

*June 2016*

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# TaxTalk Monthly

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



# Corporate Tax Update

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

On 24 May 2016, the Full Federal Court in *Commissioner of Taxation v Seven Network Limited* [2016] FCAFC 70 dismissed the Commissioner's appeal against the decision of the Federal Court in *Commissioner of Taxation v Seven Network Limited* [2014] FCA 1411. In this case, the Federal Court held that amounts paid to the International Olympic Committee were not royalties for the purposes of Article 12(3) of the Australia–Switzerland double tax agreement. As a result, the amounts paid were not subject to Australian withholding tax.

The Federal Court decision at first instance was reported in the [1 February 2015 TaxTalk: Other news Update](#).

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## **Federal Court dismisses Commissioner's appeal in AP Energy Investments Limited and Commissioner of Taxation**

On 25 May 2016, the Federal Court in *Commissioner of Taxation v AP Energy Investments Pty Ltd* [2016] FCA 577 (AP Energy) dismissed the Commissioner's appeal against the decision of the Administrative Appeals Tribunal (AAT) in *AP Energy Investments Limited and Commissioner of Taxation* [2013] AATA 626. In this case, the non-resident taxpayer had claimed that the disposal of shares it held in an Australian company was not subject to capital gains tax, because the shares disposed of was not an 'indirect Australian property interest' for the purposes of Division 855 of the *Income Tax Assessment Act 1997*.

The appeal concerned several issues, however the primary issue concerned whether the valuation methodology used by the taxpayer and accepted by the AAT to value the 'mining information' (such asset not being a 'real property asset') of the Australian company departed from established 'legal

tests'. The approach adopted by the taxpayer was to calculate the sunk cost of creating the mining information, less a discount for the availability of the information in the public domain, plus an escalation factor to account for the time delay between incurring the sunk costs and the time of re-creating the information, taking into account the increase in exploration costs over the relevant period, assuming the information was re-created at the relevant valuation date.

Relevantly, the Commissioner submitted that the AAT should have determined the value in accordance with the methodology outlined by the Full Court in *Resource Capital Fund III v Commissioner of Taxation* [2014] FCAFC 37 (Resource Capital). In the Resource Capital case, which involved the valuation of assets for determining whether the shares sold comprised an 'indirect Australian property interest', the Full Court held that the assets of the relevant company should be valued as though they are to be sold as a bundle, simultaneously to the same hypothetical purchaser. This was through application of the test in *Spencer v The Commonwealth* [1907] HCA 82.

In dismissing the Commissioner's appeal in AP Energy, Justice McKerracher said that whilst the Full Court in Resource Capital accepted that in a simultaneous sale of the relevant company's assets, the hypothetical purchaser would expect to acquire the mining information and plant and equipment for less than their re-creation costs, with little or no delay, the Court "did not, however, go so far as to reject any particular methodology for ascertaining the market value of mining information, including a method which used the costs of mining information and other factors". Accordingly, Justice McKerracher held that it was open to the AAT to compare the evidence from the experts, and to choose a market value of the mining information on a sunk cost methodology.

The AAT decision was reported in the [1 November 2013 TaxTalk: International Tax Update](#).

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## Employment Taxes Update

### Payroll Tax – De-grouping (NSW)

In *Namoi Tyreright Pty Ltd v Chief Commissioner of State Revenue [2016] NSWCATAD 88* the issue of de-grouping was 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 the entities under section 79 of the Payroll Tax Act 2007.

The Tribunal confirmed the decision of the Chief Commissioner of State Revenue not to exercise his discretion to de-group the Applicant and another member of the group (Tyres4U) 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 Tyres4U.

This was despite submissions by the Applicant that the interaction between the two entities was limited to the Applicant's use of a trademark owned by Tyres4U, the purchase of up to 30 per cent of its trading stock from Tyres4U and assistance by Tyres4U staff to the Applicant with the establishment of phone and bank accounts.

In reaching its decision, the Tribunal considered that the relevant matters included the legal control able to be exercised by Tyres4U over both the owner/manager and the dealer in relation to the manner in which the Applicant's business was carried out, the expectation that a nominee of Tyres4U sat on the board of directors of the Applicant and is a signatory to its bank account, and the strategy of Tyres4U in relation to the development of the Tyreright network.

Once again, cases such as these serve as a reminder that the onus of proof rests with the taxpayer in respect of de-grouping and they should ensure sufficient evidence is maintained to support their tax position.

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# Global Tax Update

## Latest news from international tax and transfer pricing

### Asia Pacific

The [January - March edition](#) of tax highlights for the Asia Pacific region highlights industry developments from Australia, China, Hong Kong, India, Indonesia, Korea, Malaysia and Singapore including:

- Australia's new tax system for Managed Investment Trusts
- The final stage of China's B2V reform to be rolled out from 1 May
- Regulatory and tax updates from India.

On 28 April 2016, the Assistant Treasurer and Minister for Small Business [signed](#) the Asia Region Funds Passport's [Memorandum of Co-operation](#) (MoC) with Japan, Korea and New Zealand. The Passport is an international initiative that facilitates the cross-border offering of eligible collective investment schemes while ensuring investor protection in economies participating in the Passport. The MoC sets out the internationally agreed rules and cooperation mechanisms of the Passport, and comes into effect on 30 June 2016.

### Global

Over forty countries (including Australia) participated in an Anti-Corruption Summit held in London during May 2016. Participants agreed on a [Global Declaration Against Corruption](#), which includes a commitment to expose corruption "by increasing the transparency of government budgets, tax information and procurement to deter tax evasion and expose the theft or misuse of taxpayers' money."

### Australia/Germany Double Tax Agreement

The Commonwealth Parliament's Joint Standing Committee on Treaties tabled its latest [report](#) which, among other items, addressed the new German-Australian double tax agreement (DTA). The Committee recommends that binding treaty action be taken in respect of this DTA.

The updated DTA is the first treaty to incorporate recommendations made by the Organisation of

Economic Co-Operation and Development (OECD) in the Base Erosion and Profit Shifting (BEPS) Action Plan (Action 6). It includes, for example, changes to the preamble, introduction of the 'principal purpose test' in the limitation of benefits clause, and updates the definition of permanent establishment. It is expected that this DTA will be used by Australia as a basis for future bilateral treaty negotiations.

### Australian Country-by-Country reporting implementation

The Australian Taxation Office (ATO) has finalised its guidance on the 'Local File' element of the country-by-country reporting laws that apply from 1 January 2016. The Australian requirements will be unique. An OECD Local File is a local transfer pricing report; whereas in Australia the Local File will be an electronic form requiring detailed data to be reported on international related party transactions, as well other specified business information and documents such as organisation charts and intercompany agreements.

Separately, the Government has proposed an increase in the penalties for taxpayers who fail to comply with their filing obligations. The maximum penalty is proposed to increase to AUD 450,000.

### New Zealand

The latest edition of [PwC New Zealand's Tax Tips](#) considers the key proposals outlined in a new tax Bill introduced into the New Zealand (NZ) Parliament, which include:

- changes relating to closely-held companies
- changes to the non-resident withholding tax (NRWT) and approved issuer levy (AIL) rules for related party and branch lending
- amendments to the debt remission rules for debt remission between related or associated parties
- changes to allow commonly owned companies to transfer imputation credits as part of loss grouping

- goods and services tax (GST) amendments to ensure GST continues to function as a tax on consumption in New Zealand.

[Tax Tips Alert May 2016](#) provides information on the Inland Revenue's long awaited Issues Paper on proposed reforms to the tax laws applying to share schemes. The [Issues Paper](#) outlines a number of proposals which, if adopted, will completely change the way share schemes are taxed in New Zealand.

In the previous edition of [PwC New Zealand's Tax Tips](#) an analysis of the New Zealand Budget 2016 business tax proposals is considered including an update on tax Bills update. Further insights, commentary and up-to-date news relating to New Zealand tax developments are also provided.

## United Kingdom

The United Kingdom (UK) Government announced in its 2016 Budget that new rules for addressing base erosion and profit shifting (BEPS) through interest expenses will be introduced from 1 April 2017. The new rules will be in line with the recommendations of the Organisation for Economic Co-operation and Development (OECD) by capping the amount of relief for interest to 30 per cent of taxable earnings before interest, depreciation and amortisation (EBITDA) in the UK, or based on the net interest to EBITDA ratio for the worldwide group. HM Treasury and HM Revenue & Customs have now issued a [consultation document](#) seeking views before 4 August 2016 on the detailed design and implementation of the new rules.

## OECD

Canada, Iceland, India, Israel, New Zealand, the People's Republic of China and Bermuda have signed the [Multilateral Competent Authority agreement for the automatic exchange of Country-by-Country reports](#) enabling automatic sharing of country-by-country reporting. This brings the total number of signatories to 39.

Bahrain, Lebanon, Nauru, Panama and Vanuatu have also [committed](#) to the international standard of automatic exchange of financial information (the

Common Reporting Standard) to tackle tax evasion and avoidance.

The [Tenth Meeting of the OECD Forum on Tax Administration](#) (FTA) was held in Beijing on the 11-13 May 2016. The [communiqué](#) released at the close of the meeting sets out full details of the discussions which focused on three interlocking themes:

- effective implementation of the OECD/G20-international tax agenda
- building modern tax administrations that effectively respond to the challenges and opportunities of an increasingly digital world
- helping build capacity in tax administration so that all countries can benefit from the changes in the international tax landscape.

The following [publications](#) were also released at this event:

- Tax Administrations and Capacity Building: A Collective Challenge
- Technologies for Better Tax Administration: A Practical Guide for Revenue Bodies
- Rethinking Tax Services: The Changing Role of Tax Service Providers in SME Tax Compliance
- Advanced Analytics for Better Tax Administration: Putting Data to Work
- Co-operative Tax Compliance: Building Better Tax Control Frameworks.

## Other International tax news

[International Tax News](#): Our May 2016 edition provides updates and analysis on developments taking place around the world, including Canadian and UK Budgets, and improvements on the administrative measures for the assessment on High and New Technology Enterprises in China.

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# Indirect tax update

## Wine Equalisation Tax (WET)

On 4 May 2016, the Commonwealth Treasury released the WET Rebate Consultative Group's report to Government which sets out its recommendation to reform the WET rebate. The Government's decision to reform the WET rebate is a measure in the 2016-17 Budget and forms the Government's response to the Consultative Group report. The Government announced on 6 May 2016 that consultation with industry on the WET Rebate reforms will commence in coming months.

## Customs & Excise

The Australian National Audit Office (ANAO) issued its audit report on 5 May 2016 into the effectiveness of the administration of tobacco excise and excise equivalent goods. The ANAO report concludes that the Australian Taxation Office (ATO) and Department of Immigration and Border Protection have established a suitable framework for administering a range of indirect taxes, but the framework has not been implemented adequately over the previous five years, and the administration of tobacco excise equivalent goods and the collection of customs duty has fallen short of effective practice. The report makes [four recommendations](#) to improve the current processes.

## Digital currency

On 5 May 2016, the Commonwealth Government released its [response](#) to the Senate Economics Committee Report on Digital Currency. With respect to the view of the Committee that digital currency should be treated as 'money' for the purposes of the goods and services tax (GST), and its recommendation that the Government consults with the States and Territories to consider amending the definition of money in the *A New Tax System (Goods and Services Tax) Act 1999* and including digital currency in the definition of financial supply in *A New Tax System (Goods and Services Tax) Regulations 1999*, the Government in its response states that it agrees that consumers should not be subject to the GST twice when using digital currency to purchase goods or services. In relation to the Committee's recommendation that Government consider establishing a Digital Economy Taskforce to gather further information on the uses, opportunities and risks associated with digital currencies, the Government in its response states that the recently established FinTech Advisory Group is the appropriate mechanism to progress the work.

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# State Taxes Update

## Victorian State Budget

The 2016-17 Victorian State Budget was delivered on 27 April 2016. The Victorian Treasurer announced that the Budget for 2016-17 is expected to produce

an operating surplus of \$2.9 billion, with accumulated surpluses of \$9.3 billion over the Budget and forward estimates period. Victoria is expected to collect \$60.4 billion in total revenue in

2016-17, with revenue growth averaging 3.4 per cent over the budget and forward estimates. Victorian economic growth is expected to be 3 per cent in 2016-2017, on trend with 2015-16.

Major contributions to growth in the Budget year include land tax and payroll tax revenue, and an allowance for prepaid port licence fees, partially offset by an anticipated moderation in land transfer duty revenue.

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

### Stamp duty surcharge for 'foreign purchasers'

The Victorian Government last year introduced legislation to impose a 3 per cent stamp duty surcharge rate on direct and indirect acquisitions of residential property in Victoria by 'foreign purchasers' from 1 July 2015, in addition to the general rate of stamp duty of up to 5.5 per cent.

As part of the 2016-17 Budget, the Treasurer has announced that the stamp duty surcharge rate will increase to 7 per cent for contracts entered into on or after 1 July 2016, resulting in a stamp duty rate of up to 12.5 per cent for purchases of Victorian residential property by 'foreign purchasers'.

### Land tax surcharge for 'absentee owners'

As part of the 2015-16 Budget, the Victorian Government introduced an annual 0.5 per cent land tax surcharge rate applying to 'absentee owners' of all taxable land in Victoria from the 2016 land tax year onwards, in addition to the general rate of land tax of up to 2.25 per cent.

The Treasurer has announced that the 'absentee owner' surcharge rate will rise to 1.5 per cent for the 2017 land tax year onwards, resulting in annual land tax rates of up to 3.75 per cent on the taxable value of all taxable land in Victoria held by an absentee owner.

Further, the State Revenue Office will receive additional funding to establish and expand compliance programs to ensure property taxes are correctly paid.

### Payroll tax-free threshold and payroll tax incentive

The Government has announced that the payroll tax-free threshold will progressively increase from \$550,000 to \$650,000 over the next four years (in \$25,000 increments), starting with an increase to \$575,000 from 1 July 2016.

Further, a payroll tax exemption will be introduced for the wages paid or payable by an employer to a displaced apprentice or trainee from 1 July 2016.

### Freeze of heavy motor vehicle nominal registration revenue

The Transport and Infrastructure Committee (comprising State, Territory and Commonwealth transport, infrastructure and planning Ministers) has decided to freeze nominal registration revenue for heavy motor vehicles at 2015-16 levels for two years.

### Land tax exemption for primary production land in urban zone

The Treasurer announced that to receive the land tax exemption within 'urban zones', certain ownership requirements must be fulfilled. The exemption for primary production land in an urban zone will be extended to land owned by certain family superannuation trusts.

### Infrastructure announcements

The Government has announced that infrastructure investment will average \$7.4 billion per year over the next four years, with funding for key projects in urban and regional transport, health and education.

The key infrastructure initiatives announced include:

- *Melbourne Metro Tunnel* - The Government has confirmed its commitment to the Melbourne Metro Tunnel Project and announced an allocation of \$2.86 billion over the forward estimates in addition to the guaranteed \$10.9-billion funding to fully fund the project.
- *Western Distributor project* - The Government has announced that it intends to improve travel on local streets by removing trucks from traffic. The 2016-17 Budget commits \$5.5 billion to the project, including up to \$400 million in funding for the Monash Freeway Upgrade.
- *Regional rail services and infrastructure upgrades* - the Government has indicated that it will commit \$1.3 billion for regional rail services and infrastructure upgrades designed to better connect people and businesses in regional Victoria and \$1.9 billion to expand and upgrade the metropolitan rail network.
- *Meeting the demands of a growing population* - capital funding will be provided to expand government school and hospital capacity and to invest in public transport rolling stock.

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## Western Australian State Budget

The 2016-17 Western Australian (WA) State Budget was delivered on 12 May 2016. The Budget came in the context of significant challenges to State finances, owing largely to a rapid decline in State revenue. This will result in an estimated deficit of \$3.9 billion for 2016-2017, culminating in a net State debt of \$33.8 billion.

WA remains committed to various sales of major State assets, which are estimated to raise around \$16 billion, and to bring debt 'to a manageable level'. State asset sales will also assist in funding some major infrastructure projects across the State, many of which are required owing to a significant increase in the WA population during the 'mining boom'.

The only change to State taxes which the WA Treasurer announced was an increase in the tax-free threshold for payroll tax from \$800,000 to \$850,000, effective from 1 July 2016. No other tax cuts have been introduced (although there is a rebate for the three years beginning 2015-16 of up to 50 per cent for magnetite royalties paid during the period).

Further details about the Budget announcements are as follows.

### Asset sales

- The Government will continue with its plan to sell mature assets to pay down debt and fund capital works going forward. Progress on recent major asset sales in WA includes:
  - \$135.5 million sale of the Perth Market Authority
  - \$142.6 million sale of Land to date
  - *Pilbara Port Assets (Disposal) Bill 2015* (WA) introduced to Parliament
  - Fremantle Port due diligence on the proposed lease undertaken, and
  - Consultation with the racing industry on the sale of TAB.
- The Government also proposes the sale of Western Power and Horizon Power's transmission and distribution assets in the Pilbara.

- The current and proposed asset sales programmes are estimated to result in proceeds of around \$16 billion (8.4 per cent of the State's \$190 billion asset base).
- The proceeds will be used to retire up \$11 billion of State debt (30 per cent reduction in net debt) and create a \$5 billion Infrastructure Fund.

### Asset Investment Program (AIP) 2016-17

- In 2016-17, the AIP will invest \$5.9 billion into State infrastructure projects, distributed as follows:

Infrastructure	Spending (\$m)	AIP (%)
Transport	1,817	31
Electricity Utilities	1,048	18
Water Corporation	782	13
Housing Authority	602	10
Health	526	9
Land Authorities	436	7
Education	300	5
Other Agencies	232	4
Finance	119	2

### Infrastructure announcements

- Major *transport* infrastructure projects over the next four years include:
  - \$2 billion for the Forrestfield-Airport Link project
  - \$1.5 billion towards the \$1.9billion Perth Freight Link
  - \$1 billion for the NorthLink WA project, and
  - \$427 million for the \$1.9billion MAX Light Rail project.
- Major *electricity utilities* infrastructure projects over the next four years include:
  - \$1.7 billion to ensure Western Power's network is safe and reliable
  - \$763 million provision for Western Power's customer-driven works

- \$347 million for Horizon Power to maintain adequate regional electricity supplies, and
- \$141 million to maintain Synergy's generation assets across the South West Interconnected System.
- Other major State infrastructure projects include:
  - \$782 million upgrade to the Water Corporation's wastewater treatment plants and country water sources and distribution
  - \$428.3 million towards construction of the New Perth Museum
  - \$206.9 million towards construction of the Karratha Health Campus Site, and
  - \$91.8 million further spending on the Perth Children's Hospital.

### GST allocation

- A particular focus of the WA Budget was WA's share of goods and services tax (GST) revenue. Currently, WA contributes \$2,497 per capita (\$6.7 billion in total) towards the Commonwealth's total GST receipts, but receives only \$760 per capita (\$2 billion in total) back from the Commonwealth; the remainder being distributed to other Australian jurisdictions. This \$4.7 billion 'discrepancy' between per capita GST expenditure and per capita receipts was emphasised by the WA Treasurer, to contextualise the \$4 billion revenue deficit.

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### Northern Territory Budget

The 2016-17 Northern Territory Budget was delivered on 24 May 2016. The main change which was announced in the Budget was a discount of up to 50 per cent (capped at \$10,000) on the stamp duty otherwise payable when first home buyers

purchase an established home from 24 May 2016 to 20 June 2017.

Further details about this measure and/or incentive is provided below.

### First home owners discount

First home buyers purchasing an established home will be eligible for the First Home Owner Discount. The new initiative provides a discount of up to 50 per cent, with a maximum discount of \$10,000, on the stamp duty otherwise payable when first home buyers purchase an established home. The Budget states that this initiative is intended to provide short-term stimulus to a slowing residential property market and assist home buyers seeking to enter the housing market for the first time by reducing the barrier of upfront transaction costs. For example, on a home valued at \$450,000, the effect of the discount is to reduce the stamp duty payable from about \$20,000 to \$10,000.

The discount applies from 24 May 2016 to 30 June 2017 and is expected to provide \$5.5 million in extra assistance to Territory home buyers. The initiative will complement the existing First Home Owners Grant available to purchasers of new homes.

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### Tasmanian State Budget

The 2016-17 Tasmanian Budget was delivered on 26 May 2016. The main change which was announced in the Budget was the introduction of a corporate reconstruction/consolidation duty exemption for corporate group reorganisations.

At this stage, the form (including if any pre or post association tests will be legislated, amongst other possible requirements) has not been announced. The introduction of the exemption for corporate group reorganisations will bring Tasmania in line with the other Australian States and Territories.

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# Legislative update

With the Federal election to be held on Saturday 2 July 2016, both Houses of Parliament were dissolved on 9 May 2016 following a very short sitting period which commenced on 18 April 2016.

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

*Tax and Superannuation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2016*, introduced into the House of Representatives on 2 May 2016 and subsequently enacted on 4 May 2016, increased, with effect for the for the 2015-16 income year, the Medicare levy and Medicare levy surcharge low-income thresholds and "phase-in" limits for individuals and seniors in line with movements in the consumer price index (CPI) (refer to PwC's [Analysis of the 2016-17 Federal Budget](#) for further details).

*Change Of The Reporting Period For Third Party Reports On Real Property Transfers Determination 2016* which changes the reporting period for reports required to be given by states and territories to the Commissioner under item 3 of the table in section 396-55 of Schedule 1 to the *Taxation Administration Act 1953* (third party reports on real property transfers) from financial year to quarterly periods.

*Classes of Electronic Payment System Transactions Exempt In The 2017/18 Year From Providing Third Party Reports Determination 2016* which provides a temporary exemption for the 2017-18 financial year to administrators of payment systems from having to include specified classes of transactions in reports prepared and lodged in relation to item 9 of the table in section 396-55 (third party reports on electronic payments).

*Classes of Electronic Payment System Transactions Exempt From Providing Third Party Reports Determination 2016* which provides an exemption from 1 July 2017 to administrators of payment systems from having to include specified classes of transactions in reports prepared and lodged in relation to item 9 of the table in section 396-55 (third party reports on electronic payments).

*Classes of Transactions for which Government Related Entities are Exempt from Providing Third Party Reports Determination 2016*, which provides an exemption from 1 July 2017 to government related entities from having to include specified

classes of transactions in reports prepared and lodged in relation to items 1 and 2 of the table in section 396-55 (third party reports on Government grants and supplies made to Government entities).

*GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2016 (No. 1)* extends, for a further 12 months, the GST-free Supply (National Disability Insurance Scheme Supports) Determination 2013 which specifies which kinds of supplies to a participant of the National Disability Insurance Scheme are GST-free in accordance with section 38-38(d) of A New Tax System (Goods and Services Tax) Act 1999.

*Tax and Superannuation Laws Amendment (2016 Measures No. 2) Regulation 2016*, which:

- amends the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulation) to allow trustees of eligible rollover funds (ERFs) to transfer member account balances to active accounts in other superannuation funds without a member's consent and includes an exemption for this type of transfer to the significant event disclosure requirements in the *Corporations Regulations 2001*
- makes minor technical corrections and consequential amendments to the SIS Regulation
- ensures that Australian Defence Force Cover is listed as an exempt public sector scheme, and
- amends the *Income Tax (1936 Act) Regulation 2015* to exempt from income tax the remuneration of Australian Defence Force personnel serving on Operations Accordion, Highroad, Manitou, Okra and Palate II.

*Tax Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Regulation 2016* adds Chi-X Australia Pty Ltd (Chi-X) to the list of approved stock exchanges, so that transactions conducted on Chi-X fall within the on-market transactions exception for the new foreign resident capital gains withholding tax regime which commences from 1 July 2016. The Regulation also temporarily exempts conveyancers who perform certain services in relation to the making of payments under the new withholding regime from the *Tax Agent Services Act 2009*.

By way of round-up, the following main tax and superannuation related Bills that were before Parliament have now lapsed:

- *Customs and Other Legislation Amendment Bill 2016*
- *Superannuation Legislation Amendment (Choice of Fund) Bill 2016* which proposed to amend the *Superannuation Guarantee (Administration) Act 1992* to ensure employees under new workplace determinations or enterprise agreements that are made from 1 July 2016 have an opportunity to separately choose their superannuation fund
- *Superannuation Legislation Amendment (Transparency Measures) Bill 2016* which proposed to increase the quality of information available to superannuation fund members and employers in relation to choice product dashboards and portfolio holdings disclosure
- *Superannuation Legislation Amendment (Trustee Governance) Bill 2015*

- *Tax and Superannuation Laws Amendment (2015 Measures No 3) Bill 2015* which included the Government's proposal to reduce the rate of the research and development offset by 1.5 percentage points and abolish the seafarer tax offset
- *Tax and Superannuation Laws Amendment (2016 Measures No 2) Bill 2016* which, among other things, included the proposal to establish statutory remedial power for the Commissioner of Taxation

In addition, tax return season for the 2016 income year has been officially launched with the Commissioner of Taxation registering a number of legislative instruments on 19 May 2016 that require the lodgment of various returns to the Commissioner including those relating to the lodgment of income tax returns for the 2016 income year.

If you have queries in relation to tax return lodgment obligations for the 2016 year, contact your usual PwC adviser.

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## Other news

### 2016-17 Federal Budget

The [Federal Budget](#) for 2016-17 was handed down on 3 May 2016. An analysis of the Budget can be viewed on PwC's dedicated [Federal Budget website](#).

### Board of Taxation's report on Taxation of Islamic Finance Products

The Government has released the Board of Taxation's [final report](#) on the Tax Treatment of

Islamic Finance Products. The Board's review confirmed that access to withholding tax exemptions, stamp duty on asset backed finance products, and uncertainty in relation to the application of general income tax provisions are the main impediments to the provision of Islamic finance products in Australia. In its Report, the Board made a number of recommendations to address these issues including:

- extending access to the existing interest withholding tax exemption to publicly offered

Islamic finance products that exhibit equivalent economic characteristics to debentures or to those debt interests that are currently eligible for the exemption

- encouraging the States and Territories to provide relief from stamp duty so that it does not arise where there is a synthetic disposal or acquisition that would not have occurred had it not been to give effect to a financial arrangement
- amending the income tax law to ensure that, in respect of a deferred payment arrangement whose main purpose is the raising or provision of debt finance, the finance gain or loss is treated the same as interest on a conventional borrowing
- extending the application of the hire purchase provisions (which re-characterise an arrangement as a notional sale and loan), and
- that, in consultation with industry, the Australian Taxation Office (ATO) provide guidance on the current taxation treatment of Islamic finance products to resolve particular areas of uncertainty.

Relevantly, in the 2016-17 Federal Budget, the Government announced that it will remove key barriers to the use of asset backed financing arrangements. Under the proposal announced in the Budget, the Government will clarify the tax treatment of asset backed financing arrangements and ensure that they are treated in the same way as financing arrangements based on interest bearing loans or investments. This measure is proposed to apply from 1 July 2018.

### ***Senate inquiry into corporate tax avoidance***

On 22 April 2016, the Senate Standing Committee on Economics issued its second Report on its inquiry into Corporate tax avoidance - [Part 2: Gaming the system](#). In this Report, the Committee only made one recommendation and that was that the inquiry be extended to explore the implications arising from the Panama Papers.

The Committee also reiterated its earlier expressed view that greater transparency in tax affairs is important both for addressing profit shifting by multinationals and maintaining public confidence in the integrity of the tax system. Whilst noting the voluntary tax transparency code, the Committee was sceptical that a voluntary code will provide the necessary incentives for multinationals with questionable tax practices to disclose their affairs. As a result of this scepticism the Committee

expressed the view that a mandatory tax reporting code should be implemented.

With the dissolution of the Senate and the House of Representatives on 9 May 2016 for a general election on 2 July 2016, this and all other Committees ceased to exist.

### ***Increased funding to tackle foreign bribery***

On 23 April 2016, the Federal Government announced \$15 million in funding over three years to be used to expand and enhance the foreign bribery investigation teams of the Fraud and Anti-Corruption Centre (FAC), which includes representatives of the ATO, the Australian Crime Commission (ACC) and the Australian Transaction Reports and Analysis Centre (AUSTRAC).

### ***ATO strategies to address the cash and hidden economy***

On 26 April 2016, the Australian National Audit Office (ANAO) released a [report](#) following an audit of the effectiveness of the ATO's strategies and activities to address the cash and hidden economy. The report concludes that the ATO's strategies and activities are consistent with international approaches and guidance provided by the Organisation for Economic Co-operation and Development (OECD), but recommends the ATO establishes and reports against defined indicators and targets for the measures of success in its Community Participation Framework, and that it also reports on the achievement of indirect revenue targets associated with the Federal Budget funding for ATO cash economy activities.

### ***Senate's report on Economic Security for Women in Retirement***

On 29 April 2016, the Senate Economics References Committee published its [report](#) on the review of [Economic Security for Women in Retirement](#). The Committee made recommendations intended to increase female participation in the workforce and improve superannuation savings, including that superannuation tax concessions be re-targeted to ensure that they are more equitably distributed and assist people with lower superannuation balances; the concessional superannuation contributions of lower income earners are not taxed at a higher rate than their ordinary income, and the Government commit to retaining the Low Income Superannuation Contribution beyond 30 June 2017; the current schedule for the increase in the

Superannuation Guarantee (SG) rate to 12 per cent be implemented earlier; and that the SG exemption for employees with salary or wages less than \$450 in a month be removed.

### **Revised FIRB tax conditions**

The Foreign Investment Review Board (FIRB) has released [revised tax conditions](#) that will be applied to foreign residents seeking investment approval in Australia. This [LegalTalk Alert](#) provides an overview of the revised conditions.

### **Treasury consultation on encouraging venture capital investment in Fintech**

Released in March 2016, the Commonwealth Government's [FinTech statement](#) is committed to encouraging investment in FinTech firms by ensuring that tax concessions are available for venture capital investments in FinTech startups, including banking and insurance activities. On 3 May 2016, the Commonwealth Treasury commenced its consultation process by formally asking interested parties to make [submissions](#) with respect to the availability of venture capital tax concessions for investment in FinTech, banking and insurance activities, including ideas on how to ensure that tax concessions are available for the right FinTech startup activities. The closing date for submissions is 3 June 2016.

### **Private and Public Ancillary Fund Guidelines**

The Commonwealth Government has made amendments to the *Private Ancillary Fund Guidelines 2009* and the *Public Ancillary Fund Guidelines 2011*, which set minimum standards for the governance and conduct of ancillary funds and their trustees. The new Guidelines commenced on 5 May 2016.

### **Deductible donations for environmental organisations**

On 4 May 2016, the House of Representatives Environment Committee presented its Report into the Register of Environmental Organisations, a Government scheme that enables eligible environmental organisations to receive tax-deductible donations. The Committee identified key areas of possible reform including measures relating to the operation of the Register, activities undertaken by organisations listed on the Register, and the integrity of the current regulatory framework for registered organisations.

### **Extractive Industries Transparency Initiative**

On 6 May 2016, the Commonwealth Government [announced](#) that Australia will join the Extractive Industries Transparency Initiative (EITI), an international standard for increased transparency and accountability in the oil, gas and mining sectors. Countries implementing the EITI disclose information on taxes and other payments made by companies in these sectors to governments as well as other information such as licences, contracts, production and exports.

### **Parliamentary committee report on innovation**

On 3 May 2016, the Joint Select Committee on Trade and Investment Growth tabled its [Report - Inquiry into Australia's Future in Research and Innovation](#). The Committee recommended the identification of potential new innovation industries; a review of overseas assistance models to inform additional ways of encouraging commercialisation of Australian innovation; a timely review of the National Innovation and Science Agenda (NISA) initiatives; and careful examination of possible measures to encourage the innovation sector, including that Treasury undertake a close examination of a patent box scheme and a proposal for an Advanced Manufacturing Tax.

### **Senate report on 2015 Annual ATO report**

On 5 May 2016, the Standing Committee on Tax and Revenue tabled the [2015 Annual report of the Australian Taxation Office: first report](#). The recommendations made in the report include that the ATO make a clear public statement of its timetable for the transition to the new tax agent platform; the ATO issue notices of assessment whenever an assessment is finalised; and that for future draft public rulings the ATO consider a provision that they cease on a certain date or when they are made redundant by legislation.

### **Senate report on external scrutiny of ATO**

On 5 May 2016, the Standing Committee on Tax and Revenue tabled its report into the [External scrutiny of the Australian Taxation Office](#). To increase transparency, the Committee recommended that the Auditor General, Commonwealth Ombudsman, and Inspector-General of Taxation (IGOT) examine ways to increase the profile of their co-ordination activities, and improve explanations in reports of

why each review is conducted and how it fits in with past and other current reviews. The Committee also recommended that communication before, during and after reviews be improved.

In addition, the Committee recommended that the IGOT examine opportunities to conduct targeted reviews based on complaints and emerging issues in tax administration, and to work with the ATO to develop a mutually efficient system for such reviews. It also recommended that the Standing Committee on Tax and Revenue consider expanding its biannual inquiries into the ATO to include scrutiny of the IGOT, or alternatively to conduct a separate dedicated regular inquiry into the IGOT's annual report.

## High Court grants taxpayer special leave

The High Court has granted the taxpayer special leave to appeal against the Full Federal Court decision in *Blank v Commissioner of Taxation*

[2015] FCAFC 157. In that case, the Commissioner assessed the taxpayer on monies received in respect of the taxpayer's participation in an employee incentive plan. At first instance, Justice Edmonds held that the amounts received were amounts of ordinary income, and were not amounts received on capital account for disposal of rights acquired under the incentive plan.

The majority in the Full Court refused the taxpayer's appeal. Justice Pagone dissented from this decision, since in his view the amounts were received for disposal of a bundle of rights, and were not amounts received as income according to ordinary concepts.

On 16 May 2016, the Chief Justice of the High Court granted leave for the taxpayer to appeal the Full Court's decision. On behalf of the taxpayer, Counsel submitted that "Justice Pagone was clearly correct in his Honour's conclusion because the shares and associated rights were capable of being turned to pecuniary account in the relevant sense, and the relevant sense is the sense indicated by Lord Reid in *Abbott v Philbin*."

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