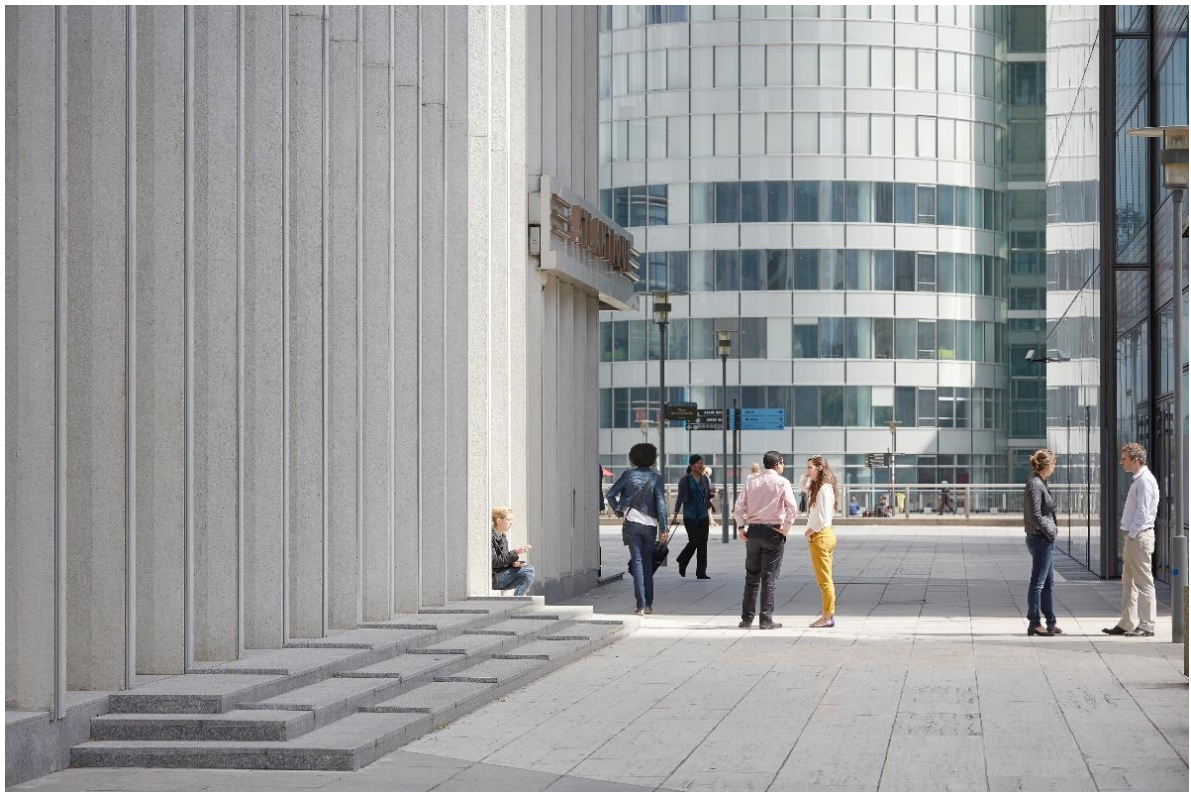


*December 2016*

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# TaxTalk Monthly

*Keeping you up to date on the latest Australian and international tax developments*



# Corporate Tax Update

## ***ATO's compliance approach to exploration expenditure deductions***

The Australian Taxation Office (ATO) issued [Draft Practical Compliance Guidelines PCG 2016/D17](#), which sets out how the ATO will administer the law to assure deductions claimed for exploration expenditure. The draft Guidelines set out the factors the ATO will consider when assessing risk of non-compliance and therefore, how likely it is to review claims for exploration expenditure. It sets out three ways to check exploration expenditure deductions:

- assess the quality of governance policies for projects and tax characterisation decisions
- identify and keep adequate analysis and evidence so that exploration expenditure deductions can be substantiated, and
- identify and explain any expenditure viewed as high risk by the ATO.

In relation to areas of risk in regards to claims for exploration expenditure, it indicates that from a practical perspective, the closer a project is to being developed or constructed, the greater the degree of complexity in characterising exploration expenditure deductions in keeping with the law. Specifically listed areas that it considers to be at higher risk include:

- cost of long lead assets and early works activities
- expenditure that is incurred 'too soon' or goes 'too far', and
- certain costs in relation to economic feasibility study.

Comments on the draft Guideline can be made until 9 December 2016.

## ***ATO's guidance on contractual rights and beneficial interests for ESS purposes***

The ATO released [Taxation Determination TD 2016/17](#), which discusses the circumstances in which a contractual right, subject to the satisfaction of a condition, becomes a right to acquire a beneficial interest in a share for the purposes of the employee share scheme (ESS) rules according to subsection 83A-340(1) of the *Income Tax Assessment Act 1997*.

## ***High Court dismisses taxpayers' appeals on corporate residency***

The High Court dismissed the appeals by the taxpayers in [Bywater Investments Limited and Ors v Commissioner of Taxation and the related matter in Hua Wang Bank Berhad v Commissioner of Taxation](#), which considered whether the relevant companies were resident of Australia for income tax purposes. The dispute between the Commissioner and the taxpayers centred on the question as to whether each relevant corporate taxpayer (each company being incorporated in an overseas jurisdiction) had its place of central management and control in Australia. The High Court held the appellants were Australian residents for income tax purposes during the relevant years and were thus liable to tax in Australia.

The Court found, as a matter of long-established principle, the residence of a company is a question of fact and degree to be answered according to where the central management and control of the company actually abides, and that is to be determined by reference to the course of the company's business and trading, rather than by reference to the documents establishing its formal structure.

Specifically, the High Court held the fact that the board of directors were located abroad was insufficient to locate the residence of the appellants abroad in circumstances where the boards of directors had abrogated their decision-making in favour of an Australian resident and only met to mechanically implement or rubber-stamp decisions made in Australia.

Importantly, the Court rejected the appellant's submission that the decision in *Esquire Nominees Ltd v Federal Commissioner of Taxation* mandated that the 'real business' or 'superior or directing authority' of a company is to be found where the board holds its meetings, even if the only thing done at those meetings is to record decisions actually made elsewhere. In the Court's view, none of the established judicial authorities including *De Beers v Howe*, *Koitaki Para Rubber Estates Ltd v Commissioner of Taxation*, *North Australian Pastoral v Federal Commissioner of Taxation* and *Bullock v Unit Construction Co Ltd*, "supports the idea that a company is taken to be resident for tax purposes where its board meetings are held even if the meetings are mere window dressing comprised of rubber-stamping decisions actually made

elsewhere by others and held in that place in the hope of avoiding tax liability in the place where the decisions are actually made."

### **High Court finds amount originating under incentive agreement assessable**

The High Court dismissed the taxpayer's appeal in *Blank v Commissioner of Taxation*.

In a unanimous decision, the Court held a lump sum paid to the taxpayer in instalments pursuant to an incentive profit participation agreement after termination of his employment was income according to ordinary concepts and was not assessable as a capital gain.

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## **Employment Taxes Update**

### **Payroll tax on medical practice arrangements (NSW)**

In *Winday International Pty Ltd v Chief Commissioner of State Revenue [2016] NSWCATAD 270*, the New South Wales (NSW) Civil and Administrative Tribunal affirmed the Chief Commissioner of State Revenue's decision to impose payroll tax on contracts the taxpayer had in place with qualified radiologists on the basis that these contracts were found to be employment agency contracts under Division 8 of the *Payroll Tax Act 2007 (NSW)*.

Ultimately, the Tribunal found the taxpayer had advertised their business as being the provision of radiology services to patients. As such, the radiologists were engaged to work in the taxpayer's business. Importantly, the Tribunal was satisfied the facts outlined during the hearing resulted in the patients being clients of the taxpayer rather than clients of individual radiologists.

### **Remission of penalties and interest in respect of payroll tax underpayments (NSW)**

In *Tacey v Chief Commissioner of State Revenue [2016] NSWCATAD 255*, the NSW Civil and Administrative Tribunal affirmed the Chief Commissioner of State Revenue's decision to disallow the remission of 20 per cent penalty tax as a result of payroll tax assessments issued under audit, on the basis that the taxpayer failed to take reasonable care, despite the use of a qualified accountant who advised on payroll tax matters. Similarly, the taxpayer was unable to provide evidence that the tax shortfall arose solely from circumstances beyond their control, including postal delays and natural disasters. As such, the Tribunal found that the taxpayer had not discharged the onus of proving circumstances that would warrant remission of the penalty tax by the Chief Commissioner.

In contrast, the Tribunal found that additional factors could be taken into account in respect of the remission of the premium interest rate component, but not the market interest rate component.

While finding the taxpayer had not taken reasonable care to comply with the law, there was evidence of the taxpayer placing reliance on their advisers in relation to payroll tax issues and the taxpayer had no reason to believe the advisor failed to comply with the *Payroll Tax Act 2007 (NSW)*. Also relevant was the taxpayer's unblemished payroll tax record over many years and cooperation with the Office of State Revenue's investigation.

On this basis, the Tribunal found it appropriate to reduce the premium rate component of the interest imposed from 8 per cent down to 2 per cent.

### **Payroll tax grouping with discretionary trusts (NSW)**

In *Smeaton Grange Holdings Pty Ltd v Chief Commissioner of State Revenue [2016] NSWSC 1594*, the Supreme Court of NSW found for the plaintiffs and revoked the payroll tax assessments issued by the Chief Commissioner of State Revenue. The assessments were issued on the basis that the plaintiffs were grouped for payroll tax purposes on account of a specific individual being a potential beneficiary of a number of discretionary family trusts and therefore being seen to hold a controlling interest in each of the trusts under the payroll tax grouping provisions. The Court held a disclaimer signed by the beneficiary in respect of the relevant trusts had the effect of retrospectively disclaiming their right as a discretionary object of the trusts, with the result that the grouping provisions had no application.

### **ATO review of recent ABN registrations**

The ATO has announced it will be conducting a review of a representative sample of approximately 1,400 Australian Business Name (ABN) registrations issued for individuals, partnerships and trusts between August and October 2016. The purpose of this review is to confirm these ABN applications are valid and there is evidence that either a business is being carried on or steps are being taken to commence a business at the time the ABN is issued.

### **State Legislative amendments**

The following bills introduced into State Parliaments last month have now received Royal Assent:

- *State Taxation Acts Further Amendment Bill 2016 (VIC)*, which amends the *Payroll Tax Act 2007* to update the way the exempt rate used in the calculation of the exempt component of motor vehicle allowances is determined.
- *Taxation and Related Legislation (Miscellaneous Amendments) Bill 2016 (TAS)*, which amends the *Payroll Tax Act 2008* to ensure harmonisation with Victoria and NSW in relation to the payroll tax treatment of owner-driver contracts and anti-avoidance provisions related to excluded contracts, and removal of relevant contractor exclusions for insurance and door-to-door sales in line with NSW amendments. See the State Taxes Update for further details.
- *Taxation and Related Legislation (Miscellaneous Amendments) Bill 2016 (TAS)*, which amends the *Taxation Administration Act 1997* to extend the standard reassessment time frame and a taxpayer's entitlement to a refund from three to five years, to better align with Victorian and NSW reassessment and refund time frames.

### **Recently registered PAYG legislative instruments**

The following legislative instruments dealing with the Pay-As-You-Go (PAYG) withholding regime were registered during November:

- [PAYG Withholding variation for foreign resident capital gains withholding payments - marriage or relationship breakdowns](#), which removes the requirement for withholding when ownership of a relevant asset is transferred under the *Family Law Act 1975* or a state or territory law relating to breakdowns of relationships between spouses resulting in a rollover available under Subdivision 126-A of the *Income Tax Assessment Act 1997*.
- [PAYG Withholding Variation: Donations to deductible gift recipients](#), which allows a payer to reduce a PAYG withholding payment by the amount they pay to a deductible gift recipient on a payee's behalf (for example, under a workplace giving program).
- [PAYG Withholding Variation: Body Corporate](#), which ensures there is no withholding required for payments to a body corporate of residential or commercial property by a member of the body corporate.

- [PAYG Withholding Variation: Performing Artists](#), which applies a flat withholding rate of 20 per cent to payments to performing artists for performing in a promotional activity.

## Globally mobile employees: whose labour laws apply?

This [PwC LegalTalk Alert](#) discusses recent Australasian cases which provide guidance as to factors to consider when determining which country's employment laws should apply.

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# Global Tax Update

## Latest news from international tax and transfer pricing

### US election results may provide opportunities for major tax law changes

President-elect Donald J. Trump has stated one of his top priorities is comprehensive tax reform to significantly lower individual and business tax rates. Refer to [Tax Insights](#) from PwC Washington National Tax Services for further information.

### 2017 Papua New Guinea National Budget

On 1 November 2016, the 2017 Papua New Guinea National Budget was handed down. Key highlights include:

- resourcing the Internal Revenue Commission to improve compliance
- changes to corporate income tax, foreign contractor withholding tax and dividend withholding tax rates

- imposing Additional Profits Tax across all mining and petroleum projects
- adjusting the taxable value of employer provided housing.

PwC PNG's [National Budget Commentary](#) provides an overview of the tax developments and amendments contained in the Budget.

### 2017 Malaysia Budget

On 21 October, 2016, the 2017 Malaysia Budget was handed down. PwC's [TaXavvy Budget 2017 edition part 1](#) and [part 2](#) provides an analysis of the key tax proposals in the Budget which include a corporate tax reduction.

## **EU consultation on mandatory disclosure scheme for intermediaries who facilitate tax evasion and avoidance**

The European Commission has launched a [public consultation](#) to gather feedback on the way forward for European Union action on advisers and intermediaries who facilitate tax evasion and tax avoidance. In particular, the Commission is interested in gathering views on the Organisation for Economic Co-operation and Development (OECD) base erosion and profit shifting (BEPS) Action item 12 and how a mandatory disclosure scheme for tax advisers could be put in place.

## **Luxembourg adopts OECD transfer pricing standard**

On 12 October 2016, the Luxembourg Government presented a Bill to Parliament outlining its 2017 budgetary measures. This includes the new transfer pricing provisions, augmenting the basic arm's-length rule in force since 1 January 2015, which formally adopt the OECD standard into Luxembourg law and expect to take effect from 1 January 2017. Refer to [Tax Insights](#) from PwC Transfer Pricing.

## **Thailand's incentives for headquarters, foreign trading companies, and treasury centres**

Thailand recently revamped its incentive regimes, by creating a new international headquarters company regime, with add-on benefits for treasury centres, and an international trading centre regime. The most prominent incentives include a full corporate income tax exemption on qualifying income for 15 years, withholding tax exemptions, and other non-tax benefits. Refer to [Tax Insights](#) from PwC International Tax Services for further information.

## **OECD and BEPS developments**

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes [held its annual meeting](#) on 2-4 November 2016. Key highlights from the meeting include:

- the completion of the first round of the Forum's peer review process, with the release of 17 new reports assessing the level of compliance with the international standard for exchange of information on request
- a special fast-track review procedure was agreed to enable the Global Forum to recognise progress made and to assess changes being made in various jurisdictions by mid-2017, and
- a second round of peer reviews is now underway which will include an assessment of the availability of and access by tax authorities to beneficial ownership information of all legal entities and arrangements.

Through the Centre for Tax Policy and Administration, the OECD also released a publication, [OECD work on Taxation](#), which summarises the initiatives undertaken by the OECD to ensure tax transparency.

The OECD released a number of new guidance materials and information on BEPS Action 14 (*Making dispute resolution mechanism more effective*) including:

- [key documents](#), which will form the basis of the Mutual Agreement Procedure (MAP) peer review and monitoring process, and
- the [schedule](#) for reviews, which will commence in December 2016.

As part of this review, taxpayers will be invited to provide input in relation to:

- access to MAP
- clarity and availability of MAP guidance, and
- the timely implementation of MAP agreements.

As a next step to implementing the OECD Common Reporting Standard, the OECD has [announced](#) that [the first series of bilateral automatic exchange relationships](#) were established among the first batch of jurisdictions committed to exchanging information automatically as of 2017.

Brazil, Guernsey, Jersey the Isle of Man, Latvia, Panama, Cook Islands and St Lucia have signed the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#) (see [the full list of current participating jurisdictions](#)).

 [Explore PwC's global tax research and insights](#)

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## Indirect tax update

### **Applying GST to low value goods imported by consumers**

On 4 November 2016, the Treasurer [announced](#) the release of [exposure draft legislation](#) to give effect to the 2016-17 Budget measure to apply Goods and Services Tax (GST) to low value goods imported by consumers. Under this measure, from 1 July 2017, overseas vendors, electronic distribution platforms and goods forwarders will be required to account for GST on sales of low value goods to consumers in Australia if they have GST turnover of AUD75,000 or more. Submissions can be made until 2 December 2016.

### **Practical Compliance Guideline issued on GST and countertrade transactions**

The ATO has released Practical Compliance Guideline [PCG 2016/18](#) on GST and countertrade transactions. The Guideline discusses the Commissioner's compliance approach to an entity that has entered into a countertrade transaction (otherwise known as 'barter' or 'non-monetary' transactions) as part of carrying on its enterprise, provided that countertrade transactions account for no more than approximately 10 per cent of the entity's total number of supplies.

As outlined in the Guideline, the Commissioner will not apply resources to verify compliance with GST reporting obligations for a countertrade transaction in certain circumstances. The Guideline does not apply to countertrade transactions between members of a 'barter scheme' conducted by a barter or trade exchange.

### **GST on Contract for sale of land**

In [A & A Property Developers Pty Ltd v MCCA Asset Management Ltd](#), the Supreme Court of Victoria held the purchaser of land was not liable to pay GST in addition to the purchase price of land stated in the contract. The Court considered the construction of the relevant provisions in the contract and held the inclusion of the letters 'GST' in the relevant box in the contract did not trigger the mechanism for the GST to be added to the purchase price (as the contract required the words 'Plus GST' to be included). The Court stated the words of commercial contracts are to be interpreted in accordance with their commercial purpose, and there was no ambiguity in this contract justifying reference to surrounding circumstances.

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## State Taxes Update

### South Australian Bill to reduce red tape and simplify regulation

The [Statutes Amendment and Repeal \(Simplify\) Bill 2016 \(SA\)](#) was introduced into the South Australian parliament. It is part of the State Government's program to reduce red tape and simplify regulation for businesses and consumers.

### Tasmanian legislative amendments

[Duties Amendment \(Landholder and Corporate Reconstruction and Consolidation\) Bill 2016](#) has passed the Parliament and awaits Royal Assent.

The Bill proposes to amend the *Duties Act 2001* (Tas), in relation to the duty liability for indirect transfers of land, by changing the assessment of liability from a land-rich model to a landholder model. This brings Tasmania in line with similar provisions applied by other states.

[Taxation and Related Legislation \(Miscellaneous Amendments\) Bill 2016 \(Tas\)](#) has received royal assent. Amongst other things, the Act amends the following:

- *Duties Act 2001 (Tas)* – includes the vesting of dutiable property transactions to be treated as transfers
- *Land Tax Act 2000 (Tas)* – ensures the special rate of land tax for land owned by a club or body of persons is also able to obtain the benefit of the tax-free threshold available to other land tax payers
- *Payroll Tax Act 2008 (Tas)* – ensures harmonisation with Victoria and New South Wales (NSW) in relation to the payroll tax treatment of owner-driver contracts and

anti-avoidance provisions related to excluded contracts. Also, in line with NSW amendments, removing the relevant contractor exclusions for insurance and door-to-door sales, and

- *Taxation Administration Act 1997 (Tas)* – extends the standard reassessment timeframe from three to five years and extends a taxpayer's entitlement to a refund from three to five years to better align with Victorian and NSW reassessment and refund timeframes.

### Victorian Land and Payroll tax amendments

The [State Taxation Acts Further Amendment Bill 2016 \(Vic\)](#) has received Royal Assent.

Amongst other things, the Bill makes the following amendments:

- amends the *Land Tax Act 2005* (Vic) to align the date for the determination of the taxable value of non-rateable non-leviable land with the date that applies to other land, and corrects one of the surcharge rates of land tax for absentee trusts, and
- amends the *Payroll Tax Act 2007* (Vic) to update the way the exempt rate used in the calculation of the exempt component of motor vehicle allowances is determined.

### Northern Territory stamp duty amendment Bill

The [Stamp Duty Amendment Bill 2016](#) was introduced into the Northern Territory Parliament and amends the *Stamp Duty Act* (NT) to:

- provide increased assistance to first home buyers of established homes via a stamp duty concession



- implement transitional provisions to provide for the cessation of the previous AUD10,000 first home owner discount (which is limited to

established homes valued at over AUD650 000 from 1 September 2016) after 31 December 2016.

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## Superannuation update

### Government's superannuation reform package

On 11 November 2016, Minister for Revenue and Financial Services Kelly O'Dwyer gave a [speech](#) to the Association of Superannuation Funds of Australia conference. Key points of the speech includes:

- the Government's superannuation reform package including the plan to legislate the objective of superannuation and the introduction of flexibility measures to help people save for their retirement
- the release of a discussion paper by the Government this year which will explore the key policy issues for developing a framework for comprehensive income products for retirement
- the progress of the Productivity Commission review of the superannuation system's efficiency and competitiveness
- continuing to progress superannuation legislation previously before the Parliament, including choice of fund arrangements, independent directors on superannuation trustee boards and increased transparency in fund reporting of underlying assets and choice products.

Furthermore, in response to the subsequent passage through Parliament of the major superannuation reforms, which will generally commence from 1 July 2017, the ATO has issued the following draft Law Companion Guidelines for comment:

- [LCG 2016/D8](#): Superannuation reform: transfer balance cap and transition-to-retirement reforms: transitional CGT relief for superannuation funds

- [LCG 2016/D9](#): Superannuation reform: transfer balance cap

Comments are due on the above LCGs by 8 December 2016.

Public guidance products are currently under consideration by the ATO for a range of other issues relating to the superannuation reform package.

### Labor's superannuation policy

The Labor Party has [announced](#) its revised superannuation reform package, which includes:

- lowering the annual non-concessional contributions cap to AUD75,000
- lowering the high income superannuation contribution (Division 293) threshold to AUD200,000 (the current Government proposal is to reduce this threshold to AUD250,000, and
- opposing other aspects of the Government's superannuation package, including the ability to catch up on concessional contributions and provisions to allow a tax deduction for personal superannuation contributions

During the passage of the Government's superannuation reform Bills in Parliament, these amendments were not passed.

### Risk and Compliance the ATO's perspective

ATO Deputy Commissioner of Superannuation James O'Halloran delivered a speech to the ASFA National Superannuation Conference, highlighting the [ATO's risk and compliance approach for](#)

[superannuation](#). He also noted that a second series of foreign income tax offset reviews has commenced, and that the ATO is planning to issue Practical

Compliance Guidelines early next year regarding adoption of segregation and the movement of assets into the pension phase.

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## Legislative update

Commonwealth revenue measures introduced into Parliament or registered as legislative instruments or regulations since our previous TaxTalk publication include the following:

- [Superannuation \(Objective\) Bill 2016](#), introduced into Parliament on 9 November 2016, which proposes to enshrine the primary and subsidiary objectives of the superannuation system in legislation and introduce a requirement for statements of compatibility with these objectives to be prepared for every Bill or regulation relating to superannuation.
- [Treasury Laws Amendment \(Fair and Sustainable Superannuation\) Bill 2016](#) and [Superannuation \(Excess Transfer Balance Tax\) Imposition Bill 2016](#), which will implement the package of superannuation reforms intended to improve the sustainability, flexibility and integrity of the superannuation system from 1 July 2017, were introduced into Parliament on 9 November 2016 and have also completed their passage through Parliament without amendment (and have since been given Royal Assent on 29 November 2016).
- [Customs Tariff Amendment \(Expanded Information Technology Agreement Implementation and Other Measures\) Bill 2016](#), introduced and passed both Houses of Parliament in November, will implement commitments made in the 2016-17 Australian Federal Budget to reduce customs duty on certain information technology products.

- [Income Tax Rates Amendment \(Working Holiday Maker Reform\) Bill 2016 \(No 2\)](#), introduced into Parliament on 28 November 2016, which proposes to change the rate of tax to apply to working holiday maker's taxable income ('backpacker tax') to a flat 15 per cent. This Bill replaced the [Income Tax Rates Amendment \(Working Holiday Maker Reform\) Bill 2016](#) which failed to be passed (note that the other Bills in this package (i.e. [Treasury Laws Amendment \(Working Holiday Maker Reform\) Bill 2016](#), and [Superannuation \(Departing Australia Superannuation Payments Tax\) Amendment Bill 2016](#)) completed their passage through Parliament as originally introduced).

With the Spring session of Parliament to end on Thursday 1 December 2016, as at 12 noon (AEST) 30 November 2016, the following key Bills (introduced in earlier months) remain in progress:

- [Tax and Superannuation Laws Amendment \(2016 Measures No 2\) Bill 2016](#) which proposes several amendments, including the introduction of a statutory remedial power for the Commissioner of Taxation, changes to allow primary producers to access income tax averaging ten income years after they opt out, and relief from luxury car tax for certain public institutions that import or acquire luxury cars for public display.
- [Treasury Laws Amendment \(Enterprise Tax Plan\) Bill 2016](#) which seeks to reduce the corporate tax rate to 25 per cent, increase the tax discount for unincorporated small businesses

and increase the small business entity threshold for certain purposes.

- [Income Tax Rates Amendment \(Working Holiday Maker Reform\) Bill 2016 \(No 2\)](#) (as noted above).
- [Superannuation \(Objective\) Bill 2016](#) (as noted above).

Federal Parliament will be in recess until commencing the Autumn 2017 sittings on 7 February 2017. For those who are looking ahead, the 2017-18 Australian Federal Budget has been flagged for 9 May 2017.

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## Other news

### Improving disclosure for ESS

The Minister for Revenue and Financial Services has [announced](#) the release of [exposure draft legislation and explanatory material](#), which aim to make it easier for employers to provide incentives to their employees through Employee Share Schemes (ESS). This initiative is part of the Government's National Innovation and Science Agenda (NISA).

In particular, the Government intends to amend the *Corporations Act 2001* and remove the requirement for the Australian Securities and Investments Commission to place eligible ESS disclosure documents on a public register. Comments on the draft legislation were due to be made by 2 November 2016. A [consultation paper](#) on options to make ESS more user friendly has also been released. Submissions close on 7 December 2016.

### Draft PCG on Fixed Trusts

The ATO has issued [Draft Practical Compliance Guideline PCG 2016/D16 on Fixed Trusts](#). This Draft Practical Compliance Guideline (PCG) sets out the factors the Commissioner will consider when exercising discretion to treat an entitlement in a trust as being a fixed entitlement, which results in a trust being treated as a fixed trust for purposes of the trust loss provisions.

By way of background, a trust will be a fixed trust if the beneficiaries hold 'fixed entitlements' to all of the income and capital of the trust. It is well known that it is difficult for many trusts to satisfy the legislative definition of 'fixed trust' unless the Commissioner exercises his discretion to treat the beneficiaries' interests as being vested and indefeasible.

The draft PCG is meant to provide taxpayers with greater certainty about when the Commissioner will exercise his discretion, and notes in broad terms, that the Commissioner must consider the following:

- the circumstances in which the interest is capable of not vesting or being defeated
- the likelihood of the interest not vesting or being defeated, and
- the nature of the trust.

The Draft also sets out examples of specific circumstances which will affect the Commissioner exercising his discretion.

## **CIV non-resident withholding taxes consultation paper released**

The Minister for Revenue and Financial Services has released a [discussion paper](#) on collective investment vehicle (CIV) non-resident withholding taxes. This follows the 2016-17 Australian Federal Budget announcement to introduce two new internationally recognised CIVs. The new vehicles will also support participation in the Asia Region Funds Passport. Submissions can be until 2 December 2016.

## **ATO puts trusts on notice with new Taxpayer Alert**

As part of the ATO's review of arrangements detected by the ATO's Trusts Taskforce that appear to be designed to exploit the proportionate approach to trust taxation, the ATO has issued [Taxpayer Alert TA 2016/12](#) dealing with trust income reduction arrangements.

The Taxpayer Alert is not concerned with arrangements where differences arise between the trust income and the taxable net income of the trust, merely because:

- taxable net income includes amounts such as capital gains that are not traditionally regarded as trust income or amounts that do not represent an accretion of value to the trust such as franking credits
- proper accounting creates differences between when and how amounts are recognised for tax and accounting purposes.

However it is concerned by contrived arrangements that are deliberately structured to reduce the trust income by a significant part of the economic benefit that is reflected in the taxable net income of the trust, including for example, an arrangement where an in-specie capital distribution is purportedly charged against trust income, or a revaluation of a share investment and subsequent receipt of a dividend that creates an accounting loss for the trust.

## **Federal Court issues New Taxation Practice Note**

The Federal Court has issued a new [Taxation Practice Note \(Tax -1\)](#). This sets out arrangements for the management of tax cases within the National Court Framework which relate to tax appeals to the Federal Court, pursuant to Part IVC of the *Tax Administration Act 1953* or appeals from the

Administrative Appeals Tribunal. The practice note applied from 25 October 2016.

## **ATO's Annual Report 2015-16**

The ATO has released its [annual report](#) for the 2015-16 financial year on 1 November 2016. Key highlights in the report include:

- ATO initiatives to improve client experience, including myTax to streamline tax returns, myDeductions, and business performance check tools.
- The International Structures and Profit Shifting Program has raised AUD1.2 billion in liabilities since it started in 2013.
- The ATO has litigated fewer cases in 2015-16; this is attributed to the increased use of alternative dispute resolutions, new settlement guidelines and the use of independent ATO facilitators. The ATO has achieved a litigation success rate of 85 per cent (77 per cent of cases fully favourable to the ATO and 8 per cent of cases partly favourable to ATO). The number of appeals to the Administrative Appeals Tribunal against decisions by the Commissioner has fallen by 26 per cent.
- An analysis of the estimated 'tax gap' for indirect taxes, PAYG withholding and fuel tax credits for the 2014-15 year (the tax gap is an estimate of the difference between what the ATO collects and the amount that would have been collected if every taxpayer were fully compliant). The ATO plans to develop tax gap estimates for all of the taxes and programs it administers.
- New challenges and risks identified for 2017 include:
  - mounting public concern with the impact of global economic forces on the integrity of the tax system
  - new tax measures, such as the extension of GST to consumer imports of digital services and low-value goods, and a simpler BAS.

Subsequently, the House of Representatives Standing Committee on Tax and Revenue has commenced its [review](#) of the ATO's 2015-16 Annual Report, which will focus on topics including:

- progress on new technology projects, including myTax
- relationships with tax practitioners

- how the ATO is monitoring and assisting individuals and very small businesses who are not computerised to handle the new environment
- how does the ATO benchmark its performance in introducing new IT
- an update on measuring the tax gap, any new estimates of particular taxes and of total revenue impacts, and an overall timetable for completion
- the new strategy for addressing the cash economy, and its effectiveness
- a progress report on dealing with the backlog of draft public rulings, and
- an update on the indicators of perceptions of fairness in disputes and other performance information as listed in the Committee's previous report.

### **IGOT Annual Report 2015-16**

The Inspector General of Taxation (IGOT) released his [annual report](#) on 28 September 2016. Some of the key points in the report include:

- For the 2015-16 financial year, the IGOT received a total of 2148 complaints of which over 95 per cent have been processed and finalised within the same period – the most common complaints related to ATO's debt collection action, delays in processing activity statements and tax returns and the ATO's audit activities.
- As at 30 June 2016, two IGOT reviews were finalised – the Debt collection and Tax practitioners reviews. The Taxpayers' Charter and taxpayer protections review and the employer obligations audit review are currently in progress.

### **Update on tax transparency initiatives**

Released for consultation on 31 October 2016, the [Open Government National Action Plan](#) makes the following transparency and accountability commitments in relation to taxation matters:

- Improve whistle-blower protections in the tax and corporate sectors: Australia will ensure appropriate protections are in place for people who report tax evasion or avoidance, corruption, waste, fraud and misconduct within the corporate sector. Draft legislation is expected in May 2017.
- Beneficial ownership: Australia will work to improve transparency of information on beneficial ownership and control of companies available to competent authorities.

Consultation paper is expected at the end of this year.

- Natural resource transparency: Australia will work towards compliance with the Extractive Industries Transparency Initiative (EITI) standard and continue to support the application of EITI principles around the world. Australia's first EITI report is expected to be produced in mid-2018.

Submissions were due to be made by 14 November 2016.

### **ATO large market engagement – Justified Trust**

The ATO is using the concept of '[justified trust](#)', developed by the Organisation for Economic Cooperation and Development (OECD), to engage with large market taxpayers. To achieve justified trust, the ATO seeks objective evidence that would lead a reasonable person to conclude a particular taxpayer paid the right amount of tax. Within this content, when engaging with a taxpayer, the ATO has indicated that it will review four key areas:

- understanding a taxpayer's tax governance framework
- identifying tax risks flagged to the market
- understanding significant and new transactions, and
- understanding why accounting and tax results vary.

### **ATO Key Taxpayer Engagement approach is coming soon**

Following a pilot which is currently being run, the ATO will roll out its [key taxpayer engagement \(KTE\) approach](#) to 130 largest public businesses (those described as higher consequence taxpayers for income tax, GST or excise). The approach has been developed in response to client feedback and Australian National Audit Office recommendations. The ATO expects most engagements will begin in the 2016-17 year.

### **Senate Economics Estimates update**

The [Senate Economics Legislation Committee](#) met on 19 October 2016, at which representatives of the Treasury, the ATO and Inspector-General of Taxation were in attendance. Matters discussed

included: ATO staffing, the ATO's access to the Panama Papers, petroleum resources rent tax,

modelling around the proposed corporate tax rate cuts, and multinational tax avoidance.

### Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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