

December 2015

TaxTalk Monthly

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



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Corporate tax update

Tax transparency measures

Before the enactment of *Tax and Superannuation Laws Amendment (Better Targeting the Income Tax Transparency Laws) Act 2015* on 12 November 2015, the income tax transparency laws in section 3C of the Taxation Administration Act 1953 required the Commissioner of Taxation to publish, each year, certain income tax information for all corporate tax entities (ie, companies and entities taxed like companies) with reported total income of \$100 million or more, commencing with the 2013-14 income year.

Under these measures, the Commissioner is required to publish the entity's name and Australian Business Number, total income, taxable income or net income (if any) and income tax payable. All information published under the income tax transparency laws is sourced from taxpayers' tax returns.

Under the Act specified above, the law was amended (with effect from 12 November 2015) to provide an exemption from these income tax transparency laws for companies that satisfy all of the following conditions:

- The company must be an Australia resident private company.
- The company must not be the wholly-owned subsidiary of a foreign corporate group.
- The company must not have a level of foreign shareholding greater than 50 per cent.

In its consideration of the *Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015*, which was introduced into the House of Representatives on 16 September 2015 (and is still not yet law), the Senate made amendments to the Bill including that:

- The exemption for private companies from the income tax transparency measures be repealed.

- Corporate tax entities that are 'significant global entities' be required to provide to the Commissioner, as soon as practicable after the end of the income year, a general purpose financial report for the income year. An entity will be a 'significant global entity' for a period if it is a 'global parent entity' whose 'annual global income' for the period is AU\$1 billion or more, or it is a member of a group of entities that are consolidated for accounting purposes as a single group and the 'global parent entity' of the group has annual global income for the period of AU\$1 billion or more.
- The Commissioner be authorised to determine, on application by an Australian-owned private company, that the income tax transparency measures will not apply to the company, if the Commissioner considers that to make the information publicly available may be significantly prejudicial to any of the entity's current or future commercial negotiations.

On 12 November 2015, the House of Representatives formally disagreed with the amendments to this Bill made by the Senate. An effect of this is that the exemption for certain private companies from the income tax transparency laws remains in place. Any further developments on this will be reported in future TaxTalk editions.

There has been no change to the requirement for the Commissioner to publish certain tax information in relation to Minerals Resource Rent Tax (MRRT) or Petroleum Resource Rent Tax (PRRT) taxpayers. The first annual report from the Commissioner under these transparency measures (covering income tax, MRRT and PRRT) is expected to be released in December 2015.

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Employment tax update

New Superannuation Guarantee Bill introduced into Parliament (Cth)

The *Treasury Legislation Amendment (Repeal Day 2015) Bill 2015* has been introduced to Parliament, which proposes to:

- simplify the superannuation guarantee (SG) charge by aligning the earnings base for calculating the SG charge with the earnings base for calculating SG contributions, aligning the interest component on any SG shortfall with the period over which the contributions are outstanding, and replace the SG charge penalty with the administrative penalty applied under the Taxation Administration Act 1953 (effective from 1 July 2016), and
- enable the Commissioner of Taxation to pay certain superannuation amounts directly to individuals with a terminal medical condition and remove the requirement for superannuation funds to lodge a separate biannual lost members statement (effective from 1 July 2016).

Review of the Australian Taxation Office's (ATO) Employer Obligations audit program

The Inspector-General of Taxation has released the Terms of Reference for the review into the ATO's Employer Obligations audit program (including obligations for employers in respect of superannuation, PAYG withholding, FBT and contractors). Stakeholder submissions are currently being sought from taxpayers in relation

to their experiences with ATO Employer Obligations audits, including any concerns with the current audit program approach.

Submissions will be treated as confidential and are due by 11 December 2015.

Jobs Action Plan Payroll Tax Rebate Scheme - New Revenue Ruling (NSW)

The NSW Office of State Revenue (OSR) has issued a new Revenue Ruling, JAP 002, clarifying a number of issues arising from the release of their earlier JAP 001 ruling. Under JAP 002, an extension for the registration of a new job is given to taxpayers, provided a submission was lodged with the OSR containing all of the information required by 22 November 2015. The extended due date for the resulting/related manual entry of new jobs into the OSR's online portal is 18 December 2015.

NSW OSR phasing out refunds via cheque

The NSW OSR has announced that, from January 2016, refunds will no longer be issued by cheque. Instead, all taxpayers will need to provide details of your nominated bank account to allow refunds to be paid by electronic funds transfer.

Meal Entertainment changes Awaiting Royal Assent

The Bill introducing a cap of \$5000 for salary packaged entertainment has been passed and it's awaiting Royal Assent.

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International tax update

OECD BEPS Project: Endorsement by G20 leaders

At the Leaders' Summit held in Turkey on 15 and 16 November 2015, the leaders of the Group of Twenty (G20) endorsed the package of measures ([BEPS 2015 Final Reports](#)) developed under the Base Erosion and Profit Shifting (BEPS) project by the Organisation for Economic Cooperation & Development (OECD), noting that wide-spread and consistent implementation will be critical in the effectiveness of the project, and reaffirming previous commitments to information exchange on-request as well as to automatic exchange of information by 2017 or end-2018. Our [TaxTalk Alert](#) provides an analysis of the package from an Australian perspective.

Further details are set out in the [G20 Leaders' Communique](#).

New tax treaty with Germany

On 13 November 2015, the Commonwealth Treasurer announced that a new Tax Treaty (Treaty) had been signed with Germany, aimed at reducing tax impediments to increased bilateral trade and investment, and improving the integrity of the tax system. It replaces a previous Double Taxation Agreement between Australia and Germany signed in 1972.

According to the media statement the new Treaty gives effect to the OECD/G20 Base Erosion and Profit Shifting (BEPS) recommendations with the main features of the new Treaty including:

- Treaty benefits will be denied if a principal purpose of a person is to take advantage of the Treaty.
- Nothing in the Treaty will prevent either country from applying their domestic laws which are designed to prevent the evasion or avoidance of taxes.
- The Australian taxes covered by the Treaty are income tax, fringe benefits tax and resource rent taxes.
- The German taxes covered by the Treaty are income tax, corporate income tax, trade tax and capital tax.
- Treaty benefits will be available for income derived through fiscally transparent entities but only to the extent that the income is treated as the income of a resident of Australia or Germany under domestic law.
- Treaty benefits will be available under certain circumstances for income received by Australian managed investment trusts.
- The definition of 'permanent establishment' has been strengthened and supplemented by new integrity provisions, which will broaden the range of circumstances in which both countries can tax business profits.
- A ten year time limit will generally apply for making transfer pricing adjustments, with a correlative adjustment to be made to the profits of an associated enterprise so that the transfer pricing adjustment does not result in double taxation of the same profits in the hands of two associated enterprises.
- The definition of 'immovable property' will enhance both countries' ability to tax income derived from the use of immovable property, including mining rights.
- Dividends may be taxed in the source (of the dividend) country up to the following limits:
 - **Zero** for intercorporate dividends paid to publicly listed companies, or subsidiaries thereof, or unlisted companies in certain circumstances, that hold 80 per cent or more of the paying company;
 - **5 per cent** of the gross amount of the dividend for intercorporate dividends paid

- to companies that hold 10 per cent or more of the paying company;
- **15 per cent** for all other dividends.
- Interest may be taxed in the source (of the interest) country up to the following limits:
 - **Zero** for interest derived by government bodies, central banks and unrelated financial institutions; and
 - **10 per cent** for all other interest.
- Royalties may be taxed in the source (of the royalty) country up to a limit of 5 per cent of the gross royalty. The right to use industrial, commercial or scientific equipment has been removed from the revised definition of 'royalties'.
- Comprehensive rules will govern the allocation of taxing rights between Australia and Germany over income, profits or gains from the alienation of different categories of property.
- Rules are included prescribing the circumstances under which Germany may apply its capital tax to capital owned by Australian residents.
- Rules are included for seeking a refund of overpaid withholding tax, including the requirement that the refund be requested within four years of receiving the relevant income.
- The revenue agencies of Australia and Germany will be authorised to exchange taxpayer information in respect of all taxes imposed in either country. Strict rules will govern the protection of tax information exchanged in relation to individuals.
- The revenue agencies will assist each other in the collection of outstanding tax debts.

The new Treaty will enter into force in Australia on 1 January for withholding taxes, 1 April for Fringe Benefit Tax, 1 July for other taxes, after both countries have completed their domestic requirements and instruments of ratification have been exchanged. For Germany, the treaty applies from 1 January following ratification of the treaty.

A copy of the text of the new treaty is available on the [Treasury website](#).

For further information please contact Christian Holle on 61 (2) 8266 5697 or at christian.holle@au.pwc.com.

Papua New Guinea (PNG): Budget 2016

The 2016 Papua New Guinea National Budget was handed down on Tuesday 3 November 2015. PwC PNG's [National Budget Commentary](#) is available online, and includes an overview of the tax

developments and amendments contained in the Budget.

New Zealand: Consultation on tax simplification

The New Zealand (NZ) Minister of Revenue has released the following two consultation papers containing further tax simplification proposals as part of the Government's "Making Tax Simpler" consultation series:

- [Making tax simpler – Towards a new Tax Administration Act](#), which looks at the role of the Commissioner of Inland Revenue, how taxpayer information can be used more efficiently to provide better services for New Zealanders, and the role of taxpayers and third parties
- [Making tax simpler - Better administration of PAYE and GST](#), which looks at how to make Pay As You Earn (PAYE) and Goods and Services Tax (GST) systems fit with business processes rather than the other way round.

A third paper on business taxation is expected to be released in 2016. The Minister has also released a summary of public feedback received from the first round of public consultation - [Making tax simpler - Green paper and Better digital services: summary of feedback](#).

New Zealand: Taxing gains on sale of residential land

The *Taxation (Bright-line Test for Residential Land) Bill* has now passed its third reading in the NZ Parliament and will become law upon receipt of Royal Assent. Under the measures, a new 'bright-line' test will require income tax to be paid on gains from residential property acquired on or after 1 October 2015 that is sold within two years (with exceptions for main residence, inherited property, and transfer of relationship property). For further details see the Minister of Revenue's [media statement](#) available on Inland Revenue's Policy Advice website.

Board of Taxation: Consultation on proposed anti-hybrid rules

On 20 November 2015, the Board of Taxation (Board) released its Discussion Paper (Paper) on the Implementation of the anti-hybrid rules. The Paper has been developed by the Board to invite submissions and facilitate stakeholder consultation on the issues raised in accordance with the terms of reference given for the review.

Under the terms of reference, the Board has been requested to undertake consultation on the implementation of new tax laws to neutralise

hybrid mismatch arrangements (anti-hybrid rules), pursuant to the recommendations of the G20 and OECD under Action Item 2 of the Base Erosion and Profit Shifting (BEPS) Action Plan and to examine how best to implement anti-hybrid rules in the Australian legal context. In particular, the Board has been asked to identify an implementation strategy that has regard to:

- Delivering on the objectives of eliminating double non-taxation, including long term tax deferral
- Economic costs for Australia
- Compliance costs for taxpayers, and

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- Interactions between Australia's domestic legislation (e.g. the debt-equity rules and regulated capital requirements for banks), international obligations (including tax treaties) and the new anti-hybrid rules.

The Board has been requested to report to Government by March 2016 to allow this issue to be considered as part of the 2016 Federal Budget. So as to meet this timeframe, the Board has requested that submissions to this review be made by 15 January 2016. For further information in respect of this consultation, contact Peter Collins on 61 (3) 8603 6247 or at peter.collins@au.pwc.com.

Legislative update

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

Excise (Volume of Liquid Fuels - Temperature Correction) Determination 2015 (No. 1), registered on 2 November 2015, specifies the methods available for determining the volume of excisable liquid fuel, and the types of fuel and aggregated clearances as factors that permit the use of a particular method.

Excise (Mass of CNG) Determination 2015 (No. 1), registered on 2 November 2015, specifies the methods available for determining the mass of excisable Compressed Natural Gas (CNG) delivered into home consumption (in kilograms) and specifies a total figure of aggregated clearances as a factor relevant for determining eligibility to use certain methods.

Excise (Volume of LPG – Temperature and Pressure Correction) Determination 2015 (No. 1), registered on 3 November 2015, specifies the methods available for determining the volume of Liquefied Petroleum Gas (LPG) (in litres) and specifies a total figure of aggregated clearances as a

factor relevant for determining use of a particular method.

Customs Amendment (Anti-dumping Measures) Commencement Proclamation 2015, registered on 30 October 2015, provides for the commencement of Schedule 1 of the *Customs Amendment (Anti-Dumping Measures) Act (No 1) 2015* on 2 November 2015.

Customs Tariff (Anti-Dumping) Amendment Commencement Proclamation 2015, registered on 30 October 2015, provides for the commencement of Schedule 1 of the *Customs Tariff (Anti-Dumping) Amendment Act 2015* on 2 November 2015.

Customs (Preliminary Affirmative Determinations) Direction 2015, registered on 2 November 2015, directs the Commissioner of the Anti-Dumping Commission as to the general principles for carrying out or giving effect to the Commissioner's powers relating to the making of preliminary affirmative determinations under section 269TD of *Customs Act 1901* following the initiation of an anti-dumping or countervailing duty investigation.

Customs (Extensions of Time and Non-cooperation) Direction 2015, registered on 2 November 2015, directs the Commissioner of the Anti-Dumping Commission in relation to granting extensions of time and making determinations about uncooperative exporters or non-cooperation by entities.

Customs (Anti-Dumping Review Panel Fee) Instrument 2015, registered on 2 November 2015, specifies fees payable in relation to applications under Division 9 of the Customs Act 1901.

Treasury Legislation Amendment (Repeal Day 2015) Bill 2015, introduced into the House of Representatives on 12 November 2015, proposes to:

- simplify the superannuation guarantee (SG) charge by aligning the earnings base for calculating the SG charge with the earnings base for calculating SG contributions, aligning the interest component on any SG shortfall with the period over which the contributions are outstanding, and by replacing the SG charge penalty with the administrative penalty

applied under the *Taxation Administration Act 1953* (effective from 1 July 2016)

- enable the Commissioner of Taxation to pay certain superannuation amounts directly to individuals with a terminal medical condition and remove the requirement for superannuation funds to lodge a separate biannual lost members statement (effective from 1 July 2016), and
- amend the tax law to remove a number of inoperative or spent provisions including the tax-exempt infrastructure borrowing concession.

Omnibus Repeal Day (Spring 2015) Bill 2015, introduced into the House of Representatives on 12 November 2015, proposes to repeal inoperative Acts and provisions and make a number of consequential amendments to other Acts so as to remove references to those inoperative Acts.

Tax Laws Amendment (Gifts) Bill 2015, introduced into the House of Representatives on 12 November 2015, proposes to update the list of specifically listed deductible gift recipients.

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Other news

Reduce penalties for voluntary disclosure by SMSFs involved in dividend stripping arrangements

On 10 November 2015, the Australian Taxation Office (ATO) published a statement confirming that it would not apply penalties to a self-managed superannuation fund (SMSF) that implemented a dividend stripping arrangement substantially similar to that described in Taxpayer Alert 2015/1 (TA 2015/1) in the income tax years ended 30 June 2011 to 30 June 2015, where the SMSF 'self-amends' its annual return before the earlier of 15 February 2016 and the commencement of

compliance action by the ATO. Interest charges on taxes underpaid will however continue to apply.

The ATO 'offer' of zero penalties does not extend to arrangements more complicated in their structure and intent than the arrangement described in TA 2015/1, and such arrangements and the imposition of penalties will be considered by the ATO on a case-by-case basis.

The process for self-amending an annual return is detailed in the ATO's publication.

If you have any queries in relation to TA 2015/1 and its relevance to your SMSF, contact your usual PwC adviser.

Inspector-General of Taxation: Annual Report

The Inspector-General of Taxation (IGT) has released his Annual Report 2014-15 which includes an overview of completed work by the IGOT this year (including reviews of tax disputes, valuations and penalties, a follow up review of 'u-turns' and follow up work on other reviews), the work program for 2015-16 and the successful transfer of the tax complaint handling function from the Commonwealth Ombudsman to the IGT from 1 May 2015.

Inspector-General of Taxation: Review of ATO's audit of employer obligations

The IGT has released the Terms of Reference for his review into the ATO's audits of employer obligations (including obligations under the superannuation, Pay As You Go and Fringe Benefits Tax regimes). In relation to easing the compliance burden for employers the focus areas listed in the Terms of Reference are:

- The distinction between 'employee' and 'contractor' for Federal taxation and superannuation purposes, its coherence with business practices, state taxation and other legal requirements as well as the interactions with Australian Business Number (ANB) and Goods and Services Tax (GST) registrations.
- Simplification of reporting, withholding and payment obligations for employers as well as certain contractors.
- The effectiveness of the ATO's use of existing third party data to reduce the compliance burden for employers.
- Guidance and tools for employers to discharge their employee-related taxation and superannuation obligations, including the level of protection afforded to those relying upon the information provided.
- Information and support for employees to understand their rights, entitlements and avenues for redress where they become aware of potential non-compliance by their employers.

Focus areas relating to the ATO's conduct of its compliance activities are:

- The effectiveness of the ATO's risk assessment and verification processes to detect and address non-compliance of employer obligations in a timely manner.

- The ATO's consideration of relevant employee entitlements protection and business viability impacts when undertaking compliance actions.
- The effectiveness of the ATO's actions to address phoenix activities.
- The ATO's conduct during employer obligations compliance activities, including the:
 1. proportionality and use of information gathering powers
 2. access and use of available third party information to verify compliance
 3. appropriateness of auditor communications
 4. pathways for escalating and resolving issues before such activities are finalised
 5. sustainability of audit and penalty decisions
 6. costs for employers and employees. and
 7. the feedback given to employees who notify the ATO of potential employer non-compliance.
- The ATO's administration of alienation of personal services income provisions and its interaction with other compliance activities including those relating to employer obligations.
- The extent to which aspects of the administrative penalty regimes encourage or hinder voluntary compliance and self-reporting of non-compliance by employers.

The IGT has called for submissions which can be made until 11 December 2015. For further information contact your usual PwC adviser.

Inspector-General of Taxation: Review of Taxpayers' Charter and taxpayer protections

The IGT has announced the Terms of Reference for his review into the Taxpayers' Charter and taxpayer protections. Under this review, the IGT will seek to identify opportunities to improve taxpayer protections and avenues for redress, with a focus on:

- the framework for taxpayer protections
- compensation and other avenues for redress
- model litigant rules
- protection of taxpayer's rights in cross-border information exchanges between revenue authorities.

The IGT has called for submissions which can be made until 18 December 2015. For further information contact your usual PwC adviser.

Commissioner of Taxation: Annual Report

The Commissioner of Taxation has published his 2014-15 Annual Report. The Report includes the ATO's key statistics and achievements for the last financial year, and provides indications of the ATO's operating program for the years ahead. This program includes working with Treasury to simplify tax law and contribute to deregulation targets to further reduce compliance costs, implementing digital service initiatives, building analytics capability to enhance ATO risk-based, differentiated client experience, and driving action in the international tax arena.

Small Business CGT roll-over

On 5 November 2015, the Commonwealth Treasury released exposure draft legislation to give effect the 2015-16 Budget proposal to allow 'small business' to change their legal structure without incurring a capital gains tax (CGT) liability. Although the Budget announcement referred to a roll-over of a CGT liability, the exposure draft also extends the relief to the transfer of trading stock, revenue assets and depreciating assets. Submissions on the exposure draft can be made until 4 December 2015.

Tax Accounting

On 12 November 2015, the Australian Securities and Investments Commission (ASIC) announced its areas of focus for 31 December 2015 financial reports of listed entities and other entities of public interest. Tax accounting policy choices are highlighted as an area of focus for 31 December 2015, to ensure that:

- there is a proper understanding of both the tax and accounting treatments, and how differences between the two affect tax assets, liabilities and expenses
- the impact of any recent changes in legislation are considered
- the recoverability of any deferred tax asset is appropriately reviewed.

For further information on tax accounting matters, contact Ronen Vexler on 61 (2) 8286 0320 or at ronen.vexler@au.pwc.com.

Initial reactions on Financial System Inquiry

The release of the Government's response to the final Financial System Inquiry report has proved to be the largest overhaul in nearly two decades for the financial system, starting almost immediately. Key recommendations call for lower credit card and bank fees, better superannuation options, improved financial products and advice, increased innovation and a focus on leveraging new technologies, and robust banks reducing the risk of tax payer bailouts. [View](#) PwC's snapshot of the headline recommendations and our initial reactions and insights.

Reforms to insurance industry

On 6 November 2015, the Assistant Treasurer announced that the Government will introduce a package of reforms for the life insurance industry to commence from 1 July 2016. The package will include amendments to the *Corporations Act 2001* to facilitate the rationalisation of legacy products in the life insurance and managed investment sectors, with further analysis of the tax implications to be explored as part of the Tax Reform White Paper process.

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Personal tax update

Full Federal Court dismisses taxpayer's appeal on taxation of incentive scheme benefits

In *Blank v Commissioner of Taxation* [2015] FCAFC 154, the Full Federal Court dismissed the taxpayer's appeal from the earlier decisions of Justice Edmonds in *Blank v Commissioner of Taxation* [2014] FCA 87 (the primary decision) and in *Blank v Commissioner of Taxation (No 2)* [2014] FCA 517 (the foreign service decision).

In summary, at the time of termination of employment, the taxpayer became entitled to receive amounts under his employer's 'profit participation plan' being instalments of a lump sum as determined under the plan. The plan under which the taxpayer received the payments was that entered into 2005, there being earlier plans that applied to the taxpayer (the majority of the Full Federal Court considered that there were no material differences in the earlier plans), each of which was superseded by a later plan.

The taxpayer treated the amounts received as the proceeds from disposal of Genussscheines (GS) provided to the taxpayer under the plan during the period of his service with the Glencore International Group of companies in Australia and overseas. A GS is a profit sharing certificate issued by a company under its articles of association pursuant to Article 657 of the Swiss Code of Obligations.

In treating the amounts received as being instalments of the amount payable on disposal of GS, the taxpayer did not include the amounts received as assessable income in the relevant returns lodged with the Commissioner, but instead, returned an amount as a capital gain under the capital gains tax (CGT) rules. Since

according to the taxpayer, some of the GS were provided to the taxpayer whilst he was a non-resident of Australia, the taxpayer adopted as the CGT cost of these GS the market value of the GS at the time that the taxpayer became a resident.

The Commissioner disagreed with the taxpayer's position and issued amended assessments to the taxpayer for the 2007 to 2010 tax years on the basis that the amounts were assessable when received as eligible termination payments (ETPs), or alternatively, as ordinary income as a reward for services.

The taxpayer's objections against the amended assessments were disallowed by the Commissioner, and the taxpayer appealed these adverse objection decisions to the Federal Court.

In defending the decisions to disallow the objections, the Commissioner for the first time argued as an alternative to the basis upon which he had assessed the taxpayer, that the amounts received were assessable as dividends or as non-share dividends under section 44 of the *Income Tax Assessment Act 1936* (ITAA 1936).

At first instance, in the primary decision, Justice Edmonds held that under the plan which was implemented in 2005, the taxpayer did not own any GS at the time of termination, and that the amounts received were simply the reward for services provided by the taxpayer. On this basis, the amounts were ordinary income when received. In relation to this conclusion, his Honour drew the distinction between the contractual right to receive the amounts (which was not the reward for service) from the receipt of the money itself (which was the reward for service). Since the amounts received were ordinary income, the amounts were not assessable as ETPs.

His Honour also concluded that the amounts were not assessable under section 44 of the ITAA 1936

The foreign service decision dealt with the taxpayer's interlocutory application, filed before the publishing of final orders in respect of the primary decision, that the taxpayer be granted leave to re-open his case to enable him to make submissions concerning the application of section 23AG of the ITAA 1936. The effect of the submission that the taxpayer sought to make was that some part of the amount received qualified as 'foreign earnings derived by [the taxpayer] from ... foreign service', and was exempt from tax: subsection 23AG(1).

After receiving submissions from the parties with respect to the application, Justice Edmonds refused the taxpayer's application. The basis of the decision was that the taxpayer's argument that subsection 23AG(1) applied was without merit. In particular his Honour expressed the view that the provision required the earnings in question to be exclusively from 'foreign service', and that it was clear that in this case, it was not possible to identify any portion of the amount as being

derived exclusively from 'foreign service' "because the amount was not calculated by reference to days of service".

The taxpayer appealed these two first instance decisions to the Full Federal Court.

With respect to the primary decision, the Court, by majority, dismissed the taxpayer's appeal. In dissent, Justice Pagone held that the amounts received were not ordinary income. In this respect, his Honour was of the view that the amount received by the taxpayer was for the disposal by the taxpayer of the bundle of rights that had accrued to the taxpayer under the plan including, (and contrary to the view of Justice Edmonds at first instance), GS still owned by the taxpayer at the time of termination. Justice Pagone then dealt with the CGT implications of the disposal of the rights including the basis for determining the market value of the rights when the taxpayer became a resident of Australia.

All members of the Full Court agreed with Justice Edmonds decision to refuse leave to re-open the case to argue that subsection 23AG(1) applied.

Let's talk

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

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Superannuation update

Actuarial certificate required for segregated assets

The Australian Taxation Office (ATO) [website](#) indicates that the ATO has reconsidered its view (made at a number of presentations) on the requirement to obtain an actuarial certificate to report exempt current pension income (ECPI) using the segregated asset method. This change will be reflected in a published addendum to Taxation Determination [TD 2014/7](#) . The ATO will also update its website on information for trustees.

The ATO's view now is that, where a Self-Managed Super Fund (SMSF) is paying only a pension prescribed by the superannuation regulations (most commonly an account based pension, including a transition to retirement income stream from segregated assets), an actuarial certificate is

not required. This exemption applies to an SMSF, even where it commences to pay an account based pension during the year. However, where the SMSF is also paying pensions not prescribed by the regulations, the fund can still have segregated assets but will be required to obtain an actuarial certificate.

The ATO's views are likely to have greater impact on SMSFs rather than large funds. Nevertheless, the ATO's views provide some insight relating to the segregation of assets.

Addendum to TD 2014/7 - when is a bank account a segregated asset?

In an addendum to TD 2014/7, the ATO has sought to clarify the circumstances in which subsection 295-385(4) of the Income Tax

Assessment Act 1997 will apply to treat a bank account as a segregated asset.

In TD 2014/7, the ATO has highlighted a number of circumstances where a bank account can be treated as a segregated asset.

Update on ATO ruling dealing with apportionment of expenses

A draft ruling, TR 2013/D7 relating to expense apportionment, was published on 4 December 2013. The draft ruling was one of two planned rulings to replace Taxation Ruling TR 93/17 ([TR 93/17](#)) that dealt with the apportionment of expenses. As a result of industry consultation, the ATO has indicated TR 2013/D7 will not proceed to a final version and the second planned ruling will not be written.

The ATO has indicated that instead, a comprehensive addendum to TR 93/17 has been prepared, and covers the key issues that TR 2013/D7 and the proposed second ruling were intended to address.

The ATO also indicated that the addendum to Taxation Ruling TR 93/17 was expected to issue in October 2015, however this has not occurred to date.

The ATO's approach will be welcomed and superannuation funds should review the addendum to TR 93/17 (when released) to determine the impact (if any) on the positions adopted.

Government response to Murray Report

On 20 October 2015 the Government issued its response to the Murray Report. In the context of superannuation, the Government indicated that it would undertake the following:

- Enshrine the objective of the superannuation system in legislation.
- Task the Productivity Commission to develop efficiency metrics for the superannuation system and develop alternative models for allocating default contributions.
- Improve retirement income products by removing impediments to their development.

Also, the Government has introduced [Superannuation Legislation Amendment \(Trustee Governance\) Bill 2015](#), which makes amendments to the Superannuation Industry (Supervision) Act 1993 (SIS Act) to require trustees of Registrable Superannuation Entities (RSEs) to have a minimum of one-third independent directors and an independent Chair on their boards.

Let's talk

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