

## Other news

1 February 2015

### **Mid-Year Economic and Fiscal Outlook (MYEFO) 2014-15**

The Treasurer released the 2014-15 MYEFO on 15 December 2014. The MYEFO which forecasts an underlying cash deficit of \$40.4 billion for 2014-15, shows a downwards revision of \$31.6 billion in tax revenues from the estimates included in the 2014-15 Budget. According to the Overview to the MYEFO, this downward revision results primarily from the collapse in iron ore prices by over 30 per cent, and weaker than expected wage growth. In addition to this reduction in expected tax revenues, the Overview to the MYEFO 2014-15 also states that "delays in passing legislation and negotiations with the Senate have cost the budget more than \$10.6 billion over the forward estimates, keeping debt and interest payments higher for longer".

With respect to taxation, the MYEFO 2014-15 contained no announcement of new major tax measures, however the following changes were announced to existing tax measures:

- an increase in the statutory effective life of in-house

computer software from four to five years with associated changes to the software development pool rules - applicable to income years commencing on or after 1 July 2015.

- a revised start date for the third element of the Investment Manager Regime to 2015-16 income year (with an option for investors to apply the legislation from 2011-12 income year)
- minor adjustments to the new tax system for managed investment trusts (MITs), including clarification of the treatment of tax deferred distribution paid by MITs that will have effect from 1 July 2011, and the addition of foreign life insurance companies as a specified entity for the purposes of the MIT 'widely held test' from 1 July 2014
- the start date for the measure to deny access to the research and development (R&D) tax incentive to companies with annual aggregated assessable income of \$20 billion or more is to be deferred to income years commencing on or after 1

July 2014 (instead of 1 July 2013 as originally proposed)

- changes to the application of the Superannuation Guarantee Charge for late or short payment of superannuation contributions from 1 July 2016, and
- from 1 July 2015, the Government will expand access to the Small Business Superannuation Clearing House (SBSCCH) for small businesses with annual aggregated turnover below the annual small business entity turnover threshold, currently set at \$2 million.

The Government has also announced that it will not proceed with a targeted anti-avoidance provision to address certain 'conduit' arrangements involving foreign multinational enterprises, which was announced in last year's MYEFO.

The MYEFO 2014-15 also confirmed the Government's commitment to implement the OECD Common Reporting Standard for automatic exchange of financial account information from 1 January 2017, with the first exchange of information in 2018.

### ***High Court grants SPI PowerNet leave to appeal***

The High Court has granted the taxpayer special leave to appeal the Full Federal Court decision in *SPI PowerNet Pty Ltd v Commissioner of Taxation* [2014] FCAFC 36. In that case the Full Court held that fees paid by the taxpayer in relation to a licence to transmit electricity imposed under section 163AA of the *Electricity Industry Act 1993* (Vic) were not tax deductible as they were an outgoing of capital or of a capital nature.

### ***Anti-dumping reforms***

On 15 December 2014, the Minister for Industry Minister, announced measures to strengthen Australia's anti-dumping rules. The new measures will place a significant onus on foreign exporters to cooperate in anti-dumping investigations, provide a range of new support services for Australian companies who access the system and streamline a number of processes. For further information see our [TaxTalk Alert](#).

### ***Health and Housing Issues Paper for Federation White Paper***

On 11 December 2014, the Second and Third Issues Papers for the Reform of the Federation White Paper – *Roles and Responsibilities in Housing and Homelessness* and *Roles and Responsibilities in Health* - were released by the Federal Government. The Housing and Homelessness paper recognises that there are important links between the Federation White Paper and the Tax Reform White Paper with a number of tax settings at the

Commonwealth and State and Territory level, such as negative gearing, capital gains tax, superannuation, land tax, and stamp duty, having an impact on the housing market.

Commonwealth and State and Territory tax settings will be considered in the Tax Reform White Paper. Appendix C of the Housing Paper provides a review on how housing is currently taxed.

### ***Farm-in farm-out arrangements and interest realignment arrangements***

On 9 January 2015, Treasury released exposure draft legislation on measures to give effect to the 2014-15 Federal Budget announcement, aimed at providing relief from the 2014 enacted integrity rule, to limit the immediate deductibility of expenditure on mining rights and mining information to taxpayers entering into certain farm-in farm-out (FIFO) arrangements and interest realignment arrangements. Submissions with respect to the exposure draft legislation close on 6 February 2015.

### ***Financial Systems Inquiry***

The final report of the Financial Systems Inquiry was released by the Treasurer on 7 December 2014. The Inquiry made 44 recommendations relating to the Australian financial system with two general themes of funding the Australian economy and competition. Refer to the [PwC first reaction publication](#) which reviews the report. The report makes some observations regarding tax issues - differentiated tax treatment of savings, negative gearing and Capital Gains tax, dividend imputation, interest withholding taxes, venture

capital limited partnerships, funds management vehicles, research and development, tax concessions for superannuation including differentiated treatment of earnings, tax treatment of legacy products, insurance duties, tax treatment of non-operating holding companies and the goods and services tax (GST) - and suggests that these should be considered as part of the Tax White Paper process. Closing date for submissions on the report is 31 March 2015.

### ***Investment Manager Regime***

On 18 December 2014, the Acting Assistant Treasurer confirmed the Government's commitment to implementing the Investment Manager Regime, with an exposure draft on the updated legislation to be released in early 2015. The revised legislation will adopt an approach that broadly reflects the United Kingdom's equivalent Investment Manager Exemption.

### ***Look-through treatment of instalment warrants***

Commonwealth Treasury has released exposure draft legislation in relation to amendments to the income tax law to provide 'look-through' treatment for certain instalment warrants and instalment receipts. Under the proposed measures, look-through treatment for income tax purposes is to be achieved for these investment products by:

- treating the investor, and not the trustee, as the owner of the assets of the instalment trust
- treating any acts done by the trustee in relation to the

- assets of the instalment trust as if they had been done by the investor, instead of by the trustee, and
- treating the investor as having the asset in the same circumstances as the investor actually has the interest in the trust.

Submissions close 13 February 2015.

### **Inspector-General of Taxation review**

On 19 January 2015, the Assistant Treasurer released the Inspector-General of Taxation's (IGT) Review administration of valuation matters by the Australian Taxation Office (ATO). In the report the IGT made recommendations to the Government on ways to deal with the costs and difficulties associated with valuations.

In his media statement, the Assistant Treasurer said that the Government welcomed the recommendations, including the ATO's commitment to develop a standard template for instructing valuers, which contribute to cutting red tape and reducing compliance costs for taxpayers. The Assistant treasurer added that the Government will give full consideration to the IGT's recommendations, noting that the upcoming Tax White Paper will be an opportunity to provide a longer-term, considered approach to tax reform.

Recommendations made by the IGT include:

- consideration of ways to limit the need for valuations when developing tax law, including shortcuts or safe harbours as

an alternative to full valuations

- consultation on ways to reduce reliance on valuations to access the small business capital gains tax concessions, and
- tapering the eligibility criteria for tax concessions.

### **Data matching: motor vehicle registrations**

On 16 December 2014, the ATO published a notice in the Commonwealth Gazette advising of a new data matching program in which it will acquire details of entities from State and Territory motor vehicle registries for the 2013-2014, 2014-2015 and 2015-2016 financial years. These records will be electronically matched with other data to identify non-compliance with registration, lodgment, reporting and payment obligations under Commonwealth taxation laws.

### **Review of tax impediments facing small business**

The Federal Government has released the Board of Taxation's report on tax impediments facing small business. The report focused on key reform priorities which are intended to reduce compliance costs. The Government noted that the report will be an important input into its broader considerations on small business taxation, and is timely ahead of the release of the Tax White Paper. Recommendations made by the Board include that:

- the ATO develops guidance for small businesses to provide some certainty as to documentation requirements for transfer pricing transactions

- the small business entity turnover threshold be increased to at least \$3 million and investigate the feasibility of an increase to \$5 million, and
- the ATO, and its relevant advisory groups, review whether the quarterly reporting obligations for small businesses could be significantly simplified including whether at the end of each financial year businesses could complete a combined Income Tax Return and Annual Business Activity Statement based on the same data.

### **Amounts pay by broadcaster to the IOC were not royalties**

In *Seven Network Limited v Commissioner of Taxation* [2014] FCA 1411 the Federal Court has held (at first instance) that amounts paid by *Seven Network Limited* (Seven) to the International Olympic Committee (IOC) were not royalties. As a result, Seven was not required to deduct withholding tax from the payments.

Briefly, the payments in question were payments made to the IOC (a tax resident of Switzerland) for the 'ITVR Signal' which was to be used by Seven in connection with its broadcasting of Olympic Games conducted by the IOC. According to the experts who appeared before the Court, the ITV signals are electromotive forces that transmit data to some form of receiving device. Each ITVR Signal comprised an International Television (ITV) and International Radio (IR) Signal. These were received by

Seven on copper coaxial cable at the Olympic Games as an electromotive force, there being no picture, image or sound recorded or permanently stored in the copper coaxial cable. In the context of the decision, it is also relevant to note that each Olympic broadcaster (such as Seven) could use or alter the ITV or IR Signal as it saw fit to create its broadcast signal.

At issue before the Court was whether the payments made by Seven, were royalties as defined in the double tax treaty entered into between Australia and Switzerland (Treaty). In considering this issue, the *Copyright Act 1968* (Cth) was held to be relevant, with the fundamental question being whether the payments were for the use of 'copyright' within the meaning of that Act. Relevantly, the term 'royalties' was defined in the Treaty, and that definition included as a royalty, "consideration for the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right, or industrial, commercial or scientific equipment". The definition also included consideration "for the use of, or the right to use, motion picture

films, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting".

In holding that the payments were not royalties, Justice Bennett said that the ITV Signals did not hold the sounds or visual images in a form for use. As a result, the ITV Signal was not a 'cinematograph film' for the purposes of the *Copyright Act 1968* (Cth). It was only when the receiving device received the signal and the sounds and visual images were produced, that the incorporeal transmission was given a material form for the purposes of that Act. Since it was Seven that created the copyright and broadcast its production to the public, Seven was not making payments to the IOC for the use of copyright.

The Commissioner also submitted that the payments were royalties for use of 'other like property or right' within the meaning of Article 12(3) of the Treaty, as "the right to use visual images and sounds transmitted by the signal is a right to use 'other like property' and is 'like' a copyright within the meaning of Article 12(3)".

Justice Bennett noted that the phrase 'other like property or rights' as used in the Treaty, "recognises that different legal systems may deal with intellectual property rights somewhat differently, as is the case with the conceptual basis for, and precise content of, copyright (Australia) and droit d'auteur (French language version) or Urheberrechten (German language version) under Swiss law". In dismissing the Commissioner's submission, Justice Bennett, said the question was not one to be determined under Swiss law. Whilst droit d'auteur would be relevant if the tax was imposed in Switzerland it was not relevant in considering whether the payments were royalties for the purposes of imposing Australian tax.

Based on the decision at first instance, Seven was not required to deduct tax from the payments made to the IOC.

For further information on this case or any other questions regarding the tax treatment of payments for the use of technology, contact Paul McNab on +61 (2) 8266 5640.

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### ***Let's talk***

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

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