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*What would you like to grow?*

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# Reportable Tax Position Schedule

On 11 May 2011 the Australian Tax Office (ATO) released a draft Reportable Tax Position (RTP) Schedule for comment. The Schedule will require some large business taxpayers to disclose information about their reportable tax positions (i.e. uncertain or contestable positions) as an attachment to their annual income tax return.

Initially only taxpayers in 'Quadrant 1' (higher risk) and 'Quadrant 2' (key taxpayers) under the large market Risk Differentiation Framework (RDF) who are notified in writing by the ATO will be required to complete the RTP Schedule. Taxpayers with an Annual Compliance Arrangement (ACA) will not be required to complete the Schedule.

Whilst the ATO is planning to issue a final release of the Schedule by 30 June 2011 with application to income years commencing on or after 1 July 2011 it is expected that the related guidance and commentary will continue to be clarified past this date as consultation continues. Please note that the Schedule will not apply to substituted accounting periods (SAPs) ending before 20 June 2012 (e.g. income years ending on 31 December 2011 in lieu of the following 30 June 2012).

## Defining a Reportable Tax Position

Under the Schedule a 'reportable tax position' is defined as any of the following:

- a. a material position that is not more likely to be correct than incorrect, *or*
- b. a position in respect of which uncertainty about taxes payable or recoverable is recognised and / or disclosed in the taxpayer's or a related party's financial statements, *or*
- c. a position in respect of a reportable transaction, that has not been otherwise adequately disclosed to the Commissioner.

A 'reportable transaction' is a transaction which is both:

- a. more than \$200 million of income in financial statements with less than 50 per cent as assessable income
- b. involves a change in effective ownership or control of an entity or asset.

Unlike paragraph (a) or (c) of the definition of 'reportable tax position', paragraph (b) requires disclosure of any provision in the financial statements regardless of size. In practice, organisations follow a number of accounting treatments, which will potentially result in differing disclosures being made in the Schedule.

Under the proposed definition, potentially all accounting provisions regarding uncertain tax positions (UTPs) will need to be disclosed, and organisations will need to consider the impact of this and how best to communicate these issues to the ATO.

We understand that the ATO expect the narrative descriptions of reportable tax positions to be approximately 500 words, signalling the ATO's desire for more detailed information to be provided for each disclosure than originally expected.

## Current Issues

As part of the consultation process various issues have been raised with the ATO in relation to the RTP Schedule including the following:

- The draft Schedule provides that a position is 'material' if the position would be considered material for the purposes of the taxpayer's Australian financial statement for the income year. How will materiality be determined for taxpayers who do not prepare local accounts?
- Further clarity is needed regarding both provisions made in prior years, and the use of losses brought forward from prior years.

## Reportable Tax Position Schedule

- More explicit guidance regarding foreign tax issues is required as the current guidance lacks clarity and precision. It is unclear what, if anything, needs to be disclosed.
- Paragraph (b) of the Schedule under 'reportable tax position' requires a taxpayer to disclose a position of uncertainty in the financial statements of a related party. It is currently unclear what constitutes a related party.

### Key actions going forward

The RTP Schedule represents part of the ATO's broader strategy to improve transparency and governance on tax matters for Australian corporate taxpayers and accelerate identification and resolution of technical disputes. The ATO's strategy is reflective of the global trend towards greater corporate transparency, for example, the United States Internal Revenue Service (IRS) introduced a similar schedule in 2010.

The RTP Schedule is only required to be completed by those taxpayers who have not made prior disclosures of their RTPs, via either a private binding ruling or other written communication to the ATO. In light of this it will be necessary for Heads of Tax to consider the most appropriate method and timing of disclosure of reportable tax positions. Many Australian corporate taxpayers have selectively disclosed tax risks to the ATO. The RTP Schedule in conjunction with other ATO initiatives such as quarterly pre-lodgement compliance reviews, would appear to mean that it is now more a question of when, rather than if, tax risks are disclosed. Consequently organisations should be cognisant of the impact of their tax risk appetite on their relationship with the ATO, and how best to strategically manage this, for example, via greater use of private rulings. It will also be interesting to see whether this is a catalyst for more companies to agree Annual Compliance Arrangements with the ATO.



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# Citigroup loses Part IVA appeal

The Commissioner of Taxation has had a rare recent win on a Part IVA matter in the Full Federal Court in *Commissioner of Taxation v Citigroup Pty Ltd* [2011] FCAFC 61. The Full Court upheld the decision of Justice Edmonds who found Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936) applied to disallow foreign tax credits (FTCs) of approximately \$23 million claimed by the taxpayer in relation to two bond transactions entered into in Hong Kong during the 2003 and 2004 income years.

However, in a partial win for the taxpayer, the Court dismissed the Commissioner's appeal in respect of the application of the General Interest Charge (GIC) under the former foreign tax credit determination and GIC recovery provisions, agreeing with Justice Edmonds that the taxpayer was not liable to pay the GIC on the unpaid amount created by the denial of FTCs.

The relevant transactions represent a bond strip trade involving the subscription of an interest bearing bond and an immediate sale of its interest coupon for a lump sum payment. The taxpayer claimed FTCs for the Hong Kong tax paid on this lump sum received.

## Part IVA issue

An interesting aspect of the Part IVA case was that the Commissioner proposed no positive counterfactual. The relevant question for the Court was 'whether it would be concluded that the taxpayer undertook the transaction for the dominant purpose of obtaining a foreign tax credit, by comparison with not undertaking any such transactions at all.'

The Full Court agreed with Justice Edmonds that the commercial return yielded from the transactions was in fact funded by the taxpayer's credit arising under former Division 18 of the ITAA 1936 and was 'not inconsistent' with the dominant purpose of obtaining the FTCs. The Full Court also concluded that the taxpayer's purpose of deriving the commercial gain was dependant on the dominant purpose of obtaining the FTCs.

The Full Court made the following key findings in relation to Part IVA (the general anti avoidance provision):

- Justice Edmond's application of the 'economic reality' test (from *Commissioner of Taxation v Spotless Services Ltd* (1995) 62 FCR 244) rightly related to determining the taxpayer's dominant purpose.
- It was legitimate to compare the post-tax results when the transactions were viewed as being funded by the FTCs.
- Part IVA requires an examination of the underlying characteristics and drivers of the transaction.

The Full Court held that the obtaining of the FTCs was 'more than a condition of the viability of the scheme – it was ultimately the commercial engine, which drove the scheme.'

## General Interest Charge

The Court accepted the taxpayer's argument that when it claimed the FTCs, the Commissioner applied those credits in discharge of its liability to the Commonwealth. Accordingly, the taxpayer was 'deemed to have paid' the tax against which the credits were applied and therefore no tax 'remained unpaid'. As a result, no GIC was payable.

## Impact of Decision

While this is a fact-specific case, it does represent an example of the Commissioner successfully arguing a 'do nothing' counterfactual in respect of anti-avoidance. It also is a reminder that the Australian Taxation Office is highly attuned to structured arrangements such as this which involve a 'sharing' of the tax advantage, particularly in the banking sector.

# Distributing trust income for 2011

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With legislation not yet passed by Parliament to alleviate or overcome the problems under the income tax law in streaming capital gains and franked dividend income to beneficiaries, trustees will need to carefully consider their options in making distributions for the year ending 30 June 2011. These options need to consider the state of the existing law following the High Court's *Bamford* decision (see May 2010 edition of *TaxTalk*) and the Government's intention to change the law to overcome the uncertainties (see May 2011 edition of *TaxTalk*).

On 28 April 2011, the Commissioner of Taxation published a document titled *Improving the taxation of trust income*. The document refers to the Government's exposure draft legislation, which contains provisions designed to enable the streaming of franked distributions and capital gains to beneficiaries. While there is a clear intention on the part of Government that these provisions will be enacted with

effect from the commencement of the 2010-11 income year, the Commissioner notes the possibility that the provisions might not be enacted as currently envisaged, and that in framing trust resolutions, a trustee may need to also consider its tax effect should the law not be enacted as proposed. On this point the Commissioner adds the comment that trustees should be aware that regardless of whether the proposed changes are enacted as currently set out, they will not allow for trustee resolutions made on or before 30 June 2011 to be amended.

Additionally, the Commissioner states that trustees may be well advised to have regard to the proposed anti-avoidance rule in the exposure draft legislation. As currently drafted, that rule may apply if a 'tax exempt' beneficiary is made presently entitled to trust income but is neither paid nor notified of their entitlement within two months after the end of the relevant income year. It may also apply if the exempt entity's entitlement exceeds the prescribed 'benchmark percentage'.



# Corporate Tax update

## Capital gains tax reforms for business restructures

On 13 May 2011, the Department of Treasury released exposure draft legislation, that when enacted, will make it easier for certain restructures to be implemented without a tax cost. In summary, the measures are as follows:

### Roll-overs for change of incorporation

The *Income Tax Assessment Act 1997* (ITAA 1997) is to be amended to expand the existing capital gains tax (CGT) roll-over for the change of a body to an incorporated company. The expanded roll-over applies to entities that change incorporation to become a *Corporations (Aboriginal and Torres Strait Islander) Act 2006* corporation. The expanded roll-over also covers a taxpayer's rights associated with a body, as well as their ownership interests, and situations where a body is wound up and replaced by a new company incorporated under a different law.

The amendments will also allow for tax neutral consequences for CGT, depreciating, revenue and trading stock assets of a body that is wound up and replaced by a new company incorporated under a different law, and these assets are transferred to the new company.

The expansions to the CGT roll-over for interests in a body that changes incorporation applies to CGT events happening after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010. The roll-over for the CGT,

depreciating, revenue and trading stock assets of a body that changes its incorporation by winding up and transferring its assets to a new company applies in relation to the cessation of existence of bodies corporate occurring after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010.

The measure was announced by the then Assistant Treasurer on 11 May 2010 and in the 2010-11 Federal Budget.

### Demerger relief

Under the proposed amendments, an entity that is a corporation sole or a complying superannuation entity will be excluded from being a member of a 'demerger group' for taxation purposes.

In summary, corporate groups that have a corporation sole or a complying superannuation entity as their head entity are unable to benefit from 'demerger relief' under the ITAA 1997 because they can only demerge, or realistically demerge, by treating an entity below the corporation sole or complying superannuation entity as the head entity of a demerger group that does not include the corporation sole or complying superannuation entity.

Excluding a corporation sole or a complying superannuation entity from being a member of a demerger group will allow an entity owned by the corporation sole or complying superannuation entity to qualify as the head entity of a demerger group. The new head entity will be able to demerge entities from the demerger group and qualify for relief under Division 125 of the ITAA 1997.

These amendments apply to CGT events happening after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010.

The measure was announced by the then Assistant Treasurer's Media Release No. 090 on 11 May 2010 and in the 2010-11 Federal Budget.

### Share sale facilities

These proposed amendments are designed to ensure that entities in a restructure can use a share or interest sale facility to deal with foreign held interests without Australian tax residents automatically failing a key requirement of certain CGT roll-over concessions.

In a share sale facility, new interests issued under an entity restructure in relation to the foreign interest holder's interest may be allocated to the foreign interest holder's agent or nominee. The agent or nominee owns these interests, but deals with them on the foreign interest holder's behalf, including ultimately selling them and giving the proceeds (less expenses) to the former foreign interest holders.

This measure applies to CGT events happening after 7.30 pm (by legal time in the Australian Capital Territory) on 11 May 2010.

The measure was announced by the then Assistant Treasurer on 11 May 2010 and in the 2010-11 Federal Budget.

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## Corporate tax update

### Reporting employee share scheme benefits

Employers who provide employee share scheme (ESS) interests (such as discounted shares, share rights or options) to their employees, are likely to be required to provide an ESS statement to their employees by 14 July 2011, and an annual report to the Australian Taxation Office (ATO) by 14 August 2011.

The ESS statement to be provided to employees must include the following for the period 1 July 2010 to 30 June 2011:

- the 'discount' on ESS interests acquired under 'taxed up front' schemes, and
- the 'discount' on ESS interests acquired both before and after 1 July 2009 for which a deferred 'taxing point' has occurred during the tax year.

An amended ESS statement must be provided to the employee if the employer becomes aware of any material change or material omission in any information provided to the employee. This amended statement must be provided to the employee and the ATO within 30 days of becoming aware of the change or omission.

The ESS annual report which employers must provide to the ATO by 14 August 2011 will include the information provided to each employee in the ESS statement (as above), as well as the following information:

- a plan identifier which identifies each ESS plan that a company operates;
- the date of the 'taxing point', and
- the number of ESS interests for which a 'taxing point' arose during the tax year.

Where an amended ESS statement is required to be provided to an employee, an amended ESS annual report must also be provided to the ATO, detailing the changes that have been made.

If you have any concerns or require any assistance in fulfilling your 2011 ESS reporting obligations, please contact your usual PwC contact, or Andrew Lazar on (03) 8603 3685.

### Upcoming deadlines for TOFA elections

A reminder to June balancing entities planning to make any of the taxation of financial arrangements (TOFA) tax-timing elections for the year ending 30 June 2011 – elections must be made on or before 30 June 2011 to have them apply to financial arrangements that you started to hold during the current 2010-11 income year.

Also, for those TOFA taxpayers which have made, or about to make, the TOFA hedging election, do not forget that additional time is available for this year *only* to get hedging documentation in place. The general rule requires hedging documentation to be made or in place at, or soon after, the time when the hedging financial arrangement is created, acquired or applied. As a transitional concession for new hedge arrangements, the Government announced in November 2010 that taxpayers will have until 30 June 2011 to put in place the required hedging documentation with respect to the recording of the basis of the tax allocation of a gain or loss from a new hedging financial arrangement. This is a once only extension.

In addition, a transitional decision for those December balancing taxpayers which entered the TOFA regime on 1 January 2011 needs to be made by the lodgment date for the tax return for the year ended 31 December 2010 (that is, in July 2011).

Refer to *TaxTalk* Issue 121 (May 2010) for further information regarding TOFA elections.

# International developments

## Tax treaties and the meaning of 'beneficial owner'

On 29 April 2011, the Committee on Fiscal Affairs of the Organisation for Economic Co-operation and Development (OECD) issued draft changes to the Commentary on Articles 10, 11 and 12 of the OECD Model Tax Convention concerning the meaning of the term 'beneficial owner'. According to the OECD's publication, given the risks of double taxation and non-taxation arising from different interpretations of the term 'beneficial owner', proposals have been developed and aimed at clarifying the interpretation. Comments can be made on this discussion draft before 15 July 2011.



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# Indirect Taxes update

## GST and development lease arrangements

The 2011-12 Federal Budget (<http://pwc.com.au/tax/federal-budget/index.htm>) included a measure confirming that the Government will amend the goods and services tax (GST) law to restore the policy intent following the decision of the Full Federal Court in *Commissioner of Taxation v Gloxinia Investments (Trustee)* [2010] FCAFC 46. This proposal was originally announced by the Assistant Treasurer in January 2011.

In the *Gloxinia* case, the Court held that the sale by developers to individual purchasers of certain new residential premises constructed under a development lease arrangement was input taxed, rather than taxable.

The proposed amendments are intended to ensure that:

- from 3 October 2007, supplies of new residential premises constructed under development lease arrangements are taxable for GST purposes, and
- from 1 July 2000, the granting of individual strata lot leases over newly constructed residential premises is not sufficient to make future supplies of the premises input taxed – any change in property title arrangements will not result in the premises once again becoming new residential premises.

Transitional arrangements will apply.

The Australian Taxation Office has also withdrawn GST Ruling GSTR 2008/2 on development lease arrangements, and has announced its administrative treatment pending passage of the relevant legislation by Parliament.

Property developers involved in development lease arrangements will need to consider their position in light of this proposed amendment, and will be eagerly awaiting further details of the legislation and transitional arrangements.

## Other GST developments

- **Appeal news** – The Full Court of the High Court has refused the taxpayer's application for special leave to appeal against the decision of the Full Federal Court in *Commissioner of Taxation v American Express Wholesale Currency Services Pty Limited* [2010] FCAFC 122. The case concerns the GST treatment of payments made by credit card and charge card holders following default on their accounts. The Full Federal Court held that the payments constitute "consideration" for a "financial supply" for the purposes of the GST law. The Full Court of the High Court was not persuaded that an appeal would enjoy prospects of success sufficient to warrant the grant of special leave.
- **Recovery of input tax credits by the Commissioner** – In *Wynnum Holdings No.1 Pty Ltd and Commissioner of Taxation* [2011] AATA 296, the Administrative Appeals Tribunal (AAT) found in favour of the Commissioner

in respect of a preliminary issue in dispute concerning recovery of input tax credits. In particular, the Tribunal considered the application of section 105-50 in Schedule 1 to the *Taxation Administration Act 1953*, which provides a four year time limit for recovery by the Commissioner of "unpaid net amounts ... or amounts of indirect tax". The AAT found that neither of these terms include an amount of input tax credit, so in the circumstances of the case, the Commissioner was not out of time to recover input tax credits from the taxpayer.

- **Exempt taxes, fees and charges** – The Assistant Treasurer has released Exposure Draft Regulations as part of the Government's reform of the mechanism for exempting Australian taxes, fees and charges from GST. The Regulations are provided for by legislation that formed part of the *Tax Laws Amendment (2011 Measures No. 2) Bill 2011*, introduced into Parliament on 24 March 2011. The Draft Regulations prescribe kinds of fees and charges that will be treated as taxable supplies. These include parking fees, road tolls and certain facility use, hire or entry fees.
- **Export of new recreational boats** – *Tax Laws Amendment (2011 Measures No 3) Bill 2011*, which was introduced into the House of Representatives on 12 May 2011, includes proposed amendments to allow supplies of particular types of new recreational boats to be GST-free if the boats are exported within a specified 12-month period.

# State Taxes update

## Victorian Budget 2011-12

The Victorian Budget for the 2011-12 financial year was delivered on 3 May 2011. The Budget included the following measures:

### *Move to Landholder Duty Model from 1 July 2012*

From 1 July 2012, Victoria will move from a 'land rich' duty model to a 'landholder' model. Among other things, this will mean that the existing requirement under the land rich provisions that land comprise 60 per cent or more of the total countable property will be abolished. This is consistent with the models that have been introduced in New South Wales, Western Australia, the Australian Capital Territory and the Northern Territory. Queensland and South Australia have previously announced that they will also move to a landholder model from 1 July 2011.

Legislation has not been introduced and there is yet to be an indication of any details of proposed landholder provisions. The Government has announced that it will consult with industry before the new provisions commence on 1 July 2012.

### *Land Transfers*

First Home Buyers – First home buyers will be eligible for a 50 per cent reduction in Land Transfer Duty on properties up to \$600,000. This reduction will be gradually introduced, with a 20 per cent reduction in 2011-12, and additional ten per cent reductions from 1 January 2013, 1 January 2014 and 1 September 2014.

Pensions and Concession Card Holders – The maximum threshold for the current Land Transfer Duty concession for pensioners and concession card holders will be lifted from \$440,000 to \$750,000 from 1 July 2011 (with a full concession up to \$330,000). The eligibility for this concession will also be extended to self funded retirees who hold a Commonwealth Seniors Health Card.

Young Farmers – Farmers aged under 35 buying their first farmland property will be eligible to be exempt from Land Transfer Duty on purchases up to \$300,000 and concessional rates of duty will be available for properties between \$300,000 and \$400,000.

### *Other points of interest*

Increased Monitoring and Enforcement – Funding is provided for the State Revenue Office to recruit an additional fifty staff to undertake increased monitoring and enforcement activities from 1 July 2011 to improve taxpayer compliance.

Expected Trends in Government Revenue – Government revenue is expected to increase by 3.4 per cent in 2011-12, attributable to increases in payroll tax collections due to growth in labour market conditions, higher insurance taxes receipts, increased gambling revenue and an increase in motor vehicles taxes due to population growth. Receipts from property taxes are expected to weaken because of lower property market turnover.

## Australian Capital Territory (ACT) Budget 2011-12

The ACT Budget for the 2011-2012 financial year was delivered on 3 May 2011 by the ACT Treasurer.

While the Treasurer acknowledged that the global financial uncertainty is still having a significant impact on ACT finances, the Budget does not introduce any new stamp duties. Additionally, no changes are to be made to the payroll tax or land tax rates.

However, the Treasurer announced that the Change of Use Charge would be replaced with a charge to be known as the Lease Variation Charge (LVC) and also announced increases in a number of minor fees and charges – being the fire and emergency services levy, municipal/general rates and the utilities (network facilities) tax. Details of these changes are set out below.

## State Taxes update

### Lease Variation Charge

The ACT currently charges a Change of Use Charge on the increased value of a lease of land arising from a change in the lease conditions. The charge is determined and collected as part of the development application process and is commonly referred to as the 'betterment levy'.

The ACT has announced that the Change of Use Charge will be codified so to eliminate uncertainty in charge determinations and to avoid unnecessary delays in development approvals. The codification will involve establishing a public register of fixed charges (known as the LVC) for different land uses in all suburbs in the ACT, which will be subject to an annual review by a panel of experts. The LVC will be subject transitional arrangements, including a partial remission of the charge to be phased over the next four years.

### Fire and Emergency Services Levy (FESL)

The FESL in the 2011-12 year will have the following elements:

- a fixed charge of \$101.80 for residential and rural properties (up from \$98.20 in 2010-2011);
- a pensioner rebate of 50 per cent; and
- a valuation-based charge for commercial properties with a rating factor of 0.3907 per cent (up from 0.366 per cent in 2010-2011) applied to the average of the 2009, 2010 and 2011 unimproved land values (AUV) in excess of the rate-free threshold of \$16,500.

### Municipal/General Rates

General rates are levied on property owners to provide funding for municipal and other services. These rates are to be increased for the 2011-2012 year as follows:

- A fixed charge of:
  - \$555 for residential properties (up from \$532 in 2010-2011)
  - \$126 for rural properties (up from \$116 in 2010-2011), and
  - \$1,258 for commercial properties (up from \$1,147 in 2010-2011).
- A valuation based charge on the AUV for 2009, 2010 and 2011 land values.
- A rate-free threshold of \$16,500 applied to the AUV of each property.
- Rating factors applied to the AUV of:
  - 0.2727 per cent for residential properties (down from 0.290 per cent in 2010-2011)
  - 0.1579 per cent for rural properties (down from 0.162 per cent in 2010-2011), and
  - 0.7711 per cent for commercial properties (down from 0.734 per cent in 2010-2011).
- A pensioner rebate cap for post 1 July 1997 applicants of \$481.

### Utilities (Network Facilities) Tax

This tax, which applies to the owner of a utility network facility installed on or under land in the ACT, will be \$749 per kilometre of network route length for the 2011-2012 year (up from \$722 per kilometre in 2010-2011).

### Northern Territory (NT) Budget 2011-12

The NT Budget for the 2011-12 financial year was delivered on 3 May 2011.

A number of NT tax related measures and certain incentives were announced. These changes will generally apply from 1 July 2011 (with some exceptions such as a new BuildBonus grant). The changes include the following:

#### Stamp Duty

**Duty Rate Increase** – The NT Budget announces that from 1 July 2011 the maximum conveyance stamp duty rate for dutiable property transactions with a dutiable value of \$3 million or more will increase from 4.95 per cent to 5.45 per cent. This will apply to contracts signed on or after 1 July 2011 including contracts following the exercise of an option granted prior to 1 July 2011 or a contract that replaces an earlier contract for the same property.

The rate of 4.95 per cent will continue to apply to conveyances of dutiable property valued from \$525,000 to under \$3 million. Conveyance duty collections are forecast to increase by \$2.8 million in 2011-12 as a result of this change.

**Abolition Reaffirmed** – Importantly, the NT Budget reaffirmed that conveyance stamp duty will be abolished from 1 July 2012 on transfers of non-real property business assets (e.g. goodwill and other intangibles). The NT Budget Forward Estimates anticipate that this change will reduce stamp duty revenue by \$8.242 million in the first year.

## State Taxes update

Other Stamp Duty changes – Other announced stamp duty changes were to:

- extend the ability to provide a stamp duty refund for conveyances of property on the breakdown of a de facto relationship or pursuant to a binding financial agreement under the *Family Law Act*, and
- ensure instruments are considered to be duly stamped where duty is paid under a returns-based arrangement such as for insurance duty.

### Payroll Tax

Rate Reduction and Threshold Changes – The NT Budget announced that from 1 July 2011 the payroll tax rate will reduce from its current rate of 5.9 per cent to 5.5 per cent.

In addition, also from 1 July 2011, the annual total Australian wages threshold will be increased from \$1.25 million to \$1.5 million. The threshold will be changed from a general exemption to a deduction from an employer's taxable wages. For businesses with wages above the \$1.5 million threshold, the deduction will reduce by one dollar for every four dollars in wages paid by an employer above \$1.5 million (similar to the approach in Queensland). This will mean that an employer who pays \$7.5 million or more in wages does not receive a deduction.

The change in treatment from a general exemption to a deduction is significant and may mean some businesses have a higher liability to payroll tax notwithstanding the rate reduction. This is recognised in the NT Budget where it is stated:

*“Most locally-based businesses will pay less payroll tax, with Businesses paying wages up to \$3 million having payroll tax savings of up to \$14,750. Larger businesses may pay more payroll tax as a result of the changes to the annual threshold ...”*

Employee Share Schemes – From 1 July 2011, the NT payroll tax employee share scheme provisions will be updated as a result of the Commonwealth's income tax changes.

### BuildBonus

From 3 May 2011 to 31 December 2011, Territorians purchasing or building a new home may be eligible for a BuildBonus grant of \$10,000. The \$10,000 grant will be available to home buyers (including first home buyers and investors) to build or purchase a new home valued up to \$530,000. It will include off the plan purchases and units.

The BuildBonus grant will apply to contracts to build or purchase signed from 3 May 2011 to 31 December 2011 where construction commences on or after 3 May 2011. Owner builders who commence construction of a house during this period will also be eligible

### Other measures

Other measures announced in the NT Budget, which generally commence from 1 July 2011, will:

- provide the Commissioner of Territory Revenue with the discretion to waive, in special circumstances, the requirement of the home incentive schemes that a person occupy a home as their principal place of residence
- clarify that the Commissioner can reduce or not impose interest on instalment arrangements where payment of the outstanding liability has been secured, and
- repeal redundant revenue legislation generally relating to abolished taxes.

### Mining and Petroleum Royalties

The mineral royalty rate was increased from 18 per cent to 20 per cent last 1 July 2010. The NT Budget reports that mining and petroleum royalties are expected to increase by \$16.6 million in 2011-12.

## State Taxes update

### Western Australia (WA) Budget 2011-12

The WA Budget for the 2011-12 financial year was delivered on 19 May 2011.

Broadly, the State Government announced a projected operating surplus of \$442 million for the 2011-12 financial year.

The following is an overview of certain measures contained in or affirmed by the Budget:

#### Stamp duty

No significant stamp duty announcements were made. The deferment of the abolition of duty on non real business transfers (i.e. intangible business assets such as goodwill and intellectual property) will continue to be deferred until 1 July 2013.

#### Vehicle Licence Duty – exemption for transfers of vehicle licences between spouses

From 1 July 2011, an exemption from motor vehicle licence duty will apply for transfers of private vehicle licences between spouses or de facto partners of at least two years.

#### Land tax

Land tax revenue is forecast to rise by \$34 million to \$548 million in 2011-12 based on the advice from the Valuer General with respect to the unimproved land values as at August 2010.

### Iron Ore 'fines' royalty rate increases

The royalty rates for iron ore 'fines' will increase from 5.625 per cent to 6.5 per cent from 1 July 2012, and to 7.5 per cent from 1 July 2013. This will align the 'fines' royalty rate with the existing 7.5 per cent rate for 'lump' ore and other 'crushed and screened' ores. The reform is expected to increase royalty income by \$378 million in 2012-13 and by over \$800 million per annum in both 2013-14 and 2014-15.

#### Other insights

The forecast for the State growth is 4.5 per cent in 2011-12, with forward estimates showing growth thereafter at 4 per cent per annum. Total taxation revenue is forecast to grow by \$303 million (or 4.5 per cent), or 10.3 per cent in underlying terms if the one-off payment of \$350 million in 2010-11 made by BHP Billiton and Rio Tinto in relation to changes to State Agreements is excluded.

The increase in taxation revenue is to be underpinned by higher transfer duty collections (due to an assumed improvement in the housing market) and continued growth in payroll tax. Transfer duty revenue for 2010-11 has been revised down by \$385 million (or 24.8 per cent) relative to 2009-2010.

Total royalty growth is to increase by \$636 million (or 15.3 per cent), largely due to a projected increase in iron ore royalties. Royalties will account for approximately 19 per cent of total revenue.

The Government announced additional infrastructure investment, including \$7.6 billion in 2011-12 (as part of its asset investment program), up from \$6.9 billion in the current financial year.

### Australian Capital Territory (ACT): Payroll tax harmonisation Bill

The *Payroll Tax Bill 2011 (ACT)*, which was introduced into the ACT Legislative Assembly on 5 May 2011, proposes to rewrite the *Payroll Tax Act 1987 (ACT)* with harmonised legislation in an effort to further reduce the compliance costs for businesses operating in the ACT and other jurisdictions. The Bill aims to adopt a high degree of uniformity with the structure and language used in the New South Wales and Victorian harmonised legislation (except where differences are necessary to accommodate ACT specific issues or policy). The amendments are proposed to take effect from 1 July 2011.



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# Personal Tax update

## Draft rules for SMSF Investment in Collectables and Personal Use Assets

On 18 May 2011 the Assistant Treasurer and Minister for Financial Services and Superannuation, released draft Regulations outlining rules for self managed superannuation fund (SMSF) investment in collectables and personal use assets.

The release of the draft Regulations follows the release on 1 February 2011 of exposure draft legislation (see March 2011 edition of *TaxTalk*). This proposed legislation continues to allow SMSFs to invest in such assets, but with strict rules on their use and location.

Interested parties are invited to make written submissions on the draft Regulations by Tuesday, 14 June 2011.

## Superannuation contribution caps

Now is the time for individual taxpayers to review the level of superannuation contributions made during the year. This is important, since if either the Concessional Contribution (CC) Cap or the Non-Concessional Contribution (NCC) Cap is exceeded, substantial tax liabilities will be levied by the Commissioner of Taxation.

Concessional contributions are, generally, those contributions made to a 'complying superannuation fund' which are included in the assessable income of the fund (for example, superannuation guarantee contributions, salary sacrificed contributions and amounts allowed as a personal superannuation deduction for the 'self employed').

Non-concessional contributions are generally contributions that are not tax deductible (for example, personal contributions an individual makes where a tax deduction is not claimed or is not able to be claimed by the individual).

For the 2010-11 tax year, the contribution caps are as follows:

Concessional Contribution Cap (for those under age 50 on 30 June 2011)	\$25,000
Transitional Concessional Contribution Cap (for those 50 or over on 30 June 2011)	\$50,000
Non-Concessional Contribution Cap (Note 1)	\$150,000

Note that the NCC Cap is subject to a three year 'bring forward' rule such that if for example, NCCs of up to \$450,000 were made in the 2010-11 year, provided this 'bring forward' had not commenced to apply in either of the two prior tax years, the contributions would not exceed the NCC Cap.

To the extent that the 'bring forward' rule is used, the NCC Cap applying in the subsequent two years is successively reduced. Therefore, if \$450,000 of NCCs were contributed in the 2010-11 year under this 'bring forward' rule, no NCCs could be made in the 2011-12 or 2012-13 tax years without exceeding the cap.

To the extent that the CC Cap or Transitional Contribution Cap (if applicable) is exceeded, in addition to the imposition of tax at 31.5 per cent on the excess (this tax is in addition to the tax at 15 per cent on the CCs paid by the fund), the excess is added to the NCCs for the year, which could result in the NCC Cap being exceeded for the year and tax imposed.

To the extent that the NCC Cap is exceeded, the excess is taxed at 46.5 per cent.

A mistake that appears to be common is that the 'bring forward' rule is inadvertently triggered, such as where an individual's employer fails to make Concessional Contributions by 30 June in a year and those late contributions, together with the contributions for the next year, exceed the CC Cap for that year. The effect of this is that, in addition to CC tax at 31.5 per cent on the excess, the excess adds to the NCCs for that year, and may either trigger an excess of NCCs for the year (resulting in a tax liability at 46.5 per cent on the excess) or commence the 'bring forward' rule which, if not anticipated, could result in excessive NCCs being made in the subsequent year. This can result in significant levels of excess contributions tax, considerably more than the actual excess concessional contribute made.

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## Personal Tax update

In the 2011-12 Budget, the Government announced that it will amend the law in respect of imposition of tax on excessive contributions. Under the proposed 'concession', individuals who breach CC Caps by up to \$10,000 can request the excess amount be refunded on a once only basis. Personal tax rates will apply to the refund in lieu of the potentially higher excess contributions tax rate, particularly where the excess contribution is deemed to also be a NCC and causes a breach of the NCC Cap as outlined above. This 'concession' will only apply from 1 July 2011 so is, regrettably, not retrospective.

By placing a \$10,000 and 'once only' limitation on the concession applicable to excessive CCs, and not extending it to excessive NCCs, it is essential that individuals receive professional advice before superannuation contributions are made. This advice needs to take into account the exact position of an individual's superannuation investment and the history of contributions made, and to be made by the individual and by others (e.g. an employer). The golden rule continues to be "make sure you understand your contribution caps and track your superannuation regularly".

For further information in relation to either of these items, please contact Mike Forsdick on (02) 8266 5767.



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# Legislation update

Revenue measures introduced into Federal Parliament include the following:

*Tax Laws Amendment (2011 Measures No 3) Bill 2011*, introduced into the House of Representatives on 12 May 2011, proposed amendments to give effect to goods and services tax (GST) and tax administration related measures as follows:

- Schedule 1 of the Bill proposes to amend the *A New Tax System (Goods and Services Tax) Act 1999* to allow supplies of particular types of new recreational boats to be GST-free if the boats are exported within a specified 12-month period. This proposed new rule is in addition to the existing rules that allow ships that are exported to be supplied GST-free, subject to satisfying any other conditions, within a specified 60 day period. As with the existing rules concerning the export of ships, the Commissioner will, under the proposed new rules, have the discretion to extend the period in which a new recreational boat must be exported.

Once enacted, this amendment will apply to supplies made under contracts entered into on or after 1 July 2011 (unless the supply is made pursuant to rights or options granted before 1 July 2011).

- Schedule 2 to this Bill proposes to amend the *Income Tax (Transitional Provisions) Act 1997* to remove a technical deficiency that prevents the ongoing imposition of the general interest charge (GIC) in some circumstances. Under the current law, GIC is not imposed on income tax and shortfall interest charge liabilities where the liability:

- relates to the 2009-10 or an earlier financial year and the liability becomes due for payment on or after 1 July 2010
- did not exist just before 1 July 2010 but retrospectively becomes due for payment on 30 June 2010 or earlier, or
- relates to a substituted accounting period which ends before 30 June 2010 and it become due for payment on or after 1 July 2010.

Once enacted, these amendments will apply from 1 July 2010.

*Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2011* (the Bill), introduced into Parliament on 12 May 2011, proposes to amend the *Medicare Levy Act 1986* and the *A New Tax System (Medicare Levy Surcharge-Fringe Benefits) Act 1999* to increase the Medicare levy and Medicare levy surcharge low-income thresholds for individuals, families and pensioners below age pension age. The increases are in line with increases in the Consumer Price Index.

In particular, the Bill proposes to increase the low-income thresholds for individuals and families for the 2010-11 income year of income and subsequent years of income as follows:

- the individual threshold amount is to be increased from \$18,488 to \$18,839
- the level of family income threshold is to be increased from \$31,196 to \$31,789 and by \$2,919 (instead of \$2,865) for each dependent child or student, and
- the threshold amount for pensioners who are under age pension age is increased from \$27,697 to \$30,439.



## Legislation update

The Bill also proposes to increase the phase-in limits as a result of the increased threshold limits. Once enacted, the amendments will apply from the 2010-11 year of income and later years of income.

*Taxation of Alternative Fuels Legislation Amendment Bill 2011*, introduced into the House of Representatives on 12 May 2011, is the main Bill in the package of Bills, which bring certain alternative fuels used for transport purposes into the fuel taxation regime, and make them subject to excise duty or excise-equivalent customs duty. The measures phase in the taxation arrangements for liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG) over a period of five years starting on 1 December 2011. The rates for LPG, LNG and CNG are based on the energy content of the specific fuels and discounted by 50 per cent to reflect the potential benefits of these alternative fuels.

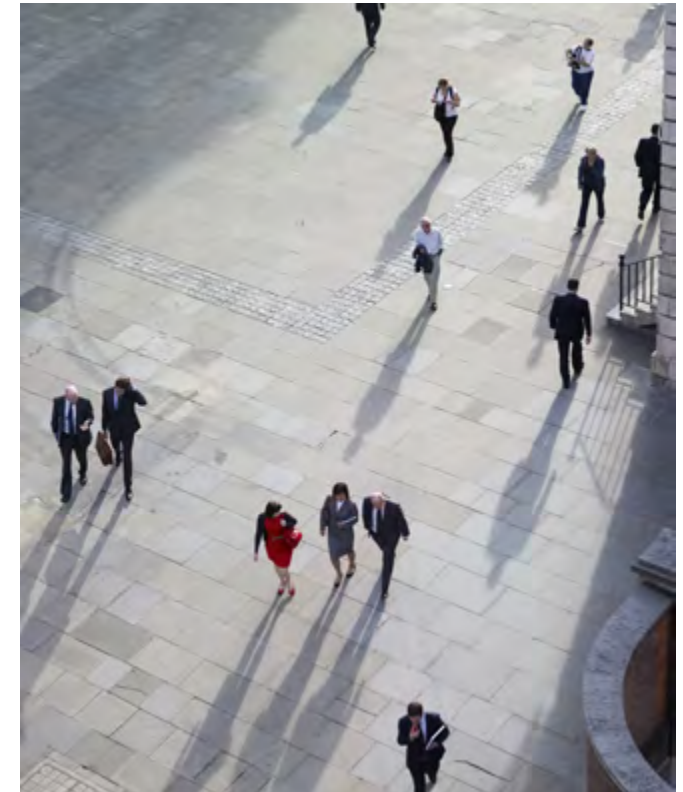
In broad terms, the Bill amends the *Excise Act 1901*, the *Fuel Tax Act 2006*, the *Product Grants and Benefits Administration Act 2000* and the *Taxation Administration Act 1953* to deal with the taxation of LPG, LNG and CNG. It also establishes LPG reporting requirements, fuel tax credit entitlements and penalties concerning unauthorised excise-free LPG sale or use, and sets out transitional excise licensing requirements for the three gaseous fuels.

The related Bills which form part of the package are the *Excise Tariff Amendment (Taxation of Alternative Fuels) Bill 2011*, the *Customs Tariff Amendment (Taxation of Alternative Fuels) Bill 2011* and the *Energy Grants (Cleaner Fuels) Scheme Amendment Bill 2011*, which were also introduced into Parliament on 12 May 2011.

The amendments are to apply to fuel:

- acquired, manufactured or imported on or after 1 December 2011
- imported into Australia before 1 December 2011, where the time for working out the rate of import duty on the goods had not occurred before 1 December 2011, and
- on hand at licensed (or deemed licensed) premises on 1 December 2011.

On 17 May 2011 it was announced that the House of Representatives Economics Committee will inquire into and report on these Bills. Specifically, the Committee will examine the adequacy of the Bills in achieving the policy objective and where possible identify any unintended consequences.



## Tax treatment of sovereign investments

On 20 April 2011 the Assistant Treasurer and Minister for Financial Services and Superannuation released an options paper discussing the tax treatment of 'sovereign investments'. As explained in the paper:

- certain income derived by foreign governments has traditionally been exempt from Australian taxation under the international law doctrine of sovereign immunity, and
- Sovereign Wealth Funds have been included in the doctrine of sovereign immunity in recent years where they have been considered to be a part of the Government itself.

The Government announced on 20 August 2009 that it would codify the current administrative practice that exempts from Australian taxation, certain income arising from investments made by foreign Governments.

The policy objective behind the proposed law is to enhance Australia's attractiveness as a destination for foreign government investment by providing greater certainty as to the Australian tax consequences for investment by foreign governments and the withholding obligations for Australian residents. Countries that have arrangements in place to provide tax exemptions for certain foreign government investments include the United States, Canada, France, Japan, UK and Belgium. Australia also has treaty arrangements in place with several other countries that provide exemptions for

certain foreign government investments, including Italy, South Korea, New Zealand and Norway.

The options described in this discussion paper set out two possible regimes for the taxation of sovereign investments. An important requirement of the proposal is that the provisions will be only available to 'foreign government agencies' and the wholly-owned entities through which they invest in Australia. This ownership may be direct or indirect.

For further details contact Christian Holle on (02) 8266 5697.

## Extension of CGT loss relief for Fund Mergers

On 3 May 2011 the Assistant Treasurer and Minister for Financial Services and Superannuation announced that the Government will extend the temporary loss relief for merging superannuation funds from 30 June 2011 to 30 September 2011. Superannuation funds that are currently in the process of merging will have additional time to complete their mergers and still qualify for the temporary loss relief for complying superannuation funds mergers.

The Government has received feedback that, due to the complexity of fund mergers, existing transactions may well be completed after 30 June 2011, meaning members would not qualify for the tax relief.

The temporary loss relief was introduced in response to the uncertain financial market conditions faced by superannuation funds in late 2008. The loss relief allows

funds to transfer losses when they merge that would otherwise be extinguished when the merging fund is wound up. These losses are valuable because they can then be offset against capital gains in future years.

The original proposal to provide the relief was made on 23 December 2008 (see February 2009 edition of *TaxTalk*) with an amendment to that proposal being announced by the Minister for Superannuation and Corporate Law on 29 April 2009.

For further information contact Ken Woo on (02) 8266 2948.

## Report by the IGT into the Australian Taxation Office's Change Program

On 5 May 2011 the Assistant Treasurer and Minister for Financial Services and Superannuation released the report by the Inspector-General of Taxation (IGT) entitled, *Review into the Australian Taxation Office's Change Program*. The Inspector-General's report focuses on the impact the Change Program of the Australian Taxation Office (ATO) had on the processing of income tax returns and refund payments for taxpayers and tax practitioners. The Change Program was a comprehensive upgrade of the ATO's information and communications and technology systems to allow it to provide a more efficient service to the Australian community through the implementation of online client portals, an integrated core processing system for tax returns, a single system for case management and a single system for client relationship management.

## Other news

The IGT made nine recommendations in his report. Eight recommendations are of an administrative nature and the responsibility of the ATO. The ATO agreed with five recommendations, agreed in part with two recommendations and does not agree with one recommendation. The remaining recommendation was directed at the Government and relates to the use of standards for large information and communication technology projects.

The recommendation which the ATO does not agree with relates to claims for compensation from taxpayers adversely affected by the Change Program. In his report, the IGT recommends with respect to compensation claims that – “For the purpose of addressing tax practitioners’ concerns with the basis for, and process to obtain, compensation, the IGT recommends that the ATO work with the tax practitioner community to robustly and openly reconsider its position on compensation claims under the CDDA scheme [Compensation for Detriment caused by Defective Administration scheme] and the process by which such claims should be made.”

In rejecting this recommendation the ATO has stated that “(T)he CDDA scheme does not operate on the basis which involves consultation about findings of defective administration. The ATO considers each case on its merits. As at 30 November 2010, the ATO has received 59 claims from taxpayers and 35 claims from tax agents for a total of 94 claims. Each of these claims for compensation under the CDDA scheme are considered on their merits. For an individual taxpayer, interest is paid with the delayed refund if a notice of assessment is issued more than 30 days after the income tax return is lodged. The ATO will continue to consider current claims and any future claims received on their merits”

With respect to the recommendation directed to Government, the recommendation is that “(F)or the purpose of minimising risks arising in future large scale ICT [information and communications technology] projects, the Inspector-General recommends that the Government consider requiring the ATO, and agencies with which it has ICT interfaces, to:

- Employ best practice modularised design approaches, avoid single contractor over-reliance, avoid lengthy projects and consider the commercial realities of pricing and rewarding contractor performance.
- Establish improved governance and scrutiny functions by ensuring:
  - the agency’s peak decision-making body (appropriately augmented with skilled and experienced ICT and key business line personnel) is directly responsible for managing the oversight of the project
  - an independent, authoritative and ICT-skilled government representative (from outside the contracting agency) be a mandatory addition to the augmented agency’s peak decision-making body for the project’s duration (including post implementation follow up where appropriate), and
  - the independent government representative report directly to Government and be required to furnish appropriate, periodic written progress reports that are publicly released at appropriate times.
- Fully explore formal intra-Governmental protocols or standards to provide reliable system function testing, both internal to the agency and for system interfaces between relevant Government agencies, during any ICT upgrades or changes, including:

- standards for system data form, structure and definitions
- specifying how intra-Government testing should be conducted and who is accountable for that testing and ensuring compliance with the standards, and
- requiring periodic review processes to ensure such protocols or standards conform to current best practice.

In his media statement the Assistant Treasurer advised that the Government will consider how the elements of this recommendation interact with its existing policies and standards before taking it further.

# Upcoming Events

Included below are some of our upcoming events.

City	Date	Contacts
<b>Adelaide</b>		
<a href="#">Stamp Duty Changes</a>	Thursday, 9 June	<b>Georgia Bailey</b> 08 8218 7603 or georgia.bailey@au.pwc.com
<b>Brisbane</b>		
<a href="#">Property Forum</a>	Thursday, 9 June	<b>Shannon Stewart</b> 07 3257 8744 or shannon.stewart@au.pwc.com
<b>Melbourne</b>		
<a href="#">Fuel Tax Credits Workshop</a>	Friday, 3 June	<b>Karen Bohne</b> 03 8603 2601 or karen.bohne@au.pwc.com
<a href="#">Tax Developments for Banks</a>	Thursday, 9 June	<b>Deb Hollingsworth</b> 03 8603 6133 or deb.hollingsworth@au.pwc.com
<a href="#">Japanese Twilight Topics: How to Manage Tax Audit?</a>	Tuesday, 21 June	<b>Florence Lier</b> 03 8603 6627 or florence.lier@au.pwc.com
<b>Perth</b>		
<a href="#">Fuel School</a>	Wednesday, 8 June	<b>Rikki John</b> 08 9238 3615 or rikki.john@au.pwc.com
<b>Sydney</b>		
<a href="#">Payroll Tax Practical Workshop</a>	Tuesday, 14 June	<b>Aimie Allen</b> 02 8266 2173 or aimie.allen@au.pwc.com
<a href="#">Tax Payer Relationships with ATO</a>	Wednesday, 15 June	<b>Carrie Morfoot-Pettit</b> 02 8266 2051 or carrie.morfoot-pettit@au.pwc.com
<a href="#">Payroll Tax Practical Workshop</a>	Thursday, 16 June	<b>Aimie Allen</b> 02 8266 2173 or aimie.allen@au.pwc.com

Please click on the event name to be taken to the registration site for further information. Alternatively, phone the event contact provided, to find out more.

For a full list of our upcoming Tax and Legal events, please contact Sonya Domanski on +61 (3) 8603 4219.

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