



TaxTalk

Electronic Bulletin of
Australian Tax Developments

March 2011, Issue 130

pwc

What would you like to grow?

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A fixed Australian carbon price from 2012

In this article, we analyse the announcement made by the Multi-Party Climate Change Committee (MPCCC) of the Australian Parliament on 24 February 2011 regarding a proposed future Carbon Price Mechanism

Getting closer but still a way to go before business certainty...

The announcement by the MPCCC represents a further step towards certainty for Australian business regarding the timeline for the introduction of a carbon price.

The range of issues that will still require negotiation and agreement remain substantial. As such the possibility still exists that agreement may not be reached between all members of the MPCCC to allow passage of any legislation during 2011.

What has been agreed between the Government and Greens?

The key points that have been agreed include the following:

Start date. The mechanism could commence as early as 1 July 2012 subject to parliamentary approval.

Fixed Price Period. During the initial three to five years unlimited emissions permits would be issued on a fixed price basis. The fixed price period would be followed by a transition to a 'cap and trade' scheme that would essentially result in a flexible market driven price.

Coverage. A carbon price mechanism could cover all six greenhouse gases counted under the Kyoto Protocol and have broad coverage of emissions sources from:

- stationary energy
- transport
- industrial processes
- fugitive emissions (other than from decommissioned coal mines)
- emissions from non-legacy waste.

Emissions from agriculture would be excluded from the scheme.

International linkages. During the initial fixed price period, liable entities may not be able to draw on international emissions units for compliance. This would be re-examined prior to transitioning to a cap and trade scheme.

Linkage to Carbon Farming Initiative. It appears that selected Kyoto compliant units created within Australia under the Carbon Farming Initiative may be used by liable entities. The relative price of these units (which will be market based) with the price of international emissions units and the fixed carbon price will therefore be closely watched.



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A fixed Australian carbon price from 2012

Substantive issues remain to be negotiated

While the mechanism through which the carbon price will be delivered appears closer to agreement, it is still too early to assess the potential financial impact to business and the general public.

Key matters that remain to be negotiated before the financial impact can be meaningfully assessed include:

The carbon price path over the fixed period. The exact price that the scheme would commence under and the annual increase in that price will be hotly debated. Factors that are expected to come into consideration include the size of Australia's 2020 emissions reduction target, developments at an international level and public reaction to the anticipated cost of living increases that would result.

Industry assistance. One of the fundamental areas of disagreement between the Government and the Greens in the design of the previous Carbon Pollution Reduction Scheme was the level of assistance that would have been provided to industry. The scale and coverage of assistance that will be provided to Emissions Intensive Trade Exposed (EITE) industries, strongly affected industries (such as coal) and small to medium businesses remains to be agreed.

Household assistance. While there appears to be agreement amongst the MPCCC members that any carbon price mechanisms should be 'budget neutral' the mechanisms to distribute assistance to households in response to the associated cost of living increases remain to be agreed.

Obligation transfer mechanisms and other scheme rules. The extent to which scheme rules that were previously canvassed under the Carbon Pollution Reduction Scheme will remain is yet to be determined. Rules surrounding the transfer of obligations between liable entities and their customers, for example, may have a significant impact on the process and systems modifications that liable entities may need to start considering in order to achieve a targeted 1 July 2012 commencement date.

Concluding remarks

While many of the details remain to be agreed, it is now clear that a carbon price is back on the agenda.

Given the short time frame before the proposed introduction of the scheme, companies that are likely to be affected should work towards understanding their potential exposure and commence preparations for implementation.



Taxpayer successful in Federal Court Part IVA case

In the recent Federal Court decision of *Noza Holdings Pty Ltd & Ors v Commissioner of Taxation* [2011] FCA 46, in which PwC acted for the taxpayers, the Court found that the Commissioner's general anti-avoidance provisions did not apply to cancel over \$300 million of deductions claimed by the taxpayers over four income years.

The taxpayers are Australian members of a US-based multinational corporation. An internal company restructure occurred in 2001 which involved both United States (US) and Australian group entities. The original plan for the restructure intended the Australian transactions to be tax neutral. However, the Australian transactions had to be altered at the last minute because of an unanticipated accounting issue. This last minute alteration, the issue of redeemable preference shares instead of ordinary shares by the Australian entities, gave rise to an unanticipated, but significant, deduction to the taxpayers through the operation of section 25-90 of the *Income Tax Assessment Act 1997*, which allows for deductions to be claimed in relation to the receipt of certain types of exempt income.

After an extensive audit over several years, the Commissioner disallowed the deductions and issued Part IVA determinations under Part IVA of the *Income Tax Assessment Act 1936* (the general anti-avoidance provision in the income tax law).

The trial before Justice Gordon ran for two weeks in September 2010 and involved evidence being given by eight witnesses and one expert for the taxpayers and three experts for the Commissioner. Several of the witnesses and experts were located in the US and gave evidence through the Court's video-link facilities.

In relation to Part IVA, the key issue was whether the taxpayers had the requisite dominant purpose of obtaining a tax benefit in entering the transactions. The Commissioner relied on two counterfactuals which were both rejected by the Court.

With regard to the first counterfactual posed by the Commissioner, after considering all of the evidence put forward by the taxpayers, the Court found that the counterfactual would not have achieved the requisite commercial objectives of the taxpayers. The Court viewed the counterfactual as rising no higher than a possibility.

The Court effectively disregarded the second counterfactual as a result of the Commissioner's counsel failing to ask any of the taxpayers' witnesses about it. Justice Gordon considered this failure deprived the Court of the witnesses' views on whether the counterfactual could have achieved the taxpayers' commercial objectives.

The Court considered that the dominant purpose of the schemes identified was not to obtain a tax deduction. Rather, the Court determined that the dominant purpose was to resolve the unanticipated accounting issue whilst maintaining the integrity of a ruling previously issued by the Illinois Department of Revenue.

In our opinion, a critical aspect of the Part IVA case was the importance of the evidence of the witnesses. While the test for dominant purpose is an objective test, this decision would appear to show that the subjective evidence of witnesses can be important in assisting the Court to ascertain what the relevant commercial objectives were, what the particular structure was, and what were the features which created the tax benefit.

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Transfer pricing update

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This month the focus shifts back to transfer pricing planning, with important developments in Australia and at the Organisation for Economic Cooperation and Development (OECD). On 9 February 2011, the Australian Taxation Office (ATO) finalised its taxation ruling on the transfer pricing aspects of business restructurings. The following week, the Federal Government released draft legislation to modernise the CFC regime, which will likely result in the ATO placing greater reliance on transfer pricing rules. At the same time, the OECD is continuing its work in the field of transfer pricing planning through a new project on the transfer pricing aspects of intangibles. The OECD has indicated that this project is important given the increasing focus on transactions involving intangibles and their migration between jurisdictions.

CFC exposure draft legislation encouraging for multinational corporations

On 17 February 2011, the Australian Government released exposure draft legislation relating to the Controlled Foreign Company (CFC) and the proposed Foreign Accumulation Fund (FAF) rules (as discussed in our *TaxTalk Special Edition* February 2011 http://pwc.com.au/tax/assets/Taxtalk/TaxtalkSE_Feb11.pdf). These draft rules seek to improve the competitiveness of Australian companies with offshore operations and encourage foreign groups to establish regional headquarters in Australia.

The updated draft CFC rules are less rigid than the existing CFC rules, reflecting a more streamlined and practical approach to attribution and taxing of foreign income on an accruals basis, such that Australian taxpayers investing offshore should, to a large extent, be relieved from additional Australian tax costs and burdensome compliance procedures associated with the current CFC and previous foreign investment fund (FIF) regimes. Nevertheless while the proposed rules relax some of the more rigid aspects of the existing regimes, greater reliance will be placed on transfer pricing rules to ensure appropriate outcomes for Australian tax residents who hold interests in foreign corporate entities.

This exposure draft legislation retains much of the operative framework as set out in the consultation papers released on 5 January 2010 and 16 July 2010. For this round of consultation, submissions can be made to the Australian Treasury before 18 March 2011.

What are the CFC rules about?

The CFC rules seek to maintain the integrity of Australia's tax base by combating the deferral of Australian tax on foreign source income. They do this by attributing certain income to an Australian resident taxpayer which is derived by a non-resident company which it controls (i.e. the CFC). The Australian resident taxpayer includes the attributable income in its assessable income.

The CFC rules generally only seek to attribute investment-type or 'passive' income derived by the CFC, such as interest, certain rents, dividends and royalties. Amounts that have an 'active' character (as defined in the draft legislation) are excluded from attribution. Other exemptions to the attribution of passive income are also contained in the draft legislation.

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Transfer pricing update

What are the key interactions with transfer pricing?

The CFC reforms outlined in the draft legislation change the landscape for foreign-based companies seeking to establish regional headquarters in Australia. It also changes the landscape for Australian based multinationals with offshore operations that are connected to the Australian group.

Some of the key highlights of the draft CFC rules from a transfer pricing perspective are as follows:

- **Active income is not attributable** – Prima facie passive income of a CFC that has an ‘active character’ is not attributable under the draft rules. This will generally mean income which is derived in connection with a permanent establishment (PE) of the entity in a particular country; and from that entity competing in a market; and substantially from the ongoing use of labour by the entity. Significantly, however, the source of the income derived, the location of the market and the labour resources utilised must each have a significant connection with the country in which the CFC has its PE, otherwise the income is not excluded from attribution. We note that it appears that the PE requirement, in this context, seeks to establish that there is a place of business from where income is derived.

Although there is currently limited guidance on these requirements, we envisage it will be important from a transfer pricing perspective to demonstrate the economically important functions of the CFC in using its labour force and competing in a market, as well as the assets of the CFC that constitute the PE. This may mean that interest income derived by an offshore treasury

entity may be exempt from attribution if it can pass the active business exemption. However, as each CFC must be considered individually these rules may be problematic for CFCs that utilise the labour resources of other group entities (such as contract research and development activities) where it cannot be shown there is a significant enough connection between its own labour and place of business and the income it derives on contracted services.

- **Relief for intra-group sales and services transactions** – Under the proposed changes to the CFC rules, both ‘tainted sales’ and ‘tainted services’ income of a CFC is no longer attributable to an Australian resident taxpayer. This reflects a significant relaxation of the existing CFC rules. Under the existing rules, if a CFC provides services to an Australian resident, or purchases and/or sells goods from/to an Australian associate without substantially altering or manufacturing the goods, the sales and services income is considered to be tainted and would generally be attributable. Under the proposed rules, income from these tainted transactions would no longer be subject to attribution and taxed in Australia.

For example, under the existing rules, an Australian manufacturer that distributed its products in overseas markets through a CFC generally would be required to include in its attributable income profits of the CFC distributor that relate to sales of the Australian company’s products. Similarly, an Australian company which has an offshore CFC operating as a procurement and logistics hub for certain products which the CFC sources and on-sells to its Australian affiliates would also be required to determine the CFC’s profits associated with the supplies to

the Australian affiliate and attribute these for Australian tax purposes. An offshore service centre, such as a shared service centre or insurance captive that provides services to its Australian affiliates was also captured under the existing rules in certain circumstances. Under the proposed draft legislation, this would no longer be the case, relieving the Australian company of the ongoing compliance burden of income attribution.

- **Treatment of royalty income** – Similar to the existing CFC rules, worldwide royalty income of a CFC continues to be prima facie passive income subject to attribution. However, under the proposed rules the active income exemption may operate to exempt royalty income from attribution, when the royalty income does not have a connection with Australia.

As a key integrity measure however, where the royalties are derived from the exploitation of assets originating from a related Australian resident which are transferred to a CFC and the CFC does not substantially develop, alter or improve the assets during the CFC’s ownership period, the royalty income is included as passive income and subject to attribution, irrespective of whether the royalty income otherwise satisfies the active character exemption. Importantly, this additional development, alteration or improvement must have the result of substantially improving the market value of the intellectual property to avoid attribution. While this position has not changed significantly from the second consultation paper, it does create important considerations for CFCs acquiring or licensing intellectual property from an Australian related party for subsequent licensing to other CFCs.

Transfer pricing update

- **Group income relief** – While passive income derived by a CFC from fellow members of its CFC group is generally excluded from attribution, there is an integrity measure. This integrity measure effectively denies the benefit of group relief where the group payer obtains an Australian ‘tax benefit’ (including a tax deduction, tax offset or increase in the tax cost of an asset) in respect of the payment that would otherwise give rise to passive income. This means that any payments generating passive income for a CFC by an Australian entity may be attributable where the Australian entity claims a deduction on those payments.



What are the practical transfer pricing implications for Australian taxpayers?

The release of the exposure draft legislation continues to reflect the Government’s intention to create a more streamlined CFC regime, attune to the commercial realities of international business. This does not mean however that the ATO will relax its focus on international tax compliance. In effect, the proposed changes to the CFC rules will result in the ATO placing greater reliance on Australia’s transfer pricing provisions, together with other anti-avoidance provisions, to protect the Australian revenue.

We have already seen this begin to take effect in practice. The ATO has recently formed the jurisdictional risk team which brings together the examination of CFCs, transfer pricing and PE issues within the one team. This move recognises that the examination of these issues is not only inter-related but moreover, is of key importance to the ATO’s ongoing compliance initiatives.

From a practical perspective, it will therefore be important for Australian resident taxpayers who have CFCs to ensure that income and expenses are allocated in accordance with the arm’s length principle, having regard to functions performed, risks assumed and assets employed. Australian resident taxpayers should also ensure that their current business structures have economic substance, are supported by legal agreements and that appropriate transfer pricing documentation exists to support the pricing of the cross border transactions. For any taxpayer contemplating a business change, proper planning, communication and implementation is essential for transfer pricing and tax purposes.

ATO finalises taxation ruling on the application of transfer pricing provisions to business restructuring with no significant amendments

Background

On 9 February 2011, the ATO released Taxation Ruling TR 2011/1, Income Tax: application of the transfer pricing provisions to business restructuring by multinational enterprises (the Ruling). Business restructuring is defined as arrangements of multinational enterprises by which functions, assets and/or risks of a business are transferred between jurisdictions.

The Ruling contains no significant changes from the position taken by the ATO in the earlier draft, circulated in June 2010.

The ATO expects that the application of Australia’s domestic transfer pricing rules and the double tax treaties in business restructuring cases will produce consistent results. The Ruling does not consider the implications of Australia’s general anti-avoidance rules in Part IVA of the *Income Tax Assessment Act 1936*.

Implications for taxpayers

Taxpayers who have undergone or are intending to carry out a business restructure will need to demonstrate that the arrangement is commercial for all parties involved, having regard to each entity’s own best economic interests and the options realistically available to them at arm’s length.

Transfer pricing update

The Ruling outlines a number of scenarios that would not be considered commercial, for example where risks are moved without a corresponding change in functions undertaken or assets owned, or where the new risk bearing entity is not functionally or financially capable of managing that risk, or where there is no real evidence of the existence of the risk.

As the scope of the Ruling is retrospective, taxpayers should consider the guidance in the Ruling to ensure that they have adequate documentation to support historic as well as proposed business restructuring arrangements.

Key Observations

Whilst the Ruling is balanced in its articulation of the underlying principles, the complexity and commercial orientation of business restructures will present challenges for taxpayers who have undergone, or are intending to enter into, a business restructuring arrangement and are seeking tax certainty.

In our view, the Ruling provides a roadmap to taxpayers on what information and documentation needs to be maintained and what processes need to be adopted. However, it provides limited practical guidance on how to treat key technical and pricing issues. This is in contrast to the OECD guidance, which focuses on the threshold issues and conceptually how these might be treated from a transfer pricing perspective.

The Ruling states that the ATO “has regard to” OECD guidance (released in July 2010). This wording is, in our view, weaker than the language used in the earlier draft, which stated that the ATO “will follow the OECD guidance...”. We would have expected the language to be stronger in this context, as we understand that the ATO had significant input into the drafting of the OECD guidance.

The Ruling provides limited practical guidance on key issues such as describing the exceptional circumstances when the ATO will seek to disregard the actual transactions that took place and look to hypothesise what an arm’s length party might have been expected to do in the same situation.

One of the key challenges facing taxpayers will be in the area of documentation. The Ruling highlights that the ATO expects that detailed documentation should be prepared at the local Australian entity level, even if this is not required for the decision making process. The ATO has also said that the Ruling does not impose a greater degree of record keeping than was previously expected under Taxation Ruling TR 98/11. We understand that this is the reasoning on which the ATO have applied the Ruling retrospectively.

The ATO has said that it will not use the benefit of hindsight and will analyse the value chain at the time of the restructure with a view to determining how it was expected to be changed as a result of the business restructuring. This is a positive step, however, it remains to be seen how this will be applied in practice.

OECD and transfer pricing aspects of intangibles

On 27 January 2011 the OECD announced the scope of its new project on the transfer pricing aspects of intangibles. According to the announcement, this work is expected to lead to an update of the existing guidance on intangibles in Chapter VI of the OECD Transfer Pricing Guidelines (TPG).

In issuing the scoping document the OECD highlighted the importance of this project for countries and the business community, given the increasing focus on transactions

involving intangibles and their migration between jurisdictions. The work will focus on the following aspects:

- the development of a framework for analysis of intangible-related transfer pricing issues
- definitional aspects
- specific categories of transactions involving intangibles, such as:
 - research and development activities
 - differentiation between intangible transfers and services
 - marketing intangibles, other intangibles and business attributes
 - how to identify and characterise an intangible transfer
 - situations where an enterprise would at arm’s length have a right to share in the return from an intangible that it does not own, and
 - calculation issues.

In addition, a review is to be carried out of the existing guidance in Chapter VIII of the TPG on Cost Contributions Arrangements.

ATO relaxes its FBT view on the 'Cost Price' of a Car

Despite the festive season being over for another year, the Australian Taxation Office (ATO) has delivered a pleasant surprise to employers as we approach another fringe benefits tax (FBT) year end, in the form of *Draft Taxation Ruling TR 2011/D1 "Fringe benefits tax: meaning of 'cost price' of a car, for the purpose of calculating the taxable value of car fringe benefits"*.

On the presumption that the Draft Ruling will proceed to final without change, the ATO now accepts that all of the following arrangements will reduce the cost price of a car:

- A trade-in vehicle provided by an employee towards the purchase of a car.
- An up-front cash payment made by an employee towards the purchase of a car.
- Fleet discounts, sales incentives and manufacturers' rebates.

Further, once finalised, the Ruling is proposed to apply both before and after its date of issue, opening up FBT refund opportunities for employers who have followed the ATO's historical stance, particularly with respect to car manufacturer's rebates.

What is the cost price?

The 'cost price' is an important element in determining the taxable value of car fringe benefits under both the Statutory Formula and Cost Basis methods of valuation.

In relation to a car owned by a person, the term 'cost price' is defined in section 136(1) of the *Fringe Benefits Tax Assessment Act 1986* as "the expenditure incurred by the person (other than expenditure in respect of registration or in respect of a tax on, or on a transfer of, registration) that is directly attributable to the acquisition or delivery of the car..."

What is the ATO's historical stance?

Prior to the release of TR 2011/D1, the ATO had not provided any recent guidance that dealt directly with cost price of a car.

Miscellaneous Taxation Ruling MT 2021, issued in 1986, outlined the ATO's view that a trade-in by an employee could reduce the cost price of a car for FBT purposes. In a National Tax Liaison Group FBT Sub-committee meeting held on 22 May 2003, the ATO commented that, similar to cash contributions by the employee, any promotions or rebates received do not usually reduce the base value of a car. This conclusion was reached on the basis that, under the contract for sale, the employer could be liable for the full purchase price in which case the full purchase price is the 'cost price' for FBT purposes. A cash contribution by the employee or rebate that occurs after acquisition does not reduce the "expenditure incurred".



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ATO relaxes its FBT view on the “Cost Price” of a Car

What is the ATO’s revised view in TR 2011/D1?

TR 2011/D1 notes that expenditure that is directly attributable to acquisition or delivery of the car, such as dealer delivery charges, should also be included in the cost price. However, the Commissioner considers that insurance costs and extended car warranties are not directly attributable to the acquisition or delivery and, therefore, are not included in the cost price of the car.

It is the ATO’s view that certain arrangements may also affect the amount of expenditure incurred by a person that is directly attributable to the acquisition or delivery of the car. In this regard, the Draft Ruling states that:

- Where the employee provides a trade-in vehicle to a car dealer, or makes a cash payment to the dealer or to the employer to assist with the employer’s purchase of the car, the value of the trade-in or the cash payment, as the case may be, reduces the cost price of the car. Appendix 2 to TR 2011/D1 states that a cash contribution made to the employer in this instance is not a ‘recipient’s payment’, as it is made in respect of the acquisition of the car and not by way of consideration for the provision of the car fringe benefit.
- Fleet discounts, sales incentives, manufacturers’ rebates and other discounts applied by car dealers also reduce the expenditure incurred in acquiring the car and, hence, the cost price. This is the case even if a manufacturer’s rebate is received after the acquisition of the car, or is received by a fleet management company at the direction of the employer.

Practical observations

- As the ruling is more concessional on reducing the cost price of a car than the ATO view in the past, employers should review the calculation of the cost price where employee contributions, rebates or other discounts/contributions have been made by employees, manufacturers or dealers towards the acquisition of the car. Consideration should then be given to requesting amendments to prior year FBT returns and adjusting the cost price of cars for the current FBT year.
- The reduction in the cost price for manufacturer’s rebates will only apply where the rebate is paid to the purchaser or applied at the purchaser’s direction. That is, if a car is acquired by the leasing company and the rebate is payable to the employer, the cost price will only be reduced if the employer redirects the rebate to the leasing company.
- The Draft Ruling refers to a rebate received by a party other than the purchaser being directed to the purchaser “at or about the same time” as the car purchase. There is no direction as to what is meant by “at or about the same time” and it is unclear as to whether the agreement to redirect must be made “at or about the same time” of the purchase or the actual rebate must be received “at or about the same time” of the purchase. This clarification will be important if an employer agrees to redirect a rebate to the leasing company “at or about the same time” of the purchase, but the rebate is not received and physically redirected to the leasing company for example,

some months later, ie where the employer agrees to receive the rebate and on forward it to the leasing company rather than directing the manufacturer to pay the rebate direct to the leasing company. Some comfort may lie in the fact that the Draft Ruling does state that a rebate received by an employer after the acquisition of a car reduces the cost borne by the employer.

- The Appendix to the Draft Ruling explains that “expenses incurred” for FBT purposes does not have the same meaning as “outgoing incurred” in income tax law. Accordingly the cost price for FBT purposes and the depreciable value for income tax purposes may in many cases be different.

Comments on the Draft Ruling can be made until 8 April 2011.

Alternative fuels to be taxed from December 2011

On 24 January 2011, the Government released the long awaited Exposure Draft legislation to bring alternative fuels into the fuel tax regime from 1 December 2011. The new date of effect represents a five month delay on the Government's previously intended commencement date after industry highlighted the time which would be required to get systems ready for the new tax.

There is currently no duty or excise on compressed natural gas (CNG), liquefied natural gas (LNG), liquefied petroleum gas (LPG) or methanol. Similarly, the full rate of fuel tax levied on ethanol, biodiesel and renewable diesel is reduced to nil via various producer and importer grants. The new rules will impose excise or excise equivalent customs duty based on the energy content of the fuel. A 50 per cent fuel tax discount for alternative fuels is proposed in the reforms to reflect the potential benefits of using alternative fuels. Fuel tax will be levied at the point of manufacture or importation of the fuel and the rates will be phased in over five years.

A snapshot of the proposed rates:

Type of fuel

Methanol	▶ 8.5 cents per litre (low energy content rate)
LPG, LNG and Ethanol	▶ 12.5 cents per litre (medium energy content rate), with ethanol grants being phased out
CNG, Biodiesel, Renewable diesel	▶ 19.1 cents per litre or cents per cubic metre as applicable (high energy content rate)

There have been technical questions raised by the alternative fuels industry as to whether the proposed fuel tax rates accurately equate to the appropriate energy content cents per litre rates currently applied to diesel and petrol. Following industry submissions on this matter, there may be changes to the rates quoted above.

For business users of alternative fuels, fuel tax credits will be available on the use of these fuels (except in relation to most on-road transport use) from 1 December 2011, in the same way that businesses currently claim fuel tax credits for use of petrol and diesel.

The current fuel tax credit for heavy vehicle use of petrol and diesel on public roads is 15.543 cents per litre (after the 22.6 cents per litre road user charge is deducted). Any potential fuel tax credit for heavy vehicle use of alternative fuels on public roads will be eliminated by the road user charge as the latter exceeds the former. In this regard, there is concern from some industries that, contrary to the legislative agenda, the 50 per cent relative fuel tax discount is not achieved with respect to alternative fuels used by heavy vehicles on-road (albeit that use in this area is immaterial at present).

A burden on business

The proposed legislation is likely to increase the administrative burden on the LNG and LPG sectors. Whilst the draft legislation removes the need for offsetting grants for gaseous fuels, it requires manufacturers of alternative fuels to obtain site-specific licenses and permits from the Australian Taxation Office. In most cases, manufacturers will now need to track deliveries of alternative fuels (such as tank sizes, customer type, fuel use and so on in the case of LPG) to calculate the applicable tax amount or to qualify for automatic remission (in the case of LNG). Many practical implementation issues arise from the taxing methodologies set out in the proposed legislation, for example, whether business systems currently record tank size delivery information where tankers fill tanks at several different client sites.

For businesses who have never previously remitted fuel tax (for example, manufacturers of LPG and LNG), we anticipate significant systems and compliance resources will be required to collect and report the tax effectively over the coming months. For many affected businesses, this will require work of a similar scale to the GST implementation (such as systems upgrades, apportionment of revenue streams, new tax reporting obligations, contract reviews for fuel tax passing on provisions, tax invoice formats and so on).

Submissions on the draft legislation were due on 18 February 2011 and we anticipate some additional industry consultation before the legislation is finalised. To that end, and especially if the rates are changed, there may need to be a further delay to the proposed start date.

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Deferred tax on investment properties at fair value – amendment to IAS 12

The International Accounting Standards Board (IASB) issued a wide-ranging exposure draft (ED) on income tax in 2009. It decided, on the basis of comments received, not to proceed with the proposals in that ED but to focus on some practical issues with the existing standard. This amendment aims to address one of those practical issues – deferred taxes arising from remeasurement of investment properties to fair value.

The current principle in IAS 12 “Incomes taxes” requires the measurement of deferred tax assets or liabilities to reflect the tax consequences that would follow the manner in which management expects to recover or settle the carrying amount of the entity’s assets or liabilities. For example, management may expect to recover an asset by using it, and by selling it or by a combination of use and sale. Management’s expectation can affect the measurement of deferred taxes when different tax rates or tax bases apply to the profits generated from using and selling the asset.

The IASB believes that entities holding investment properties measured at fair value sometimes find it difficult or subjective to estimate how much of the carrying amount will be recovered through rental or other income (that is, through use) and how much will be recovered through sale, particularly when there is no specific plan for disposal.

Consequently, the IASB released an amendment to IAS 12, on 20 December 2010, which provides an exception to the

principles in the existing standard for measuring deferred tax assets or liabilities when investment property is measured at fair value.

The amendment introduces a presumption that the measurement of a deferred tax liability or a deferred tax asset arising on an investment property measured at fair value should reflect the consequences of recovering the carrying amount entirely through sale.

This presumption is rebutted if the investment property is depreciable and is held within a business model whose objective is to consume substantially all of the economic benefits embodied in the investment property over time, rather than through sale. The freehold land component of an investment property can be recovered only through sale.

The exception will affect entities holding investment property measured at fair value in countries where the capital gains tax rate is different from the income tax rate, or, as in Australia, where the tax base on sale typically differs from the tax base on use.

The amendment applies for annual periods beginning on or after 1 January 2012, with early adoption permitted. Full retrospective application is required, which may create complexity where the underlying investment properties were acquired in a business combination. In such circumstances it could be difficult to restate goodwill and recalculate previous goodwill impairment. Where it is established that it is impracticable to adjust comparative information, the disclosures required by IAS 8 “Accounting Policies, changes in accounting estimates and errors should be given.



Effective Tax Reporting

Is it time to take stock of your tax reporting process?

As you read this article many of you will have recently finished preparing your tax effect accounting entries and tax reporting for the period to 31 December 2010. As a post-script to this exercise, it is worth spending some time reflecting on how this process went, what went well, and what improvements could be made for future periods?

Some points to consider are:

- Was the underlying data that you received of the requisite quality? Do the business units understand what is required of them and by when? If not, how can this be improved?
- Do the tax and finance teams have delineated responsibilities for the various aspects of the tax effect accounting process? Do the teams share a joint timetable? Are the responsibilities and timetable followed in practice, or are they divorced from the reality of the resources and skill sets of the respective teams, leading to disputes and ill-feeling?
- What technology is used to prepare the tax effect accounting entries? Often because of the complexity of the Australian tax system, the tax entries are prepared off-line using a multitude of spreadsheets. If there is a late change in the underlying profit numbers, these spreadsheets often need to be updated manually. Re-keying of data, and manual process under time pressure greatly increase the

risk of errors occurring. It is also far more difficult to retain a robust audit trail, with evidence of the appropriate sign-offs, when off-line workings are used.

- The timing of tax effect accounting work – how much of the work was completed before the period end, such as review of open tax years and agreement of treatment of uncertain tax positions with auditors?

Whose problem is it?

Tax reporting is one of the most common areas raised by heads of tax in discussions with us. The first question we are usually asked is “who should be responsible for tax effect accounting and tax reporting – the finance or tax department?”

While some of the largest organisations in Australia have dedicated specialist in-house tax reporting teams, for most organisations tax reporting is not a full-time role. In our experience, those organisations which have an efficient tax reporting system share the following key characteristic: *neither the tax department nor the finance department wash their hands entirely of the process, rather they communicate throughout the year, and work together to leverage their respective skills in the optimum way for their organisation.*

By this we mean that tax reporting is not regarded as a year end process but rather that every time the tax function advise on the tax implications of a transaction or implement tax planning, the tax reporting reflex of this is determined in real



Effective Tax Reporting



time by the appropriate internal or external person. Therefore when it comes to year end, there should be no thorny tax reporting issues to wrestle with. Indeed many organisations insist that the accounting associated with any tax planning must be signed off before implementation of the planning.

Given the time pressure under which it is performed and the importance and market-sensitivity of tax reporting, coupled with the fact that increasingly more of the tax legislation is linked to accounting principles, e.g. taxation of financial arrangements, it is essential that either the tax department possess or have access to the necessary accounting and tax accounting skills.

Often in situations where the tax function does not have strong accounting knowledge (and some would argue that they do not need detailed accounting knowledge, nor should they waste their time trying to achieve such knowledge), a member of the finance team will be allocated responsibility for providing accounting advice to the tax team on transactions, advice provided to the business, and so on.

However given the complexity of the Australian tax system, and in particular the income tax consolidation regime, it is also essential that the organisation has a strong grasp of the tax accounting rules contained within AASB 112 “Income Taxes” and UIG 1052 “Tax Consolidation Accounting”, and the likely developments in this area over the coming years. This is an area where often the in-house finance team does not have the necessary expertise, hence our comment above re there being a distinction between “accounting” and “tax accounting” skills, and in-house tax and finance departments needing to work together to deliver the end product.

Some organisations will choose to develop these tax accounting skills internally, others will rely upon external advisers and outsource the preparation of the tax accounting entries. There is no one size fits all answer. The key point is that the organisation must understand what skills it needs in each of the above three areas and which of these skills it can provide internally. At PwC, we offer both outsourced tax accounting services, and we run client training courses (both standard and bespoke) on tax accounting, which may offer potential solutions for some organisations.

Uncertain tax positions

No discussion regarding tax reporting would be complete without mentioning the current developments regarding disclosing uncertain tax positions. The US IRS is requiring companies to be more transparent in respect of their uncertain tax positions, and the ATO is piloting a similar program. This initiative is prompting many Australian Heads of Tax to consider whether they currently have sufficient line of sight over tax reporting for their organisation, and if not, how they should address this.

The pace of change of tax legislation, accounting standards, and increased expectations of standards of tax corporate governance means that the tax reporting process cannot stand still. It must continually evolve to deliver the quality of information that the organisation and its stakeholders desire these days.

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Corporate Tax update

Taxpayers need to consider availability of scrip for scrip roll-over relief

In our 23 November 2010 publication – *Recent developments in M&A* – we considered the changes to the capital gains tax (CGT) provisions to align the requirements of the scrip for scrip roll-over relief in the tax law, with the requirements of the *Corporations Act 2001* regulating takeovers and schemes of arrangement. The amendments which ensure that the scrip for scrip roll-over operates more effectively received Royal Assent on 7 December 2010.

Since the amendments are retrospective (they apply to CGT events that happen on or after 6 January 2010) the Commissioner of Taxation has noted the need for taxpayers to consider their position and where necessary take action to ensure that the tax treatment that they have adopted is correct. In this respect the Commissioner has advised that those taxpayers:

- who chose roll-over relief which accords with the changes do not need to do anything more
- who did not choose roll-over relief can seek amendments and if a reduction in liability results, interest on overpayment of tax will be paid, and
- who chose to anticipate the roll-over relief, but find that this does not accord with the changes will need to seek amendments.

In these cases no tax shortfall penalties will be applied by the Commissioner and any interest accrued will be remitted to the base interest rate up to the date of enactment of the law change. In addition, any interest in excess of the base rate accruing after the date of enactment will be remitted where taxpayers actively seek to amend assessments within a reasonable timeframe after enactment.

For further information relating to these changes contact Paul Abbey on 03 8603 6733.



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International Tax update

Australia: Switzerland tax treaty

On 9 February 2011 the Assistant Treasurer invited interested parties to comment on updating the Australia-Switzerland tax treaty. The existing treaty and protocol with Switzerland were signed in 1980. Closing date for submissions was 28 February 2011.

United States: President Obama's 2012 Budget

United States (US) President Obama and his Administration recently issued their 2012 Budget. It is an extensive Budget that contains a large number of tax measures. The proposals that are of most interest to non-US taxpayers would be those that would extend the:

- Controlled foreign company (CFC) look through rule. This rule prevents attribution under the US CFC rules when dividends, interests, rents or royalties are paid, out of 'active' income, from one CFC to another CFC.
- CFC active finance exception. This rule is relevant for US owned banks and other financial institutions, which conduct an active banking business outside the US through a corporate entity.

The extension of both of these rules would be until the 2012 tax year.

As stated in the introduction, these matters form a part of the Obama administration's 2012 Budget. In order for any provision in this Budget to become law, it will need to be approved and passed by both houses of Congress, who have played no part in the drafting of this Budget. Accordingly, it is not clear whether any of the matters in this Budget will become law.

"This document contains US tax advice and US law requires that we include the following statement. This document was not intended or written to be used, and it cannot be used, for the purpose of avoiding US federal, state or local tax penalties. This document has been prepared for information purposes only and is not to be relied upon by readers of this publication or any other person for US tax purposes".

Australia-Turkey tax treaty

On 15 February 2011 the Department of Treasury released a draft explanatory memorandum to the Australia-Turkey Tax Treaty.

The explanatory memorandum will provide a technical explanation of the provisions of the treaty which was signed on 28 April 2010. In its media release, Treasury advised that the Joint Standing Committee on Treaties is yet to advise Parliament on this treaty action and that no action is to be taken to introduce relevant legislation into Parliament until after the Government has considered the Committee's report.

The closing date for submissions in relation to the explanatory memorandum was 21 February 2011.

China developments on corporate restructuring

The Chinese tax authorities have been gearing up their administration of corporate restructuring activities through regular updates of tax regulations. The core focus of these tax circulars has been addressing the tax treatments, form and substance of corporate restructurings, as well as introducing anti-tax avoidance measures to combat the abusive use of corporate restructurings to achieve tax benefits.

Under the relevant regulations, determination of the 'fair value' of assets may be required during a restructuring, and appropriate documentation must be produced to ensure the appropriate tax treatment, including 'legitimate evidence' or a report by a legitimate qualified asset valuation party (ie one which is properly licensed to conduct this type of valuation in China) as well as approval documents, statements of settlement, agreements/contracts and 'other information as required' by the Chinese tax authorities.

For further details contact Anthony Klein on 03 8613 2918.

Australia-Chile tax treaty

On 28 January 2011 the Department of Treasury released a draft explanatory memorandum to the Australia - Chile Tax Treaty. The explanatory memorandum will provide a technical explanation of the provisions of the treaty which was signed on 10 March 2010.

The closing date for submissions in relation to the explanatory memorandum was 23 February 2011.

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Indirect Taxes update

Goods and Services Tax (GST) administration reform update – cross-border transactions

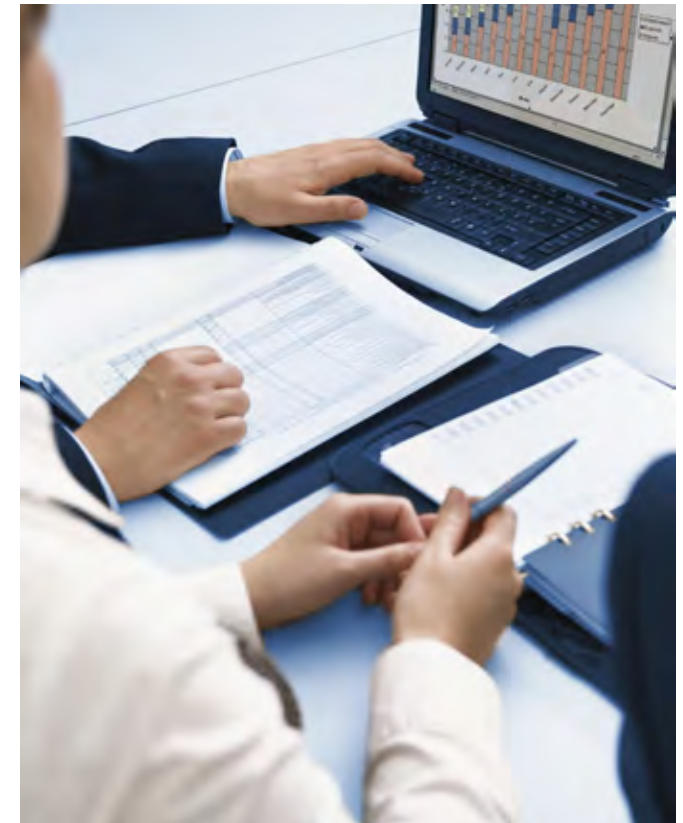
As part of the 2010 Federal Budget, the Government announced its response to the Board of Taxation's review of the application of GST to cross-border transactions (this review originated from the recommendations made by the Board of Taxation in its earlier review of the legal framework for the administration of the GST). The Government agreed to implement all of the Board's recommendations, and on 15 February 2011, announced the release of a discussion paper on the proposed reforms.

According to the discussion paper, the key objective of the reforms is to simplify the design of the GST cross-border rules and improve the balance between maintaining the tax base and ensuring Australia's GST system does not unnecessarily draw in non-residents.

Proposed changes include:

- limiting the 'connected with Australia rules' for certain supplies made by non-residents
- expanding the existing compulsory reverse charge rules to include goods
- extending GST-free status to supplies made to a non-resident but provided to registered entities in Australia (including, but not limited to, supplies of warranty services made to a non-resident but provided to an Australian warranty holder)
- expanding the non-resident agency provisions so that they apply more broadly than to common law agency relationships; and removing the requirement for the non-resident principal to register for GST
- removing the requirement for a non-resident to register for GST if they make only GST-free supplies, and
- introducing options for calculating the transport and insurance costs to include in the value of taxable importations.

The discussion paper is intended to provide additional information on how the proposed measures may operate, and to seek feedback on their design and implementation. Submissions are due by 31 March 2011.



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Indirect Taxes update

GST and discounts on mixed supplies – Full Federal Court decision for the taxpayer

On 23 February 2011, the Full Federal Court handed down its decision in *Commissioner of Taxation v Luxottica Retail Australia Pty Ltd* [2011] FCAFC 20. PwC acted for Luxottica in the appeal.

The case concerned the GST treatment of discounts offered by a retailer selling prescription eyewear, in particular whether a discount offered on the taxable frames needed to be apportioned across the full sale value of the glasses (which included the GST-free lenses).

In its appeal, the Commissioner submitted that the Administrative Appeals Tribunal had erred in law and misconstrued the operation of the legislative provision concerning the value of taxable supplies that are partly GST-free, by not taking into account the undiscounted price of the frames in calculating the taxable proportion. The Court found that the Commissioner's position amounted to a disagreement with the factual basis of the Tribunal's decision, which was to apportion the 'value' of the components of the spectacles by reference to the price agreed by the parties for each component.

As the Court agreed with the contention of Luxottica that there was no question of law to enliven the jurisdiction of the Full Federal Court, the Commissioner's appeal was dismissed.

Further analysis of this decision will be included in the next edition of *TaxTalk*.

Multi-party arrangements – ATO Decision Impact Statement

On 15 February 2011, following the High Court's refusal of the Commissioner's application for special leave to appeal, the Australian Taxation Office (ATO) released a Decision Impact Statement in relation to the Full Federal Court decision in *Commissioner of Taxation v Secretary to the Department of Transport (Victoria)* [2010] FCAFC 84. The Full Federal Court found that the Department of Transport was entitled to input tax credits in relation to amounts paid to taxi operators who provided transport services to Victorian residents with disabilities.

In the Decision Impact Statement, the ATO has attempted to limit the decision to a narrow range of circumstances in which:

- subsidy payments are made to an entity by a government agency in circumstances where the supplier supplies goods or services to a third party
- prior to the supply being made, the supplier obtains advance authorisation from the agency that the agency will make the relevant payment, and
- the supply by the supplier to the third party promotes the objects or functions of the government agency.

The ATO is seeking comments on the implications of the decision by 12 April 2011.



State Taxes update

Delayed Queensland Land Valuations

On 14 February 2011, the Queensland Premier announced that Queensland's statutory land valuations will be delayed until 30 June 2011, for this year only. Originally, the land valuations were scheduled to be declared by 31 March 2011. The delay in the release of the land valuations was recommended by the State Valuer-General, in light of the recent floods and the effects of Tropical Cyclone Yasi.

The media release states that, "valuers will now inspect properties and use spatial imagery to make valuation adjustments where necessary. Information compiled during the recent flood and cyclone events along with historical data also would be reviewed to assess impacts on property values."

This delay will affect over 1.6 million landowners across Queensland. The delay is argued to prevent distorted valuations and reduce objections. Interestingly, local councils may need to access valuations prior to 30 June 2011 in order to calculate council rates.

Queensland Treasury Mid-Year Fiscal and Economic Review

On 28 January 2011 the Queensland Treasurer issued the Mid Year Fiscal and Economic Review (the Review). As part of the Review the Queensland Treasurer announced that from 1 July 2011 Queensland (Qld) will replace the existing stamp duty 'land rich' provisions with a 'landholder' model, similar to that adopted in a number of other States.

The provisions have been announced to apply to acquisitions of:

- 50 per cent or more of an unlisted company holding land in Qld worth \$2 million or more, and
- 90 per cent or more interests of a listed company or listed unit trust holding land worth \$2 million or more (at a concessional rate of 10 per cent of the duty that would otherwise apply).

The existing requirement (under the land rich provisions) that land comprise 60 per cent or more of the total countable property will be abolished.

Another major change is the inclusion of listed unit trusts in the landholder model – the current land rich regime only applies to unlisted companies. The existing 'trust look through' rules will continue to apply to acquisitions in unlisted trusts.

The Treasurer has not announced whether the new regime will calculate duty on the value of landholdings only, or whether it will apply to landholdings and goods (as in Western Australia, New South Wales and, from 1 July 2011, South Australia). However, as one of the reasons given for introducing the landholder model is to harmonise the treatment of landholding companies with other States of Australia, it is reasonable to assume that duty will be calculated on both landholdings and goods.

Further, it is possible that the Qld legislature may take the opportunity to make other amendments to the existing provisions. For example, expressly including mining tenements in the definition of 'landholdings' (as in the case in some other landholder duty models) to resolve any current arguments relating to the treatment of these assets.

As of 1 July 2011, these changes will bring the tally of landholder jurisdictions to 6 (ie New South Wales, Western Australia, Northern Territory, Australian Capital Territory, South Australia and Queensland) compared to two land rich jurisdictions (ie Victoria and Tasmania).



Personal Tax update

Finding lost Super

On 4 February 2011, the Assistant Treasurer and Minister for Financial Services and Superannuation announced the release of draft legislation that will allow superannuation funds to use tax file numbers (TFNs) to identify members' accounts.

In his media statement the Assistant Treasurer said that an estimated 5.8 million super accounts, or about one in five, are lost, with the total amount of lost superannuation being \$18.8 billion.

Under the provisions contained in the draft legislation superannuation funds will be allowed to use the TFN to identify member accounts from 1 July 2011. At present, although members can supply their TFN to the fund, the TFN cannot be used as the primary identifier of member accounts or to assist with consolidation of accounts between and across funds. The proposal will be subject to strict privacy guidelines.

Consultation on the proposed amendments closed on 17 February 2011.

SMSFs and investment in collectibles and personal use assets

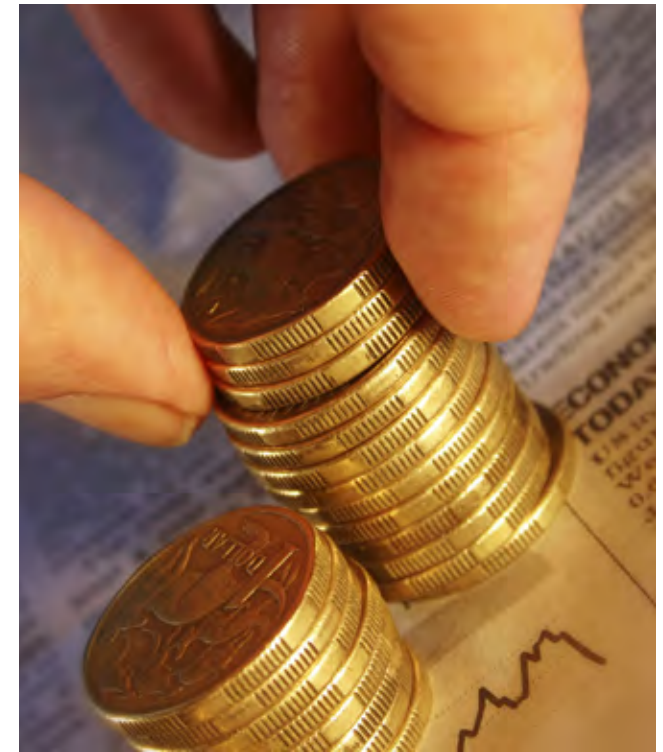
On 1 February 2011 the Assistant Treasurer issued a media statement confirming that Self Managed Superannuation Funds (SMSFs) will be allowed to invest in collectibles and personal use assets like artwork or stamps, provided they are held in accordance with tightened legislative standards.

Consistent with the media statement, the Assistant Treasurer released draft legislation that will allow the Government to make regulations about how SMSFs can make, hold and realise investments in collectibles and personal use assets.

The aim of the new rules is to ensure that these investments do not give rise to a personal benefit for SMSF trustees, but rather are held for the purpose of providing retirement benefits.

Associated draft regulations that set out the rules that will apply to SMSF investments in collectibles and personal use assets are to be released for public comment, following consultation with relevant stakeholders on their design.

For further information 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 (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011 and *Income Tax Rates Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011* were introduced into Parliament on 11 February 2011 and following referral to the House of Representatives Standing Committee on Economics have since passed the House of Representatives. These Bills are designed to implement the Flood Levy, referred to in the Other News section of last month's *TaxTalk*.

Tax Laws Amendment (2011 Measures No1) Bill 2011 introduced on 24 February 2011 proposes:

- to exempt from income tax, the Disaster Income Recovery Subsidy paid to those affected by the floods that occurred in Australia on or after 29 November 2010 and those affected by Cyclone Yasi. Once enacted, these amendments will apply retrospectively in relation to payments claimed after 9 January 2011 and before 1 March 2011.
- to exempt from income tax, ex-gratia payments to New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 financial year. Once enacted, these amendments will apply retrospectively in relation to payments claimed after 30 January 2011 and before 1 August 2011.
- to provide an exemption from income tax for Category C Natural Disaster Relief and Recovery Arrangements grants paid to small businesses and primary producers, where the Category C grant relates to flooding that occurred in Australia on or after 29 November 2010 and those small businesses and primary producers affected by Cyclone Yasi. Once enacted, these amendments will apply to Category C grants paid to small businesses and primary producers relating to flooding that occurred in Australia on or after 29 November 2010 and those small businesses and primary producers affected by Cyclone Yasi.
- to increase the flexibility of the *First Home Saver Accounts Act 2008 (FHSA 2008)* by allowing money in a First Home Saver Account to be paid into a genuine mortgage after the end of a minimum qualifying period (should the account-holder purchase a dwelling prior to the release conditions being satisfied) rather than requiring it to be transferred to a superannuation or retirement savings account. Once enacted, these amendments will apply only to persons who acquire a "qualifying interest" in a "dwelling" on or after the Bill receives Royal Assent.



Other news

Tax Office to review internet trading activities

The Australian Taxation Office (ATO) has issued a media statement advising that during February and March 2011, it will contact tax agents and business contacts of companies and trusts where both of the following apply:

- the entity is in the \$2 million to \$100 million annual turnover market, and
- the entity has indicated in their 2009 year income tax return that they sold goods or service via the internet.

The ATO further stated that it will call to obtain information from entities trading through the internet – specifically those trading on the internet with international entities. This includes:

- the main countries with which they trade
- the payment and delivery methods they use
- the type of goods and services they trade in, and
- the percentage of their total income that is derived from internet trading.

According to the ATO's media statement, the information is to help the ATO establish the effectiveness of the 'internet trading label' on the income tax return, and is not part of the ATO's data matching program.

Options paper of investor protection threshold

On 24 January 2011 the Assistant Treasurer and Minister for Financial Services and Superannuation, released an options paper reviewing the distinction between retail and wholesale clients in the *Corporations Act 2001*. The importance of the distinction is that wholesale clients do not receive the same level of regulatory protection as retail clients, as they are considered better informed and better able to assess the risks involved.

The options paper discusses the rationale for the review as well as requirements in comparable foreign jurisdictions before presenting a number of options for reform including:

- retaining and updating the current system to recognise and account for problems experienced during the Global Financial Crisis
- removing the distinction between retail and wholesale clients so that all clients receive protections and disclosures currently only afforded to retail clients, and
- introducing a subjective 'sophisticated investor' test based on the client's experience and ability to understand the product as the sole distinction.

The consultation period on the options paper closed on 25 February 2011.

Proposed changes to the Foreign Acquisitions and Takeovers Act 1975

The *Foreign Acquisitions Amendment (Agricultural Land) Bill 2010* (the Bill) was introduced into the Commonwealth Senate as a private members Bill on 24 November 2010.

The Bill seeks to change the way that foreign investment in Australian agricultural land is dealt with under the *Foreign Acquisitions and Takeovers Act 1975* (FATA). The three key amendments proposed by the Bill are:

- acquisitions of interests in Australian agricultural land greater than five hectares will now require approval by the Treasurer
- this approval will be subject to a national interest test, and
- details of agricultural applications will be made publicly available online.

Purchasing interests in agricultural land

Under the current FATA, a foreign person intending to acquire an interest (directly or indirectly through companies or trusts) in Australian urban land must first obtain the approval of the Treasurer (except in limited circumstances). However, where Australian agricultural land is being acquired, the Treasurer only needs to be notified where the value is over \$231 million (\$1005 million for United States investors).

Other news

Using the New Zealand foreign investment regime as a model, the Bill proposes to change the approval criteria from a monetary threshold of \$231 million to a flat five hectares of agricultural land being Australian land used primarily for the business of ‘primary production’. This definition includes, among other things, the activities of dairy farming, horticulture and forestry. The Bill also introduces the new concepts of ‘Australian agricultural land corporation’ and ‘Australian agricultural land trust estate’.

Essentially, a ‘foreign person’ must make an application to the Treasurer prior to a proposed acquisition of an ‘interest in Australian agricultural land’. The relevant “interests” include:

- legal or equitable interests in Australian agricultural land
- interests in a share or units in Australian agricultural land corporations or trust estates (and interests in certain trust companies)
- interests in certain shares in a company (that owns Australian agricultural land) that entitle the holder to a right to access, manage, oversee, make decisions in relation to or profit from the land
- certain interests in leases or licences giving rights to occupy Australian agricultural land for a term of five years or more (including extensions), and
- interests in arrangements that involve the sharing of profits or income from Australian agricultural land.

The current tracing provisions, which apply to acquisitions of ‘substantial interests’ in corporations and trust estates (broadly 15 per cent or more of the voting power), should also apply to indirect acquisitions of interests in Australian agricultural land.

Importantly, the Bill provides that the Treasurer may prohibit an acquisition by a foreign person or may make an order directing a foreign person to dispose of an interest in Australian agricultural land to an approved person where the acquisition would be against the ‘national interest’. Failure to comply with the notification requirements carries a penalty of up to 500 penalty units and imprisonment of up to two years.

National Interest Test

The Bill codifies the elements that the Treasurer must consider when determining whether an acquisition of an interest in Australian agricultural land is in the ‘national interest’. It is noteworthy that this proposed test is limited to Australian agricultural land, and does not apply to other acquisitions that are subject to a ‘national interest’ test (such as acquisitions of Australian urban land).

The matters to be considered by the Treasurer include:

- national security issues
- any impact on competition and global industry
- any impact on Australian tax revenues
- any impact on the Australian economy or the community, and
- the character of the investor.

Publication of interests in Australian land

The Bill introduces measures that require the Treasurer to publish various details of Australian agricultural land applications on the Treasury website. The status of these applications is to be updated as the application proceeds. The published information will include:

- details identifying the person intending to enter into the agreement and their country of residence/ place of business
- the amount of the proposed investment
- the sector of the agricultural industry to which the interest in agricultural land relates, and
- any other prescribed information.

Future passage

The Bill was initiated in the Senate and has been read for the second time. It has yet to pass the Senate and proceed to the House of Representatives. Given that this is a private members Bill, there have been some questions as to whether the Bill can attract the necessary support to pass the Senate. However, given the current make-up of Federal Parliament, and the topical nature of foreign investment into the agricultural sector, the Bill is likely to at least generate debate on the sufficiency of the current regulatory regime.

For more information contact Andrew Wheeler on 02 8266 6401.

Other news

Board of Taxation: Review of design and implementation of tax law

On 30 April 2008 the Tax Design Review Panel (the Panel) chaired by PwC Tax Partner Neil Wilson gave its report (Better Tax Design and Implementation) to the then Assistant Treasurer. The review examined how to reduce delays in the introduction of tax legislation and improve the quality of tax law changes.

In its response the Government accepted the Panel's recommendations and these recommendations are detailed in our September 2008 edition of *TaxTalk*.

The last of the Panel's recommendations was that the Government should ask the Board of Taxation to review the tax design process after two years, and report to Government on the extent to which there are demonstrated improvements.

On 16 February 2011 the Board of Taxation announced the release of a discussion paper on the Board's post-implementation review of the Panel's recommendations. The Board is seeking submissions from interested parties and will be holding a consultation meeting in Melbourne on 4 March 2011 and in Sydney on 10 March 2011 with the aim of:

- providing information on the discussion paper; and
- seeking feedback from participants on the issues raised in the discussion paper and any other matters relevant to the Board's scope of review.

The closing date for submissions is Monday 28 March 2011.



Upcoming Events

Included below are some of our upcoming events.

City	Date	Contacts
Adelaide		
<i>Employment Taxes Update</i>	Tuesday, 1 March	Emily Downie 08 8218 7603 or emily.downie@au.pwc.com
Brisbane		
<i>International Tax Reform – CFC, FAF and Foreign Income Rules briefing</i>	Tuesday, 8 March	Stephanie Leggett 07 3257 8419 or stephanie.leggett@au.pwc.com
<i>Employment Taxes Update</i>	Wednesday, 9 March	Jane Thomas 07 3257 8676 or jane.thomas@au.pwc.com
Melbourne		
<i>BASchool</i>	Tuesday, 1 March	Adelina Kurto 03 8603 5904 or adelina.kurto@au.pwc.com
<i>FBT workshop</i>	Wednesday, 2 March	Adelina Kurto 03 8603 5904 or adelina.kurto@au.pwc.com
Perth		
<i>GST breakfast briefing</i>	Thursday, 3 March	Louise Elliot 08 9238 3367 or louise.elliott@au.pwc.com
<i>Employment Taxes Update</i>	Wednesday, 9 March	Jodi Martin 08 9238 5257 or jodi.martin@au.pwc.com
<i>FBT workshop</i>	Thursday, 17 March	Jodi Martin 08 9238 5257 or jodi.martin@au.pwc.com
Sydney		
<i>Employment Taxes Update</i>	Wednesday, 9 March	Aimie Allen 02 8266 2173 or aimie.allen@au.pwc.com
<i>FBT workshop</i>	Tuesday, 15 March OR Wednesday, 16 March	Aimie Allen 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 Hazel Maung on 0(3) 8603 5066.

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