

July 2016

TaxTalk Monthly

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



Corporate Tax Update

ASIC's areas of focus for financial reports

The Australian Securities and Investment Commission (ASIC) has announced its areas of focus for 30 June 2016 financial reports of listed and public interest entities. Tax accounting remains on

its list of focus areas which also cover impairment testing and asset values, off-balance sheet arrangements, revenue recognition, expense deferral, estimates and accounting policy judgements, and the impact of new revenue and financial instrument standards. Read more in our [Straight Away client alert](#).

Let's talk

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Employment Tax Update

Changes to Jobs Action Plan rebate (FY16-17 New South Wales State Budget)

The 2016-17 New South Wales (NSW) Budget was handed down by the Treasurer on 21 June 2016 and included proposed amendments to the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*. Under the proposed amendments, new jobs commencing on or after 31 July 2016, will only be eligible for the rebate if the employer's full-time equivalent (FTE) employee number, prior to the job, is at or below 50 FTE. New positions created prior to 31 July 2016 who have anniversaries that fall after that date will still be eligible for the rebate.

The payroll tax rebate, for employers who are still eligible, for new jobs created after 31 July 2016 has increased from \$3,000 to \$4,000 for the second year of employment.

FY16-17 Australian Capital Territory (ACT) State Budget

The 2016-17 ACT Budget, delivered on 7 June 2016, was included an increase in the tax-free threshold for payroll tax from \$1.85m to \$2.0m, effective from 1 July 2016.

FY16-17 Queensland State Budget

The 2016-17 Queensland Budget was handed down on 14 June 2016. The Government announced in the Budget Papers that there will be an increase in payroll tax compliance activity from 1 July 2016, and, in particular, compliance for taxpayers incorrectly claiming to be not-for-profit organisations for the purposes of avoiding tax.

Payroll Tax – De-grouping (NSW)

In Eastside Veterinary Emergency & Specialists Pty Ltd v Chief Commissioner of State Revenue [2016]

NSWCATAD 104 the issue of de-grouping was once again brought before the NSW Civil and Administrative Tribunal. The case centred on whether the Chief Commissioner had acted correctly in deciding not to exercise discretion to de-group two neighbouring veterinary practices under section 79 of the *Payroll Tax Act 2007*.

Ultimately, the Tribunal confirmed the decision of the Chief Commissioner of State Revenue not to exercise his discretion to de-group the two veterinary practices for payroll tax purposes, finding that the Applicant had not discharged its onus of satisfying the Tribunal that the business of the Applicant was carried on independently of and was not connected with the business of Rose Bay Veterinary Hospital Pty Ltd ('Rose Bay Veterinary').

This was despite submissions by the Applicant that the two practices performed entirely separate veterinary services (i.e. general and specialist), as only a small proportion of Rose Bay Veterinary's income came from patients referred by the Applicant and the day-to-day control of each practice resided with different people, despite the entities sharing common directors.

In reaching its decision, the Tribunal considered that the relevant matters included the lack of independent evidence provided as to the nature of each business, the sharing of services and personnel between the two businesses, the use of the same registered address with ASIC, the use of the same postal and business address on the income tax returns of both entities and the provision of security by one of the common directors as a guarantor for the lease of the premises occupied by each business.

This case serves as a reminder that the decision to de-group for payroll tax purposes should not be taken lightly. As the onus of proof rests with the taxpayer, in order to be successful with your de-grouping application, you must ensure that you have sufficient evidence to substantiate the position that the relevant business is carried on independently of, and is not connected with, the business conducted by any other member of the group.

Revenue Ruling: Workers' Compensation Payments (South Australia)

RevenueSA has issued Revenue Ruling PTA015 [V2] to clarify how workers' compensation payments are treated for payroll tax purposes. The ruling is effective from 14 June 2016 and replaces PTA015.

Payments of compensation made in accordance with the *Return to Work Act 2014* are not subject to payroll tax. This is the case whether or not the payment to the worker is made by the employer or the insurer. However, compensation paid to incapacitated workers, in excess of the amount prescribed by the *Return to Work Act 2014* (i.e. 'make-up pay') will be subject to payroll tax.

SuperStream Deadline for Small Businesses

The ATO has issued a reminder to small businesses that 30 June 2016 is the deadline for those employers not already using SuperStream. Solutions to ensure compliance with SuperStream include upgrading your payroll software, using a super fund's online system, or using a clearing house. Businesses with an annual aggregated turnover of \$2 million or less, and 19 or fewer employees may use the ATO's Small Business Superannuation Clearing House at no cost.

To further support those businesses that need more time to implement SuperStream by 30 June 2016, the ATO has announced it will provide compliance flexibility until 28 October 2016.

2017 FBT Rates and Thresholds

The ATO has released a number of new Tax Determinations confirming the relevant rates and thresholds applying to the FBT year ending 31 March 2017, including reasonable food component figures and the benchmark interest rate. These rates and thresholds can be found in TD 2016/1 – TD 2016/5 and TD 2016/7.

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Global Tax Update

2016-17 New Zealand Budget

The 2016-17 [New Zealand \(NZ\) Budget](#) was delivered by the NZ treasurer on 26 May 2016.

For further information on the NZ Budget, see [PwC NZ's commentary](#).

Australian Country-by-Country reporting laws

The Australian Taxation Office (ATO) has finalised the design of the Local File, which will not be a transfer pricing report; rather, it will require certain specific transfer pricing and business information to be reported in a standardised electronic form. For further information, see our [feature article](#), which provides an overview of the Local File requirements under Australia's new Country-by-Country reporting laws.

Belgium: Introduction of transfer pricing documentation obligations

On 2 June 2016, the Belgian Government introduced before Parliament a draft Program Act which sets out the blueprint of how Belgium aims to introduce the recommendations of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action 13 into Belgian tax law. For further information, see our Tax Insights, [Prepare for imminent introduction of transfer pricing documentation obligations](#).

Canada continues moving forward with OECD transparency agenda

Canada has announced two measures aligned with OECD BEPS project. Effective 1 April 2016, the Canada Revenue Agency (CRA) began sharing selected Canadian tax ruling with certain countries in accordance with BEPS Action 5, and on 12 May 2016, Canada signed the Multilateral Competent Agreement on the Exchange of Country-by-Country Reports (MCAA). For further information, see our Tax Insights, [Canada continues moving forward with OECD transparency agenda](#).

OECD developments

More countries sign up to the Convention on Mutual Assistance

Jamaica and Uruguay have signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Convention provides for all forms of administrative assistance in tax matters: exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection.

Continued commitment to establish global taxation standards

Director of the OECD Centre for Tax Policy and Administration, Pascal Saint-Amans, has issued a [statement](#) on global tax and transparency before the [OECD Forum 2016](#), which was held 31 May – 1 June 2016, noting that, “Establishing global taxation standards and making commitments to implement them, while essential steps, are just the start. It is time to move emphatically towards implementation ... With the G20-OECD partnership at the heart of the international tax agenda, we are determined to promote better tax policies for better lives, everywhere.”

Discussion draft on BEPS Action 15

The OECD has released a [discussion draft](#) for public comment on the multilateral instrument to implement the tax-treaty related BEPS measures (BEPS Action 15: A Mandate for the Development of a Multilateral Instrument on Tax Treaty Measures to Tackle BEPS). The discussion draft outlines the background and purpose of the multilateral instrument and describes briefly the technical issues arising from its development. As noted in the discussion draft, the main objective of a multilateral instrument is to facilitate the modification of existing bilateral tax treaties in a synchronised and efficient manner to implement the tax treaty measures developed during the BEPS Project, without the need to expend resources individually renegotiating each treaty bilaterally. The OECD will hold a [public consultation](#) on the multilateral instrument on 7 July 2016 in Paris.

Amendments to Transfer Pricing Guidelines

The OECD Council has [approved](#) the amendments to the [Transfer Pricing Guidelines for Multinational](#)

[Enterprises and Tax Administrations](#)(Transfer Pricing Guidelines), as set out in the 2015 BEPS Report on Actions 8-10 [Aligning Transfer Pricing Outcomes with Value Creation](#), and the 2015 BEPS Report on Action 13 [Transfer Pricing Documentation and Country-by-Country Reporting](#). These amendments provide further clarity and legal certainty about the status of the BEPS changes to the Transfer Pricing Guidelines, which were endorsed by the Council on 1 October 2015, by the G20 Finance Ministers on 8 October 2015, and by the G20 Leaders on 15-16 November 2015.

Other International tax news

[International Tax News: Edition 40, June 2016](#) – Read our monthly newsletter for updates and analysis on developments taking place around the world, authored by Member Firm specialists in PwC’s global international tax network. The developments covered by this edition include changes to Brazil’s capital gains tax rates, the United States Treasury’s proposed Section 385 regulations on related party financing, the French Supreme Court’s final decision on remuneration of cash funding from a branch to its head office, and the United Kingdom Court of Appeal decision regarding taxation of foreign portfolio dividends.

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State Taxes Update

New South Wales State Budget

The 2016-17 New South Wales (NSW) Budget was delivered by the NSW Treasurer on 21 June 2016 and includes the following significant taxation changes:

- the abolition of stamp duty on unlisted marketable securities, non-land business assets and business mortgages
- introducing a 4 per cent duty surcharge on acquisitions of residential land by foreign persons and a 0.75 per cent land tax surcharge on residential land owned by foreign persons, and
- increasing the payroll tax rebate for the second year of employment from \$3,000 to \$4,000 for eligible employment commencing on or after 31 July 2016. Read the Employment Tax Update for more details.

The key taxation measures and/or incentives announced in the Budget are as follows.

Foreign investor duty surcharge

From 21 June 2016, a flat transfer duty surcharge of 4 per cent will apply to all acquisitions of NSW residential real estate by foreign purchasers, including foreign individuals, corporations, trusts and governments. The surcharge will also apply to landholder transactions if the underlying land is residential land and the purchaser of shares or units in the landholder is a foreign person.

The meaning of a ‘foreign person’ is taken from the Foreign Investment Review Board (FIRB) definition provided in the *Foreign Acquisitions and Takeovers Act 1975* with some modifications. These modifications provide that the definition of a foreign person does not include an Australian citizen (irrespective of where they reside) or a New Zealand citizen who is ordinarily resident in Australia, provided that they hold a special category visa and their continued presence in Australia is not subject to any legal time limitations.

The definition of ‘residential land’ is broader than existing definitions in the NSW Duty Act. However, according to announcements made by the Office of State Revenue and the Treasurer, the surcharge will

not apply to retirement villages or 'commercial residential premises' (for example, hotels, motels, inns, hostels or boarding houses, caravan parks, camping grounds or premises used to provide accommodation in connection with a school). While this is welcome and is a sensible policy outcome, given the expansive definition of 'residential land', a specific exclusion in the legislation for these asset classes would be preferred.

The surcharge purchaser duty will apply in respect of all transactions that occur on or after 21 June 2016. Transitional provisions will apply so that if an agreement was made prior to 21 June 2016 but completes after 21 June 2016, no surcharge duty will apply.

Unlike the Victorian legislation, NSW's legislation does not appear to provide any exemption for foreign developers and therefore it is expected that the surcharge will apply to foreign developers who acquire land to build and on-sell as residential land.

The current concession for residential off-the-plan purchases (which allows for a delay of up to twelve months in the payment of duty) will no longer be available to foreign persons.

Foreign investor land tax surcharge

Commencing from the 2017 land tax year (i.e. 1 January 2017), a land tax surcharge of 0.75 per cent will apply to holdings of NSW residential land by foreign persons. There will be no tax free-threshold. Accordingly, foreign investors will still be subject to the surcharge on all owned residential land even if the total land value is below the current land tax threshold. In addition, there is no principal place of residence exemption for this surcharge.

If the land is owned by a foreign person and non-foreign persons, the surcharge is assessed on the proportion of the interest held by the foreign person.

The same definition of a 'foreign person' applies to the land tax surcharge provisions (i.e. the definition takes its meaning from FIRB legislation with some modifications for Australian and New Zealand citizens). Likewise, the definition of 'residential land' is the same. Accordingly, it is expected that 'commercial residential premises' are excluded.

Other stamp duty changes

The Government had previously announced and legislated the abolition of stamp duty on selected dutiable property. This has been confirmed in the 2016-17 NSW Budget. On and from 1 July 2016, duty will not be imposed on the transfer of:

- Unlisted marketable securities
- Non-land business assets, and
- Business mortgages.

Levy on point to point transport services

The NSW Government has been progressively introducing reforms to the taxi, hire car and rideshare industry, and has set aside \$250 million industry assistance package to assist licence owners to adjust to the new framework. A levy on all point to point transport providers equivalent to \$1 per trip for up to five years will be introduced to partly fund this. Presumably, this will be passed on to customers.

Other highlights

Other highlights announced in the 2016-17 Budget include:

- Infrastructure investment of \$73.3 billion over the forward estimates. The infrastructure programme is characterised by substantial funding in the transport clusters over 2016-17, specifically:
 - \$2.9 billion allocated to WestConnex (including funding for the Western Harbour Tunnel and Beaches Link)
 - \$1.5 billion allocated to Pacific Highway duplication, and
 - \$2.7 billion allocated to deliver Sydney Metro.
- Increased investment in health services (\$21 billion), education (\$13.3 billion), and community safety (\$8.1 billion).

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Queensland State Budget

The 2016-17 Queensland State Budget was delivered by the Queensland Treasurer on 14 June 2016 and includes the following major new initiatives and significant taxation changes:

- introduction from 1 October 2016 of a foreign purchaser 3 per cent surcharge to stamp duties payable on residential land. The surcharge will apply to transfer duty (for all types of dutiable transactions), landholder duty and corporate trustee duty (relevant to discretionary trusts) but only to the residential land component of a relevant transaction

- a temporary increase in the First Home Owners Grant from \$15,000 to \$20,000 for contracts on newly constructed homes signed between 1 July 2016 and 30 June 2017
- an extension of the existing duty concession which applies in respect of primary production (and other prescribed businesses) inter-generational transfers
- increased compliance activity targeting entities which inappropriately claim the 'not-for-profit' status in respect of State taxes such as land tax, duties and payroll tax.

The key taxation measures and/or incentives announced in the Budget are as follows.

Foreign purchaser surcharge

From 1 October 2016, a 3 per cent surcharge to transfer duty, landholder duty, and corporate trustee duty will be imposed in respect of foreign purchasers of residential land in Queensland. Relevantly, foreign purchasers will include foreign individuals (i.e. natural persons other than Australian citizens or permanent residents), companies incorporated outside Australia, companies controlled by foreign persons, and foreign trusts. The Queensland Treasurer has stated that ex gratia relief may be available to foreign purchasers. Read more in our [TaxTalk Alert](#).

This 3 per cent surcharge will be in addition to the general duty rates of up to 5.75 per cent, resulting in relevant transactions being subject to duty at rates of up to 8.75 per cent.

General concessions from duty will apply in respect of the foreign purchaser duty surcharge (for example, change in trustee exemption and corporate reconstruction relief). However, certain concessions will not extend to this surcharge such as the concessions for homes and first homes, and family businesses.

Importantly, the Budget changes did not apply the foreign purchasers surcharge to land tax. It remains to be seen if this change will subsequently be made to bring Queensland in line with Victoria and NSW.

Temporary increase in the First Home Owners' grant

The Queensland First Home Owners' Grant will be temporarily increased from \$15,000 to \$20,000 for contracts on newly constructed homes signed between 1 July 2016 and 30 June 2017.

Relevantly, the Queensland First Home Owners' Grant is available for first home buyers who are

buying or building a new house, unit or townhouse valued at less than \$750,000. It does not apply to existing dwellings.

Rural Assistance Package – transfer duty concession

The Government is extending the family farm transfer duty concession for the familial transfer of farm businesses. It has been estimated that the concession will cost \$7 million over the four years to 2019-20.

The existing concession applies to transfers (and indirect acquisitions through family partnerships, family trusts and family unit trusts) of land primarily used to carry on a business of primary production (including adjacent residential land), as well as personal property used to conduct the business on the land, to the extent the transfer is by way of gift. The concession will be extended by removing the gift requirement.

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Australian Capital Territory (ACT) Budget

The 2016-17 ACT Budget was delivered by the ACT Chief Minister and Treasurer on 7 June 2016. The Budget includes measures to continue tax reforms that commenced in previous Budgets as well as several new measures, including:

- abolishing the insurance duty from 1 July 2016
- increasing the payroll tax free threshold to \$2 million in 2016-17
- continued reduction in conveyance duty rates including:
 - from 2017-18, commercial and residential property transactions will have separate conveyance duty rates and duty for commercial property transactions below \$1.5 million will be phased out over two years
 - a flat rate of 5 per cent will apply to commercial property transactions over \$1.5 million
 - residential conveyance duty rates will continue to reduce every year through incremental reductions to the marginal rates.
- reducing the early payment discount for general rates to 2 per cent from 1 July 2016 and reducing the size of previously announced increases in general rates, and

- increasing the fixed charge component of land tax by \$100 in 2016-17.

A summary of the significant tax reform measures announced in the Budget are as follows.

Abolition of duty on insurance from 1 July 2016

In the 2012-13 Budget, the Government announced the abolishment of duty on insurance premiums over a five year period. From 1 July 2016, duty on general and life insurance will be completely abolished in the ACT.

Phasing out of conveyance duty over 20 years (commenced 6 June 2012)

Continuing with the scheduled phasing out of conveyance duty over 20 years, the Treasurer has announced it will further reduce conveyance duty rates in 2016-17 and over the next few years (for both residential and commercial).

The table below shows the 'commercial' conveyance duty rate scales for 2016-17 and the next two years (note that separate duty rates will apply to 'residential' conveyances from 2017-18). Conveyance duty for commercial property transactions below \$1.5 million will be phased out over two years so that by 2018-19, a flat rate of 5 per cent will apply to the entire value of commercial property transactions over \$1.5 million, and conveyance duty for commercial property transactions below \$1.5 million will be fully abolished.

Threshold	2015-16	2016-17	2017-18	2018-19
	%	%	%	%
Up to \$200,000	1.8	1.48	0.7	0
\$200,001 to \$300,000	3	2.5	1.2	0
\$300,001 to \$500,000	4	4	1.9	0
\$500,001 to \$750,000	5	5	2.39	0
\$750,001 to \$1,000,000	6.5	6.5	3.15	0
\$1,000,001 to \$1,454,999 (*\$1,499,999 from 2017-19)	7	7	3.4	0
\$1,455,000 (*\$1,500,000 from 2017-19) and above**	5.17	5.09	5	5

*From 2017-18 the highest threshold for commercial conveyance duty will increase from \$1,455,000 to \$1,500,000.

General rates

As part of this continuing tax reform program, the revenue that would have otherwise be earned from conveyance duty is being replaced with an increases in general rates levied on property owners. Rates for residential properties will increase by an average of around 4.5 per cent, and rates for commercial properties will increase by an average of around 7 per cent.

The rating system for 2016-17 will have the following elements:

- A fixed charge of:
 - \$765 for residential properties
 - \$150 for rural properties
 - \$2,235 for commercial properties.
- A percentage rate applied to the Average Unimproved Land Value (AUV) for 2016 (which is the average of 2014, 2015 and 2016 land values)
- A pensioner rebate cap (for residential properties) of \$700 for post 1 July 1997 applicants.

Land Tax

Land tax assessments in 2016-17 will be based on a valuation based charge on the AUV for 2016 and a fixed charge of \$1,090.

In 2016-17, the Government will increase the fixed charge component of land tax by \$100. The estimated outcome for land tax revenue in 2015-16 is \$99.1 million and is estimated to increase to \$110.3 million in 2016-17.

Fire and Emergency Services Levy (FESL)

The FESL in 2016-17 will have the following elements:

- A fixed charge of \$252 for residential and rural properties (an increase from \$196)
- A pensioner rebate of \$98
- A valuation-based charge for commercial properties with progressive marginal rating factors applied to the average of the 2014, 2015 and 2016 AUVs.

Motor vehicle registration fees

The Government has indexed motor vehicle registration fees by 5 per cent from 2015-16.

Lifetime Care and Support Levy (LTCS)

The Government will introduce a new LTCS levy on workers' compensation insurers and self-insurers, and a \$1 increase in the LTCS levy applying to Compulsory-Third Party Insurance Policies issued under the *Road Transport (Third-Party Insurance) Act 2008*.

Safer Families Levy

The Government will introduce a new Safer Families Levy on 1 July 2016. The levy will be \$30 per year and will be applied to all residential and rural properties.

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Tasmanian State Budget

The 2016-17 Tasmanian Budget was delivered by the Tasmanian Treasurer on 26 May 2016. The Budget contained the following tax measures:

- introduction of a corporate reconstruction/consolidation duty exemption for corporate group reorganisations. This brings Tasmania in line with the other States and Territories
- the First Home Owner Grant will increase from \$10,000 to \$20,000 until 30 June 2017 (but will also be backdated to 1 January 2016), and
- broadening of the permitted use of the current duty exemption for demonstrator vehicles.

The Budget also includes the deferral of two previous commitments. Firstly, the reduction of duty on compulsory third party motor vehicle insurance premiums and secondly, the reduction of the motor vehicle duty tax rate on light vehicles. No date is indicated as to when these previously announced reductions will take effect.

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Superannuation update

Country by Country Reporting: how super funds may obtain an exemption

The Australian Government has adopted the Country by Country reporting (CbyC) regime, intended to address significant cross border transfer pricing risk. Australian superannuation funds are caught by the regime where they qualify as 'Significant Global Entities', bringing the potential for very onerous annual compliance reporting.

We understand that the Commissioner does not intend to exercise the discretionary power under the regime to grant an exemption to superannuation funds as a class of taxpayers. However, the

Australian Taxation Office (ATO) will consider exemption applications on a case by case basis for individual funds.

Superannuation funds wishing to obtain an exemption will be required to lodge a written application to the ATO explaining why an exemption is warranted. Given the onerous annual compliance reporting, we believe superannuation funds should consider whether they qualify as a Significant Global Entity first, and if so, seriously consider an application for an exemption.

US FIRPTA exemption for Qualified Foreign Pension Funds (QFPFs): ongoing work to ensure Australian super funds qualify

The Real Estate Roundtable and National Association of Real Estate Investment Trusts (NAREIT), which are US based property investment industry groups, have been addressing the definition of Qualified Foreign Pension Plans (QFPPs) and surrounding matters with Congressional staff and the IRS. Issues being addressed include:

- (i) adding additional clarity that Real Estate Investment Trusts (REIT) distributions through partnerships are covered by the new rules
- (ii) qualification of an entity held by multiple QFPF's and other structuring uncertainties
- (iii) application to super funds that have self-employed members and government super plans that may not be tied to an employer
- (iv) providing things other than pension benefits will not cause a problem
- (v) the nature of information that needs to be provided to taxing authority for certainty on the exemption.

We have been assisting our PwC US colleagues who are participating in the discussions with Congressional staff and the IRS to ensure the FIRPTA exemption applies to Australian super funds.

We will continue our involvement in this matter and provide updates to you.

Division 293 Tax

The ATO has released an update to its online guide on the Assessment of Division 293 tax concerning the operation of [Div 293 deferred debt assessments](#).

Super funds should consult the guide and ensure that Division 293 is being appropriately attended to.

New tax regime for managed funds becomes law

The attribution MIT regime (known as the AMIT regime) received Royal Assent on 5 May 2016. The ATO has also issued a number of Law Companion Guides which discuss certain aspects of the AMIT

regime which now have the status of public rulings. The new rules apply from 1 July 2016, with early adoption available from 1 July 2015 for any qualifying managed funds that wishes to apply the rules early.

Fund Managers will need to determine whether to elect in to the new regime and from what date. The AMIT regime is meant to be beneficial for the funds management industry and its investors. As investors, super funds may wish to engage with their fund managers to ensure the benefits of the AMIT regime are maximised.

CGT Tax Propagation: heighten scrutiny from ATO

As most super funds have now used up all their realised capital losses from the Global Financial Crisis, and have now started paying capital gains tax (CGT) again, many super funds which have not already adopted Tax Propagation are now considering the merits of adopting the process. Tax Propagation is a parcel selection process which looks at all the parcels of a share held by a super fund across all of its managers, in order to select the optimal parcel for the most tax efficient outcome when some of those shares are sold.

This has resulted in a number of super funds lodging Private Binding Ruling requests with the ATO. However, notwithstanding that the ATO has ruled in favour of the Tax Propagation process in the past, the ATO is now seriously reconsidering its position regarding the application of the general anti avoidance rules.

The ATO has referred several recent ruling requests to the General Anti-Avoidance Rules (GAAR) Panel. The fact that this issue has been referred to the GAAR Panel highlights the seriousness of the matter.

This is a serious development for the superannuation industry as a number of super funds are already adopting Tax Propagation (some of which had previously obtained a favourable ruling) and other super funds seeking to commence Tax Propagation.

PwC has been in regular dialogue with the ATO on this matter, as we attempt to resolve the matter in favour of the superannuation industry.

We will continue our efforts on behalf of the industry and keep you updated as this matter unfolds.

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Other news

Board of Taxation reviewing application of hybrid mismatch rules to Regulatory Capital

The Board of Taxation (the Board) is currently undertaking a [specific review](#) to examine how best to implement the Organisation for Economic Co-operation and Development (OECD) [Hybrid Mismatch Recommendations \(Action 2 Report\)](#), to eliminate deductible/frankable hybrid mismatch arrangements that arise in relation to regulatory capital. The Board has previously provided the Government with a [report](#) on the implementation of the OECD hybrid mismatch rules.

The report in relation to this latest review is due to be provided to the Government by the end of July 2016. This timeframe will enable the commencement of any recommended measures to align with the proposed commencement of the Australian hybrid mismatch rules.

Preparing for the Attribution Managed Investment Trusts regime

ASIC has granted relief to assist responsible entities of registered schemes to allow them to make changes to their constitutions without automatically holding a members' meeting. This relief will assist responsible entities to smoothly implement the Attribution Managed Investment Trust (AMIT) regime. Specifically, ASIC Corporations (Attribution Managed Investment Trust) Instrument 2016/489, registered on 21 June 2016, enables a responsible entity of a registered scheme to change the scheme's constitution without a members' meeting where it reasonably considers the changes to be necessary

for, or incidental to, the scheme being able to be operated as an AMIT.

The instrument also provides relief from the requirement to treat members who hold interests of the same class equally where a responsible entity is making an attribution in accordance with requirements under the new tax system for managed investment trusts.

New ATO products aim to provide taxpayer certainty

The ATO has two new products – Law Companion Guidelines (LCGs) and Practical Compliance Guidelines (PCGs) – which are aimed to provide public advice and guidance to taxpayers. To explain the purpose, nature and role of each of these new products, the following Guidelines were finalised:

- LCG 2015/1: Law Companion Guidelines: purpose, nature and role in ATO's public advice and guidance – LCGs, which can have the status of a binding public ruling, aim to provide ATO insight into the practical implications or detail of recently enacted law in ways that may go beyond mere questions of interpretation.
- PCG 2016/1: Practical Compliance Guidelines, purpose, nature and role in ATO's public advice and guidance – PCGs aim to give broader law administration guidance that conveys the ATO's assessment of relative levels of tax compliance risk across a spectrum of behaviours or arrangements (to safely 'swim between the flags') and communicate how the ATO will apply its audit resources or provide practical compliance solutions where tax laws are uncertain in their application or are found to be creating

unsustainable administrative or compliance burdens.

ATO finalises ruling dealing with TOFA and swaps

TR 2016/2, issued on 25 May 2016, sets out the Commissioner's final view regarding how section s230-120 of the *Income Tax Assessment Act 1997* applies to the taxation of swaps under the accruals/realisation methods which apply under the taxation of financial arrangements (TOFA) rules.

This Ruling, which is substantially the same as the draft (TR 2015/D3), applies to income years commencing both before and after its date of issue.

Section 230-120 sets out how the accruals and realisation methods apply to 'financial arrangements with notional principal'. Where a financial arrangement satisfies the conditions set out in s230-120(1), the gains and losses from the financial arrangement are to be worked out in accordance with s230-120(3) when applying the accruals/realisation methods.

The Ruling sets out four examples of swap contracts to illustrate the principles identified in the Ruling:

- Example 1: Interest rate swap with a non-periodic lump sum payment
- Example 2: Cross currency swap
- Example 3: Total return swap
- Example 4: Credit default swap.

In brief, the key points made in the Ruling are as follows:

- The test in s230-120(1) will be satisfied where, having regard to the actual pricing, terms and conditions of the actual financial arrangement, there is, in substance or effect, a notional arrangement (referred to in the Ruling as the notional construct) that has specified characteristics.
- The notional construct consists of two 'legs' and possibly one or more other 'things'. A 'thing' is anything else of which the notional construct consists which is not a leg. The Ruling does not provide any further detail or examples in this regard, but notes that anything not relevantly related to the notional principal will not form part of a leg.
- Where a financial benefit is, in substance, the result of an equation that contains the notional principal as a term, the financial benefit is calculated by reference to the notional principal. In terms of the legal form of the actual financial arrangement, the notional principal need not be actually provided or received.
- The financial benefits from each leg of the notional construct and any other 'thing' are worked out separately. The accruals/realisation methods apply at each level of each leg or 'thing', and the gains and losses from each leg or thing are treated as being the gains and losses from the financial arrangement.
- In working out the gains or losses of each element of the notional construct, and when they ought to be recognised, the result must properly reflect the financial substance of the financial arrangement.

Let's talk

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

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