TaxTalk

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Hung Parliament: A snapshot of opposing tax-related policies

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Until the election results are finalised and an agreement secured with the independents, Julia Gillard remains as the Prime Minister in a caretaker role.

In the meantime, we summarise the major points of differentiation on tax-related policies between the ALP and the Coalition as set out prior to the Election.

Corporate Tax

	ALP	Coalition
Company tax rate	• Eligible small business companies to have a 29 per cent tax rate from the 2012-13 income year • All companies to have a 29 per cent tax rate from 2013-14	• All companies to benefit from a 28.5 per cent rate from 1 July 2013 • Seek to deliver further reductions in company tax – with the objective of reducing the company tax rate to 25 per cent • Fund paid parental leave by a 1.5 per cent levy on companies with taxable incomes in excess of $5 million (levy to apply only to taxable income in excess of $5 million)
Energy & Resources	• Proposed mineral resource rent tax (MRRT) • Extension of the petroleum resources rent tax (PRRT) to all Australian onshore and offshore oil and gas projects, including the North West Shelf	• No resource rent tax (outside the existing PRRT regime) • Introduction of an 'Exploration Development Programme' to provide tax credits to Australian resident shareholders for eligible 'greenfields' exploration expenditure incurred in Australia
Infrastructure	• Revitalise the Australian shipping industry including a new tonnage tax (a low flat tax based on the weight of the vessel) as an alternative to the current tax regime which will be bolstered through accelerated depreciation arrangements for ships	• Ten per cent tax rebate for income from investments in new 'Infrastructure Partnership Bonds'
Small business	• Instant write-off of assets costing up to $5,000 from the 2012-13 income year, and write-off other assets (apart from buildings and other capital works) in a single depreciation pool at a rate of 30 per cent • Company tax rate to reduce to 29 per cent for eligible small business companies from the 2012-13 income year	• All companies to benefit from a 28.5 per cent from 1 July 2013 • No change to current laws relating to the treatment of personal service income

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Personal Tax

	ALP	Coalition
Education tax rebate	• Expand the Education Tax Rebate scheme to include the cost of school uniforms	• Increase the amount of the Education Tax Rebate and expand the types of expenses to which the rebate will apply
Family tax benefit	• Increase the Family Tax Benefit Part A for families with teenagers aged 16 to 18 years	
Tax deductions/incentives for individuals	• Affirmed its 2010-11 Federal Budget proposals to provide Australian resident taxpayers: – at least a $500 tax deduction from 2012-13 (and at least $1,000 in 2013-14) in lieu of claiming work-related expenses and the cost of managing tax affairs, – a 50 per cent tax discount on interest income	• Unclear of position relating to standard tax deductions • Oppose the discount on interest income • Seek a second-term mandate for a tax reform agenda to deliver lower, simpler and fairer taxes for Australian families, households and businesses, including significant personal income tax cuts through lower and flatter tax rates • Ten percent tax rebate for income from investments in new 'Infrastructure Partnership Bonds'

Superannuation

	ALP	Coalition
Superannuation guarantee (SG)	• Increase the SG rate by 0.25 percentage points on 1 July 2013 and on 1 July 2014, with further increments of 0.5 percentage points annually up to 2019–20, when the SG rate will be set at 12 per cent • Extend the current director penalty regime so that it applies to the SG regime	• Abolish the SG age limit from 1 July 2013 for the benefit of mature-age workers who choose to remain in the workforce • Ensure superannuation contributions at the mandatory 9 per cent are paid while women are receiving Paid Parental Leave
Cooper review	• A full response to the Cooper review will be released by a re-elected Labor Government by the end of 2010, following further industry consultation • Introduce a low-cost default superannuation product, MySuper, from 1 July 2013 as part of reforms to the superannuation industry, including the better use of Tax File Numbers (TFNs) to locate lost superannuation accounts and help members consolidate and switch accounts	• Respond to the Cooper review recommendations before the end of the first term • Request the Australian Office of Financial Management to examine issuing bonds for terms of up to 30 years so as to Increase the range of available retirement products
Self-managed superannuation funds	• New standards for storing collectables and personal use assets held by self-managed superannuation funds	

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Research and Development (R&D)

	ALP	Coalition
R&D tax concession	• Deliver its proposed R&D Tax Credit system as contained in the package of Bills which lapsed when the Election was called	• Oppose the R&D Tax Credit System and maintain present R&D arrangements "until at least 1 July 2011" and "work with industry to design improved incentives"

Climate Change

	ALP	Coalition
General	• Establishment of a Citizen's Assembly and Climate Change Commission • Revised emissions standards for new coal-fired power stations and electricity networks to connect renewable resources to homes	• Oppose a carbon tax
Tax incentives	• One-off bonus tax deduction of 50 per cent of the cost of eligible assets or capital works to improve the energy efficiency of existing buildings (proposed to apply from 1 July 2011 until 30 June 2015)	
Renewable energy technologies	• Support for emerging renewable energy technologies such as wave and geothermal, to be assisted in initial project stages by the R&D Tax Concession and supported in later stages by a new Renewable Energy Venture Capital Fund.	• Examine the viability of providing a new exploration incentive for solar thermal and geothermal projects

Tax Reform and Administration

	ALP	Coalition
Australian Taxation Office (ATO)	• Give the ATO additional compliance resources to detect and deter potentially fraudulent tax and excise refund claims and stronger powers to pursue phoenix company activities • Establish an advisory board at the ATO – the Tax System Advisory Board – as a 'voice' for business and taxpayer communities in relation to ATO decision-making and culture	• Every 'Pay As You Earn' taxpayer will receive a taxation receipt that provides details on how their tax money has been spent
Board of Taxation	• Boost and reshape the role of the Board of Taxation by empowering it, in consultation with the government, to initiate its own reviews to examine how current tax policies and laws are operating. Adjust its membership as necessary to ensure it is correctly balanced and fully representative	• Ensure, through future appointments, that there is always small business representation on the Board of Taxation

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Tax Reform and Administration (continued)

	ALP	Coalition
Henry Review reforms	• As part of its response to the Henry Review on 2 May 2010, it was stated, the Labor Government would NOT implement the following policies, among others, at any stage: – Include the family home in means tests – Introduce land tax on the family home – Hit single income families – Make any changes to the tax system that harm the not-for-profit sector, including removing the benefit of tax concessions, raising the gift deductibility threshold or changing income tax arrangements for clubs – Reduce the capital gains tax (CGT) discount, apply a discount to negative gearing deductions, or change grandfathering arrangements for CGT – Remove the Medicare levy – Remove the benefits of dividend imputation – Introduce a bequests tax – Abolish the Luxury car tax – Index fuel tax to consumer price index – Change alcohol tax • Reaffirmed that it will never increase the rate or broaden the base of the goods and services tax (GST) • Attracted to developing changes in a number of other areas considered by the Review, especially making tax time simpler for everyday Australians, improving incentives to save and improving the governance and transparency of the tax system. This would represent a full second term agenda. Other recommendations in the Review are not policy and expect the other recommendations to be subject of much debate in the coming years.	• Release all the costings, modelling and other data underlying the Henry Review recommendations within 30 days of coming into office • Guarantee to NOT introduce a number of Henry Review recommendations including: – New taxes on business activity – Scrapping the private health insurance rebate – Means testing the Child Care Rebate – New taxes and charges on small businesses and sole operators – Remove structural and concessional offsets such as the Low Income Tax Offset without appropriate compensation – Introduce a bequests tax – Remove the Medicare levy – Remove tax concessions, raising the gift deductibility threshold or changing income tax arrangements for clubs – Introduce taxes on Australians driving to work – Include the family home in means tests – Introduce land taxes on the family home – Disadvantage families relative to separated couples – Hit single income families – Reduce the CGT discount, apply a discount to negative gearing deductions, or change grandfathering arrangements for CGT – Remove dividend imputation – Abolish the Luxury car tax – Change alcohol tax • Further to the public release of all Henry Review information, a Coalition Government will develop a Taxation Green Paper, followed by a White Paper and seek a second-term mandate for a tax reform agenda to deliver lower, simpler and fairer taxes for Australian families, households and businesses, including significant personal income tax cuts through lower and flatter tax rates. • The Coalition will not increase the rate of GST or broaden the GST base

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Significant changes ahead for NZ GST

The most significant GST changes in decades are being implemented in New Zealand. They will affect all businesses and apply to all transactions.

Australian businesses and investors with New Zealand assets or operations need to understand the changes and plan for their impact to ensure unnecessary costs (and customer issues) are mitigated.

GST rate to increase from 12.5 per cent to 15 per cent from 1 October 2010

With 1 October rapidly approaching, it is important to take steps now to address potential costs and risks.

The rate change is not as simple as changing the goods and services tax (GST) rate in the accounting system. It will affect all parts of your organisation, not only tax. The change to 15 per cent will influence consumer behaviour and could put pressure on business margins. Pricing and systems issues will arise. There is a limited right to gross up prices for the higher rate for existing agreements and those entered into before 1 January 2011 (unless the contract specifically precludes this).

A number of simple steps can be taken to ensure a smooth transition:

- form a project team comprising finance, information technology (IT), sales and marketing staff to identify potential issues and opportunities and to provide staff training
- review current GST practices, particularly in relation to invoicing and GST timing
- test system changes before going "live" on 1 October
- update invoices, credit notes, spreadsheets and worksheets to reflect the new 15 per cent rate, and
- determine whether applying any of the optional transitional rules (see below) will assist with the transition.

Systems will need to handle two rates and be able to issue credit notes at the old rate if the original supply took place before 1 October. Care is required for transactions entered into just before 1 October and the market may dictate that some transactions are settled before 1 October to attract the lower rate.

Transitional rules

Special transitional rules have been introduced to allow businesses, in some situations, to carry on accounting for GST at 12.5 per cent even after 1 October. The rules will also better align the current GST timing rules with modern business practices – the last GST rate increase was in 1989!

The new rules will be relevant to you if you:

- give credits by reversing the original tax invoice and issuing a new one
- issue invoices with a different date from the date of posting
- have entered into a finance lease
- are an insurance company or a private training establishment
- provide goods or services and receive periodic payments, or
- make lay-by sales.

All of the transitional rules are optional. Some rules require GST to be adjusted (and paid) at 12.5 per cent in the September 2010 GST return. Businesses therefore need to immediately assess the commercial and systems compliance impact and proceed accordingly.

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Sweeping GST changes

The August 2010 Taxation Bill proposes sweeping GST changes that will be relevant to businesses who:

- buy or sell land or a business with a land component
- lease commercial property
- make some GST-exempt (input taxed) supplies
- transfer title to another party (nominee) who is not the named purchaser, or
- own rest homes, retirement villages, serviced apartments or provide commercial accommodation.

Compulsory zero-rating for land transactions

Compulsory zero-rating (GST at zero per cent) will apply for transactions involving land between GST-registered businesses. The rules are designed to deal with abusive arrangements which typically involve a purchaser claiming GST refunds but no GST being paid by the vendor.

The removal of GST on the purchase price will be welcomed by the market as it will assist with cash-flows. The new rules will also extend to commercial (but not residential) leases and businesses sold with premises. However, compulsory zero-rating will not apply if the purchaser is not GST-registered or intends to use the land as their principal place of residence.

Other changes

The current "principal purpose test" for GST deductions is being replaced with a "use" test. The new GST apportionment and change-in-use adjustment provisions are modelled on the current Australian rules and will provide more practical certainty to businesses.

New rules will also apply where a named purchaser under a sale and purchase agreement nominates a third party to take title. Given that the GST treatment of nominee transactions can be complex and uncertain in practice, legislative clarification is a welcome development.

The NZ GST Act will be amended to clarify the definitions of "dwelling" (exempt) and "commercial dwelling" (taxable). Broadly the intention is to narrow the scope of the GST-exemption and bring more supplies of accommodation into the GST net.

The above changes will take effect from 1 April 2011.

The changes are summarised in more detail at www.pwc.com/nz/GSTdirect.

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Managing overseas taxes

This month's Tax Function Effectiveness article considers issues faced when managing overseas taxes, and provides some practical ways for groups with cross-border operations to minimise risks and maximise value.

Typically, managing a global tax position necessitates dealing with various languages, time zones and cultural attitudes towards paying taxes, and understanding country-specific tax regimes. Generally a group will not have an in-house tax resource within every country it operates in, so relationships have to be built with, and reliance placed on, local finance staff and external advisors. Obviously such complexity can only increase risk.

If you are a Head of Tax, the chances are that you and your team (even if you have people present in some of your more important countries) have little or no responsibility for the operation of some of the taxes in other countries. However, when issues arise on tax audits, the management of these issues often shifts to the tax function.

Groups which are subject to Sarbanes-Oxley rules will also have to sign off on their global internal controls over tax matters. Often the chief financial officer (CFO) will look to the Head of Tax to sign off on the tax control position for the entire group.

For both of the above reasons, it is in the Head of Tax's interest to ensure that there is a robust global tax governance framework covering all taxes, even those for which he/she is not personally responsible.

What needs to be managed?

The exact tax issues which need to be managed will vary from organisation to organisation. Examples of issues and information which groups seek to control include:

Strategy and Planning	• Dissemination of group strategy, policy, procedures and responsibilities • Transfer Pricing information and policy • Dividend, interest and royalty flows • Withholding taxes and tax credits • Underlying local territory tax rates • Tax losses and other local assets • International holding and financing structures • Key transactions with potential taxation implications • Financial information having tax implications • Planning ideas and activity (both to monitor activity and encourage it to take place)
Compliance and reporting	• Tax reporting requirements and timetables • Tax enquires, audits and risk reviews • Tax effect accounting information (including global uncertain tax positions) • Information for head office territory compliance purposes • Internal tax controls
Administration	• Local tax histories • Details of local entities, branches and permanent establishments • Local contacts

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Tips to manage global taxes

Below are some principles which can be leveraged into almost any business model.

1. The key to having line of sight of tax risks in any tax function is effective communication. Cross-border communication can be complicated by multiple stakeholder groups, agendas and locations. Face-to-face meetings and regular telephone calls are ways to maintain oversight of tax risks, and the value of this human interaction cannot be overstated. Many groups supplement this informal feedback by requiring the overseas operations to complete questionnaires and data packs regularly, often as part of the half-yearly tax reporting.

2. Increasingly, groups are replacing their spreadsheet-based reporting with web-enabled coordination technology. Such software can be used to enable real-time oversight of the global tax position. This technology lends itself very well to groups managing cross-border deadlines and regulatory obligations. A good technology tool will report on what information is required, when it is required, and who is responsible. Some groups use databases to store all of their global tax documentation centrally. In addition, certain organisations use technology as the portal through which to access tax legislation, double tax agreements and other tax related information provided by third party suppliers.

3. Some groups reduce risk by outsourcing certain tax processes either to an internal shared service centre or to an external provider. Advantages might be achieved by moving compliance obligations for goods and services tax or value added tax to a shared service centre, or by using technology such as PricewaterhouseCoopers' 'Automated VAT Return'.

4. You may wish to consider how you can leverage your advisers better. Could you obtain a consistent, high-quality compliance process at a cheaper global price than you are currently paying by centralising all of your compliance work (across one or more taxes) with one provider? Are your global advisers offering you international planning workshops?

Some other tips include:

- Preparing documented tax policies and procedures that overseas staff can use
- Providing internal or external training on key tax matters for overseas finance and commercial staff
- Approving standard tax clauses for customer and supplier contracts, and instigating reporting procedures for deviations from these standards
- Ensuring that the tax department obtains all relevant withholding tax certificates to maximise foreign tax credit claims
- Asking your internal audit department to review taxes as part of its work program.

Conclusion

In the post global financial crisis (GFC) environment, governments around the world are under pressure to maximise tax revenues. In addition, a higher level of scrutiny is being placed on cross-border arrangements, and increasingly revenue authorities are sharing information cross-border. The likely change in accounting for uncertain tax positions, and the trend towards increased transparency over tax matters, means that effective global management of taxes is more important than ever, both to manage risk and to access information to identify value creating opportunities.

With this in mind, finding an effective global tax management strategy that works for your organisation and provides you with oversight of your global tax position is essential.

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The Commissioner gets one back – Part IVA

On 9 August 2010, Justice Edmonds of the Federal Court delivered his decision in Citigroup Pty Limited v Commissioner of Taxation [2010] FCA 826, finding in favour of the Commissioner on the substantive issue of whether the general anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936 (ITAA 1936)* applied to disallow foreign tax credits (FTC) 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.

The Court also considered the application of the General Interest Charge (GIC) under the former foreign tax credit determination and GIC recovery provisions, and concluded that the taxpayer was not liable to pay the GIC on the unpaid amount created by the denial of foreign tax credits.

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 a FTC for the Hong Kong tax paid on this lump sum received.

Part IVA issue

The Court held that the taxpayer had entered into the transactions for the "dominant purpose" of obtaining a tax benefit and noted that *"Absent the foreign tax credits, the [transactions] did not make sense."* A number of elements of the transactions supported the Court's finding, including:

- The structure of the transactions, which appeared to be dictated by the taxpayer's desire to be entitled to some form of tax relief in a jurisdiction outside Hong Kong in order to offset the post-tax loss incurred in Hong Kong.

  His Honour noted that *"the choice of Citigroup Pty Limited… [as a partner in the transactions] is explicable solely on the basis of the foreign tax credit regime in Australia…"*.

- The complexity of the transactions, which the Court described as having had an *"air of artificial complexity"*. In the Court's view, this was supported by the termination of the partnerships involved in the arrangements the day after the transactions were completed.
- The "economic reality" of the transactions, which resulted in a post-tax loss before taking the FTCs into account. In light of the other expected foreign source income, the FTCs could be utilised immediately and therefore would result in an immediate reduction of Australia income tax.

The decision highlights the importance of documentation and the preservation of evidence establishing and supporting the commercial purpose behind a scheme, especially where Part IVA is potentially an issue. The Court was not prepared to accept the evidence of one of the taxpayer's witnesses without corroboration, and noted that witnesses who could have corroborated her evidence were not called.

The Court also made specific reference to the evidence of another of the taxpayer's witnesses who said that the transaction made no sense if it did not break even on a tax basis, which the Court found to be consistent with its view that the transactions were entered into for the dominant purpose of obtaining a tax benefit.

General Interest Charge

The Court's decision on the Part IVA issue triggered another issue in respect of the imposition of GIC on the short-fall amount created by the denial of FTCs. The taxpayer had to commence these proceedings under administrative law principles by seeking declarations, since GIC cannot be challenged under the general objection and appeal provisions under the tax law.

The Court agreed with the position of the taxpayer and declared that it was not liable to pay GIC in respect of either the 2003 or 2004 income years.

The Court's decision turned on whether FTCs could be deemed to be an amount of tax (under provisions that have now been replaced). The Court noted that there would have been a different outcome if the current legislation had applied.

This case may provoke interest as to how to deal with transactions resulting in deductions for interest and the non-assessment of income in Australia. Every case will depend on its own facts and taxpayers should not make generalisations founded on the facts of this decision.

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ATO to audit eBay and Trading Post transactions

The Commonwealth of Australia Gazette issued on 28 July 2010 contains a notice issued by the Commissioner of Taxation titled *Notice of data matching program*. The notice states that the Australian Taxation Office (ATO) will request and collect details of individuals or entities who have sold goods through eBay Australia Pty Ltd and Trading Post Australia Pty Ltd where the value of those sales is greater than $20,000 in either the 2007-08, 2008-09 or 2009-10 financial years.

According to the Gazette notice, the details will be electronically matched with certain sections of ATO data holdings to identify non-compliance with registration, reporting, lodgment and payment obligations under Australian taxation law. The program is called the *Online Selling Sites Data Matching Program* and it will enable the ATO to:

- better understand and address the compliance behaviour of taxpayers involved with online selling through electronic bulk matching of data to identify potential ATO activity, and
- be more strategic in its approach to ATO business activities, with the aim of encouraging taxpayers to voluntarily comply with their taxation obligations.

A document describing the program has been prepared in consultation with the Office of the Privacy Commissioner.

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United States of America: tax changes affecting controlled foreign corporations

On 10 August 2010, President Obama signed into law the Education Jobs and Medicaid Assistance Act of 2010 (The Act). The Act includes a number of measures that could significantly impact controlled foreign corporations (CFCs) of United States (US) corporations, including Australian subsidiaries of such corporations. The change that is likely to be the most significant is the inability to 'split' foreign tax credits (FTCs) from the underlying income. In other words, under the changes, an FTC can only be claimed when the underlying income is also included in taxable income.

In summary, the new measures:

- Require the matching of FTCs to related income. That is, the measures defer taking into account any foreign tax paid or accrued by an entity until that entity or a US shareholder recognises the income on which the foreign tax was paid. The change to the FTC rule may mean that many groups are going to want to repatriate income this calendar year, as failure to do so may mean a greater amount of 'top-up' US tax for distributions (actual or deemed) made in subsequent years.
- Impose restrictions on the ability to 'step up' the US tax basis of assets of the newly acquired foreign companies and partnership interests, which will limit the ability to utilise foreign tax credits.
- Provide for the separate application of FTC limitations to items resourced under international treaties, i.e. a separate FTC basket for this income.
- Limit foreign taxes deemed to be paid with respect to the deemed dividend rule, which includes loans from CFCs to their US shareholders. The amendment to this rule removes the ability to selectively repatriate high tax pools of earnings from CFCs (which may be lower in the shareholding claim).
- Provide a new rule, which specifically targets transactions (redemptions) undertaken by non-US parented groups that extract non-US subsidiaries (which are CFCs for US tax purposes) from below a US company. The new rule results in US tax where previously there may not have been any and therefore probably makes these transactions less likely to occur.
- Modify the affiliation rules for purposes of rules allocating interest expense.
- Modify the treatment of the sourcing of interest and dividends paid by '80/20 companies' (a US corporation that derives at least 80% of its gross income from the active conduct of a foreign trade or business during a three-year testing period), which for these entities will make it more likely that US withholding tax will be imposed on interest payments or dividend distributions.
- Limit the extension of the statute of limitations for failure to provide notice of certain foreign transfers.

With the exception of the rule regarding redemptions outlined above, the rules come into effect for tax years beginning on or after 31 December 2010.

Please note: This information 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.

New Zealand: Inland Revenue's 2010-11 compliance focus

New Zealand's Inland Revenue has released its 2010-11 Compliance Focus report detailing the key issues it will focus on in the coming year. The report emphasises the fact that transfer pricing will be high on Inland Revenue's agenda for review and enforcement in 2010-11.

The Compliance Focus report identifies a number of areas associated with transfer pricing that Inland Revenue intends to investigate in 2010-11, across both the Large Enterprise (annual turnover greater than NZ$100 million) and Small and Medium Enterprise (turnover less than NZ$100 million) segments. It is important that New Zealand members of multinational groups are aware of these key areas in developing their transfer pricing policies and ensuring that appropriate documentation exists to support their transfer prices.

In the Large Enterprise segment, structured and complex financing arrangements will be a main area of focus for Inland Revenue, with the Compliance Focus report stating that Inland Revenue intends to address issues around structured and complex financing by:

- identifying and analysing structured and complex financing arrangements
- using questionnaires to get a leveraged compliance approach across foreign-owned New Zealand companies
- closely examining all foreign-owned companies with a turnover of more than $100 million
- reviewing arrangements where companies take positions that do not match the intent of the legislation
- pursuing complex funding arrangements that lack commercial rationale and taking corrective action, including penalties.

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New Zealand: legislation to allow splitting of income

On 16 August 2010, the New Zealand Revenue Minister tabled the Taxation (Income sharing Tax Credit) Bill in Parliament. The Bill proposes to allow families to split their income for tax purposes, thereby reducing the amount of income tax they pay. If passed, the new legislation would allow couples with dependent children under 18 to choose to be taxed on an equal share of their combined income. At the end of each tax year, eligible couples could apply for a tax credit based on the difference between tax paid on individual incomes and tax that would be paid if each person had an equal share in the couple's combined income.

The Bill is now being considered by a select committee.

China: The SAT to conduct review of contemporaneous transfer pricing documentation

On 12 July 2010, China's State Administration of Taxation (SAT) issued a circular, Guo *Shui Han [2010] No. 323 – Notice of the SAT Regarding the Sample Review of Contemporaneous Transfer Pricing Documentation,* mandating local-level tax authorities to carry out a nation-wide evaluation of taxpayers' 2008 and 2009 contemporaneous transfer pricing documentation (CTPD).

The scope of this review covers all enterprises subject to CTPD requirements, which consist of the following six categories of companies:

- those with annual related party tangible goods transaction amount exceeding RMB 200 million
- those with related party non-tangible goods transaction amount exceeding RMB 40 million
- those which perform limited functions and risks, and incur losses
- those which are in the post-audit follow up period
- those which are deemed to be thinly capitalised (i.e. their related party debt to equity ratios exceed the prescribed safe harbours), or
- those with cost sharing arrangements in place.

United Kingdom: Double Taxation Treaty Passport Scheme

Interest payments made by a United Kingdom (UK) corporate borrower to a non-resident corporate lender are subject to a 20 percent withholding of UK income tax, unless reduced or eliminated by tax treaty, and provided the non-resident corporate lender has applied for clearance on that specific loan in advance.

UK tax authorities recently announced a new, streamlined procedure for providing clearance to non-resident corporate lenders who rely on a double taxation treaty for relief from withholding tax on interest payments from UK corporate borrowers. Under the Double Taxation Treaty Passport Scheme, non-UK (i.e. non-resident) corporate lenders may begin applying immediately for a treaty passport that will allow them to make loans on or after 1 September 2010 to any UK corporate borrower, without having to apply for separate loan-by-loan clearance in order to take advantage of treaty-reduced withholding taxes. By taking advantage of this new process, non-resident companies that engage in these corporate lending activities will be able to save the time and cost associated with recovering UK withholding tax under the traditional clearance system for each loan made to a UK corporate borrower.

United Kingdom: Controlled foreign company rules

In the August 2010 edition of *TaxTalk*, we reported that in handing down the United Kingdom (UK) Budget, the Government announced that it would legislate new controlled foreign company (CFC) rules and that it also intended to move to a more territorial basis for taxing the profits of foreign branches. An update on the proposals to reform foreign branch taxation has now been released, along with additional information on the proposed CFC measures.

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Specialist taxes update

Appeal news

- Following the Full Federal Court decision for the taxpayer in *Commissioner of Taxation v Secretary to the Department of Transport (Victoria)* [2010] FCAFC 84 (as reported in last month's *TaxTalk* edition), the Commissioner has now applied for special leave to appeal to the High Court. The case concerns the goods and services tax (GST) treatment of amounts paid by the Department of Transport (DoT) to taxi operators who provided transport services to Victorian residents with disabilities.
- The Commissioner's appeal to the Full Federal Court against the decision of the Administrative Appeals Tribunal (AAT) in *Luxottica Retail Australia Pty Limited and Commissioner of Taxation [2010] AATA 22* is scheduled for hearing on 23 and 24 November 2010. The case concerns supplies comprising of GST-free lenses fitted into taxable spectacle frames, and in particular, the GST treatment of discounts offered only on the frames. In the meantime, the ATO has issued a Decision Impact Statement which sets out the Commissioner's views on the AAT decision, and the proposed administrative treatment pending the Full Federal Court's decision.
- The taxpayer's appeal against the Federal Court decision in *Meridien Marinas Horizon Shores Pty Limited v Commissioner of Taxation* [2009] FCA 1594 has been withdrawn. The case concerned the GST treatment of the long-term lease of berths at a marina.

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New South Wales: Torrens assurance levy

The New South Wales (NSW) Land and Property Management Authority has issued a publication outlining the details of the new 'ad valorem' component of the Torrens assurance levy in relation to the registration of transfers of NSW real property. The levy will significantly increase the costs of transferring real property purchased for more than $500,000.

In addition to the flat rate registration fee (currently $190), the ad valorem component of the Torrens assurance levy will be payable, and has three tiers:

- For transfers where the purchase price is $500,000 or less, a $4.00 levy is payable
- For transfers where the purchase price is more than $500,000 but not more than $1,000,000, the levy is $4.00 + 0.2 per cent of the amount by which the purchase price exceeds $500,000.
- For transfers where the purchase price is more than $1,000,000, the levy is $1,004 plus 0.25 per cent of the amount by which the purchase price exceeds $1,000,000.

As this levy is not a stamp duty, it will be payable even where stamp duty exemptions or concessions are available which reduce or remove the stamp duty cost of a transfer of real property.

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Upcoming Events

Included below are some of our upcoming events.

Sydney

	DATE	CONTACT
IAS Workshop	Thursday 16 September 2010	**Eily Hickson** 02 8266 3009 or eily.hickson@au.pwc.com
ITX Forum	Thursday 21 October	**Anthony Duckworth** 02 8266 7214 or anthony.duckworth@au.pwc.com

Brisbane

Changes to Corps Law re Dividends	Friday 17 September 2010	**Jane Thomas** 07 3257 8676 or jane.thomas@au.pwc.com
Fuel School	Tuesday 21 September 2010	**Paul Cornick** 07 3257 8315 or paul.cornick@au.pwc.com

Perth

BASchool	Wednesday 15 September 2010	**Vicky Udall** 08 9238 3367 or vicky.udall@au./pwc.com
TP School	Thursday 23 September 2010	**Jolene McLean** 08 9238 3456 or jolene.mclean@au.pwc.com

There are currently no scheduled events for Melbourne or Adelaide in September.
For further information please phone the event contact provided. For a full list of upcoming Tax and Legal events, please contact Hazel Maung on +61 (3) 8603 5066.

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