to make it easier for takeovers and mergers regulated by the *Corporations Act 2001* to qualify for CGT scrip for scrip rollover
 - the list of deductible gift recipients
 - technical amendments to the taxation of financial arrangements (TOFA) provisions several of which were previously announced 4 September 2009, and
- debt/equity rules to extend the transitional arrangements relating to the application of the debt/equity rules for Upper Tier 2 instruments issued before 1 July 2001.
- *Tax Laws Amendment (Research and Development) Bill 2010* and *Income Tax Rates Amendment (Research & Development) Bill 2010*, introduced into Parliament on 13 May 2010, proposed to implement the new tax incentive for research and development (R&D).
- *Tradex Scheme Amendment Bill 2010* was introduced into Parliament on 16 June 2010 to clarify the eligibility of partnerships for the Tradex Scheme and remove redundant provisions.
- *The Family Assistance Legislation Amendment (Child Care Budget Measures) Bill 2010*, which was introduced into Parliament on 26 May 2010, proposes to amend the *A New Tax System (Family Assistance) Act 1999* to set the annual child care rebate limit at \$7,500 for four income years, starting from 1 July 2010, with the first indexation of this amount occurring on 1 July 2014.



Other news

Reportable employer superannuation contributions

On 30 June 2010, the Minister for Financial Services, Superannuation and Corporate Law announced a reform to clarify the scope of the reportable employer superannuation contributions definition, which is used in determining eligibility for a range of government financial assistance programs.

Reportable employer superannuation contributions (RESCs) are generally superannuation contributions made under a formal salary sacrifice agreement. However, they also include other contributions made on behalf of an individual that the individual has capacity to influence to ensure the definition is not subverted.

In his announcement the Minister said that “the Government has become aware that contributions made on behalf of an individual, which the individual or their employer have no real capacity to influence, are being captured by the RESC definition and hence being considered income for means-tested tax and transfer system programs”. According to the Minister these contributions typically include additional employer contributions that are prescribed in legislation and not capable of being influenced by the individual or their employer.

As a result of this unintended consequence, the Minister said that the law would be amended with effect from 1 July 2009 so that RESCs do not include contributions made on behalf of an

individual pursuant to legislation or other requirement that the individual and their employer cannot directly control. These changes are not intended to alter the fact that contributions to superannuation made under a formal salary sacrifice agreement are RESCs.

A new resources tax

On 2 July 2010, the Government announced changes to its previous proposal to legislate a Resources Super Profits Tax (RSPT), with the changed taxation arrangements to be called the Minerals Resource Rent Tax (MRRT). The MRRT will apply from 1 July 2012. Under the proposal, the MRRT regime will apply only to iron ore and coal in Australia. Under the terms of the announcement, the Government also proposes to extend the current Petroleum Resource Rent Tax (PRRT) regime to all Australian onshore and offshore oil and gas projects, including the North West Shelf.

In view of the projected reduction in revenue over the forward estimates, the previous proposal to ultimately cut the company tax rate to 28 per cent has been altered. While the company tax rate will continue to be cut to 29 per cent from 2013-14, it will not be further reduced to the previously announced 28 per cent under current fiscal conditions. Small companies will benefit from an

early cut to the company tax rate to 29 per cent from 2012-13.

For further details on the MRRT, see our *TaxTalk* Special edition: A Step Change by the Australian Government on the Proposed Resource Rent Tax Regime.

Initial maximum payment under EMDG scheme for 2009-10 grant year

On 1 July 2010, Austrade issued a media release advising that from 1 July 2010, the maximum amount initially payable for eligible expenses incurred in the grant year 2009-10 under the Export Market Development Grant (EMDG) scheme will be \$27,500. This is the maximum amount that will be paid as an initial instalment to eligible EMDG applicants upon assessment of their grant application.

The EMDG scheme is administered by Austrade and assists small and medium sized Australian businesses to become sustainable exporters by providing partial reimbursement of some export promotion expenses.

In its media release, Austrade states that \$27,500 is the maximum amount that will be paid as an initial instalment to eligible EMDG applicants upon assessment of their grant application. Accordingly, grant recipients for the 2009-10 grant year with an entitlement up to and including

\$27,500 will be paid in full. Recipients with entitlements above this amount will receive a second payment at the end of June 2011.

The shift from a profits test to a balance sheet test for dividend payments

Royal Assent for the *Corporations Amendment (Corporate Reporting Reform) Act 2010* was received on 28 June 2010, which amends section 254T of the *Corporations Act 2001 (Cth)* (the Act).

For many years, Australian company law has provided that dividends can only be paid out of available company profits. This was referred to as the 'profits test'. The amendments to the Act introduce a new three-tiered test which a company will need to satisfy in order to pay dividends. The new section 254T provides that a company must not pay a dividend unless:

- the company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend, and
- the payment of the dividend is fair and reasonable to the company's shareholders as a whole, and

- the payment of the dividend does not materially prejudice the company's ability to pay its creditors.

Existing directors' duties which are set out in the Act and which are designed to prevent insolvent trading will continue to apply.

The Act has been amended to remove the profits test due to concerns raised by the industry, which included:

- no guidance or definition of the word 'profit' was included in the Act, which made it difficult for directors to understand the legal requirements when paying dividends
- the nature of accounting principles for the calculation of profits has changed over time and Australian accounting standards now require that a large number of non-cash expenses be included in the determination of accounting profits, and
- the profits test is inconsistent with the trend to lessen the capital maintenance doctrine.

Company constitutions will require review to ensure dividend provisions are consistent with the new requirements in the Act. Many constitutions will contain articles drafted around the profits test which may inhibit the ability of a company to pay a dividend under the new law. In such cases, shareholder

approval will be required to amend the relevant article in the constitution.

For further information, please contact Andrew Wheeler on +61 (02) 8266 6401 or andrew.wheeler@au.pwc.com, or Kathleen Ward on +61 (2) 8266 6540 or kathleen.ward@au.pwc.com.

New regulations provide relief from the Tax Agent Services

On 9 July 2010, the Assistant Treasurer released Exposure Draft Regulations to give effect to his 23 April 2010 statement, in which he announced proposed exemptions from the new national tax agent services regime for 'in-house advisors' and custodians. Additionally the Assistant Treasurer announced a one year deferral of the application of the regime to financial planners.

In releasing the Exposure Draft Regulations, the Assistant Treasurer said that the proposed Regulations prescribe that the provision of tax agent advice within a tax consolidated group or other related entities will not be captured by the Tax Agent Services regime. This extends to:

- services provided between entities that are part of the same GST group
- services provided by an entity in discharging their own formal obligations to another entity, namely

trustees and responsible entities of a managed investment scheme

- services provided between separate legal entities that are carrying on a common economic enterprise and have the same or near same owners, namely wholly owned corporate groups, stapled groups, non-wholly owned groups and listed groups, and
- services provided between dual listed companies and between joint venture partners.

The changes will also provide certainty to custodians, who are not intended to be captured by the regime.

In addition, the proposed Regulations include a deferral of the tax agent services regime to financial planners for the period up to 23 April 2011.

Expanded access to film tax offsets to boost Australian film industry

On 9 July 2010, the Assistant Treasurer and the Minister for Environment Protection, Heritage and the Arts released draft legislation to expand access to film tax offsets as announced in the 2010-11 Federal Budget.

According to a media statement issued with the draft legislation, expanded

access to the film offsets will be facilitated by:

- reducing the minimum qualifying expenditure threshold for the Post, Digital and Visual Effects (PDV) Offset from \$5 million to \$500,000, and
- removing the requirement for productions spending between \$15 million and \$50 million in Australia to spend at least 70 per cent of the total production budget in Australia in order to qualify for the Location Offset.

The amendments are proposed to apply to productions commencing from 1 July 2010.

The next stage in development of an Investment Manager Regime

On 12 July 2010, the Assistant Treasurer and the Minister for Financial Services, Superannuation and Corporate Law jointly issued a media statement announcing the commencement of a further stage in the development of an investment manager regime (IMR) by a request to the Board of Taxation that it consider the design of an IMR as part of its review of collective investment vehicles (see next item).

The first stage of the process was the release on 11 May 2010 of a consultation paper on the taxation of conduit income of managed funds (see June 2010 edition of *TaxTalk*).

According to the media statement, the next stage of developing an IMR will be a review of the Australian and foreign income aspects of a comprehensive IMR as part of a broader Board of Taxation review into collective investment vehicles (CIVs). It is proposed that the IMR will provide a set of clear and comprehensive rules on the taxation of certain non-resident investments into Australian and offshore assets, and that the IMR will apply broadly, extending beyond funds management to cover a range of other activities in the financial sector.

Board of Taxation review of Collective Investment Vehicles tax regime

On 12 July 2010, the Assistant Treasurer and the Minister for Financial Services, Superannuation and Corporate Law jointly announced the Terms of Reference for a review by the Board of Taxation into the taxation arrangements that apply to collective investment vehicles (CIVs). CIVs are widely held investment vehicles with typically long-term portfolio investors that undertake primarily passive investment activities.

The review, which was announced in May 2010, will undertake to:

- assess the tax treatment of CIVs having regard to the new managed investment trust (MIT) tax framework, including whether a broader range of tax flow-through vehicles should be permitted
- consider the nature and extent of, and reasons for, any impediments to investment into Australia by foreign investors through CIVs
- consider the benefits of extending tax flow-through treatment for CIVs, including the degree to which a non-trust CIV would enhance industry's ability to attract foreign funds under management in Australia
- consider whether there are critical design features that would improve certainty and simplicity and enable

harmonisation, consistency and coherence across the various CIV regimes, including by rationalisation of regimes where possible, and

- examine the treatment of Venture Capital Limited Partnership vehicles in a way that recognises its policy objectives.

The Board has been asked to complete its full CIV review by 31 December 2011.

Government releases Cooper Review into superannuation

On 6 July 2010, the Minister for Financial Services, Superannuation and Corporate Law issued a media statement welcoming the final report of the review into the governance, efficiency, structure and operation of Australia's Superannuation System (the Cooper Review).



Further information

If you have any queries about issues raised in this edition or would like to be placed on the mailing list for *TaxTalk*, please contact one of the following:



Adelaide

Scott Bryant, Partner
Phone: +61 8 8218 7450
Fax: +61 8 8218 7812
scott.a.bryant@au.pwc.com



Brisbane

Tom Seymour, Partner
Phone: + 61 7 3257 8623
Fax: + 61 7 3031 9312
tom.seymour@au.pwc.com



Melbourne

Helen Fazzino, Partner
Phone: +61 3 8603 3673
Fax: +61 3 8613 2882
helen.fazzino@au.pwc.com



Perth

Frank Cooper, Partner
Phone: +61 8 9238 3332
Fax: +61 8 9488 8771
frank.cooper@au.pwc.com



Sydney

Brian Lawrence, Partner
Phone: +61 2 8266 5221
Fax: +61 2 8286 5221
brian.lawrence@au.pwc.com



Canberra

Todd Wills, Partner
Phone: +61 2 6271 3554
Fax: +61 2 6271 3854
todd.wills@au.pwc.com

Editor

Catherine Pasula
Communications and Marketing
PricewaterhouseCoopers
Phone: +61 3 8603 4987
catherine.pasula@au.pwc.com

Technical Editor

Geoff Dunn, Director
Tax Technical Knowledge Centre
PricewaterhouseCoopers Tax
Phone: +61 2 8266 5220
geoff.dunn@au.pwc.com

Media enquiries

Meghan Chalmers
Phone: +61 2 8266 2174
Mobile: 0412 716 186
meghan.chalmers@au.pwc.com

© 2010 PricewaterhouseCoopers. PricewaterhouseCoopers refers to the individual member firms of the worldwide PricewaterhouseCoopers organisation. All rights reserved. The information in this publication is provided for general guidance on matters of interest only. It should not be used as a substitute for consultation with professional accounting, tax, legal or other advisers.

This document is not intended or written by PricewaterhouseCoopers to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the tax payer. Before making any decision or taking any action, you should consult with your regular PricewaterhouseCoopers' professional. No warranty is given to the correctness of the information contained in this publication and no liability is accepted by the firm for any statement or opinion, or for any error or omission. TaxTalk is a registered trademark. Print Post Approved PP255003/01192.