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# TaxTalk Monthly

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



# Corporate Tax Update

## Annual corporate tax transparency report coming soon

The Commissioner of Taxation is required to annually publish certain tax information for all corporate tax entities (companies and other entities taxed in a similar manner to companies) with total income of at least \$100 million (as disclosed in its income tax return), except Australian-owned private companies with total income of less than \$200 million.

In preparation for its second year of application, the Australian Taxation Office (ATO) plans to shortly send letters to affected entities to verify the tax information that it will extract from 2014-15 Company tax return and amendment requests (if any) processed by the ATO before 1 September 2016 for purposes of publishing the relevant data for all entities by the end of this calendar year.

In relation to income tax matters, the ATO will publish the following information based on the entity's income tax return:

- Name
- Australian Business Number
- Total income for the year
- Taxable income (if any) for the income year
- Income tax payable (if any) for the income year.

Entities that are subject to resource rent tax will also have their Minerals Resource Rent Tax or Petroleum Resource Rent Tax liability published as well.

In spite of the above, some entities and organisations have chosen to provide further information and explanation about their tax affairs in their financial or tax reports and/or on their own websites. In this regard, the Board of Taxation has developed a [Voluntary Tax Transparency Code](#) as a set of principles and 'minimum standards' to guide disclosure of tax information by businesses.

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# Employment Taxes Update

## Single touch payroll

As reported in this month's Legislative Update, the *Budget Savings (Omnibus) Bill 2016* was introduced and subsequently, a range of amendments to existing legislation. This includes the introduction of the Single Touch Payroll ('STP') reporting framework, for 'substantial employers' to automatically provide payroll and superannuation information to the Commissioner of Taxation. Entities that report under STP will not have to comply with a number of existing obligations under the taxation laws.

Employers with 20 or more employees will be required to comply with STP reporting from 1 July

2018 and there is no Government decision at this stage to extend the regime on a mandatory basis to smaller employers. That said, the Australian Taxation Office (ATO) will be conducting a pilot in the first half of 2017 to demonstrate the deregulation benefits for businesses, with a focus on small businesses, to further inform the broader implementation of STP reporting.

On 31 August 2016, the ATO released a [consultation paper](#) outlining how the Commissioner intends to apply the new STP law. The ATO sought taxpayer input through the consultation paper to help keep taxpayer obligations under this measure as simple as possible. The ATO also sought taxpayer input to highlight any areas that are unclear, or

cause difficulties in understanding taxpayer obligations. Responses to the consultation paper closed on 30 September 2016.

### **Fringe benefits affect certain income tests**

The *Budget Savings (Omnibus) Act 2016* also introduced changes to income tests for family assistance and youth income support payments, which will be calculated on the gross value of fringe benefits received rather than the net value of reportable fringe benefits, except in relation to fringe benefits received by individuals working for public benevolent institutions, health promotion charities and some hospitals and public ambulance services. These changes will come into effect on 1 January 2017.

### **New payroll tax harmonisation bill (Tasmania)**

The *Taxation and Related Legislation (Miscellaneous Amendments) Bill 2016* has been introduced into the Tasmanian Parliament and is currently before the Legislative Council. The Bill proposes amendments to a range of state taxes, including:

- Amendments to ensure harmonisation with Victoria and New South Wales (NSW) in relation to the payroll tax treatment of owner-driver contracts and anti-avoidance provisions related to excluded contracts, and to remove the relevant contractor exclusions for insurance and door-to-door sales in line with NSW amendments
- Amendments to the *Taxation Administration Act 1997* to extend the standard reassessment timeframe from three to five years and extend a

taxpayer's entitlement to a refund from three to five years.

### **Revenue Ruling PTA 040 - Payroll Tax exempt superannuation contributions pre-1 July 1996 services (NSW)**

The NSW Office of State Revenue has issued a new revenue ruling clarifying how the Chief Commissioner will apply the exemption for defined superannuation in respect of services rendered or performed by an employee before 1 July 1996, following the decision in *Qantas Airways Limited v Chief Commissioner of State Revenue [2015] NSWSC 826*.

The Revenue Ruling covers scenarios where the funds have a deficiency and where funds are in a surplus, and outlines the method of apportionment.

### **Payroll Tax Objection Time Limits (ACT)**

In *Australian Medical Council Ltd v Commissioner for ACT Revenue (Administrative Review) [2016] ACAT 105*, the Civil and Administrative Tribunal overturned the decision of the Commissioner for ACT Revenue not to exercise discretion to allow late objections to payroll tax assessments.

The Tribunal held that denying the taxpayer an opportunity to test their case for payroll tax exemption would be unjust under the circumstances. Of relevance was the taxpayer's ignorance to the fact that they were not obliged to pay payroll tax and took actions to rectify the situation upon the issue being brought to their attention by their advisers.

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# Global Tax Update

## Latest news from international tax and transfer pricing

### **ATO issues guidance material on Automatic exchange of information regimes**

The Australian Taxation Office (ATO) has issued [guidance material](#) on Australia's participation in Automatic Exchange of Information (AEOI) regimes. The guidance material concerns the automatic exchange of financial account information with foreign jurisdictions – in particular, the U.S. Foreign Account Tax Compliance Act (FATCA) and the Organisation for Economic Co-operation and Development (OECD) Common Reporting Standard (CRS).

The guidance material, which applies from 1 July 2017 (the date that the CRS applies in Australia), is structured around steps that an entity (typically a financial institution) would follow to determine whether it is required to implement the AEOI regimes, and if so, how. The key requirements involve:

- entities that are Reporting Financial Institutions
- reviewing their Financial Accounts
- to identify Reportable Accounts
- by applying due diligence rules
- then reporting the relevant information.

### **New Taxpayer Alerts on multinational arrangements**

The ATO has issued the following Taxpayer Alerts (TA):

- [TA 2016/10](#): Cross-Border Round Robin Financing Arrangements
- [TA 2016/11](#): Restructures in response to the Multinational Anti Avoidance Law (MAAL) involving foreign partnerships.

### **Panama papers “week of action”**

The Government has issued a [media release](#) regarding a "week of action" by the Serious Financial Crime Taskforce in response to tax evasion and crime identified in the Panama papers. This has included a series of unannounced access visits in Victoria and Queensland, and issue of search warrants following analysis of the leaked information. In addition, more than 100 taxpayers

are to be contacted and advised they are the subject of compliance action, and further criminal investigations have not been ruled out.

The Commissioner of Taxation, Chris Jordan, also issued a [statement](#) about progress made in relation to dealing with issues exposed by the Panama papers.

### **Australia and Singapore to exchange information under CRS**

The Inland Revenue Authority of Singapore (IRAS) and the ATO have entered into a [Competent Authority Agreement](#) on the AEOI based on the CRS. Singapore and Australia will commence AEOI under the CRS by September 2018.

### **New Zealand to address hybrid mismatch arrangements**

The New Zealand (NZ) Government has released a [discussion document](#) containing proposals to address hybrid mismatch arrangements. The discussion document proposes that NZ adopt the full range of OECD recommendations on hybrid mismatch arrangements with some minor adjustments. For further information, refer to PwC NZ's [Tax Tips Alert](#).

In addition, PwC NZ's [Tax Tips - August 2016](#) provides further information and analysis on the key proposals outlined in the *Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill*. The Bill was introduced into the NZ parliament on 8 August 2016, and implements the G20/OECD standard for Automatic Exchange of Financial Account Information in Tax Matters, and amends the NZ tax law to implement the new NZ disclosure requirements for foreign trusts.

### **United Kingdom launches offshore disclosure framework**

Her Majesty's Revenue & Customs (HMRC) launched a new, tougher [Worldwide Disclosure Facility](#) on 5 September 2016. [Consultation](#) has commenced on the new legislation that will require taxpayers in the United Kingdom with outstanding tax liabilities relating to any offshore interests to voluntarily come forward and correct those liabilities by September 2018. This consultation invites views on the proposed principles and design



aspects including a toughened offshore penalties framework that will come into full effect after September 2018.

## OECD and BEPS developments

The [G20 Leaders' Communiqué](#) sets out the key discussion points and agreed actions from the two day G20 meeting in China held on 4 and 5 September 2016. The G20 Leaders reiterated international tax co-operation in the context of growth but also referred back to BEPS, automatic exchange of financial information, transparency and non-cooperative jurisdictions and capacity building.

Burkina Faso, Malaysia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa and Pakistan have recently signed the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#), bringing the total number of participating jurisdictions to 104. This Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, including exchange of information.

In addition, the OECD has published public comments received on recent consultations:

- the [BEPS discussion draft](#) on the design and operation of the group ratio rule under BEPS Action 4 (interest deductions and other financial payments), including the global submission from PwC
- the [conforming amendments](#) to Chapter IX of the OECD Transfer Pricing Guidelines, including the global submission from PwC

- the [BEPS discussion drafts](#) on the Attribution of Profits to Permanent Establishments and the Revised Guidance on Profit Splits – public consultation on these two discussion drafts will be held this October.

The OECD Secretary-General has released his [tax report to the G20 leaders](#). Part I reports on the G20/OECD BEPS Project, tax transparency, tax policy tools to support sustainable and inclusive growth, and tax and development. Part II is a Progress Report to the G20 by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

## Unlawful State aid

At the end of August 2016, the European Commission (EC) announced the adoption of its final decision in the formal State aid investigation into the profit attribution arrangements and corporate taxation of Apple in Ireland. The EC concluded that, in its opinion, Apple benefitted from unlawful State aid granted by Ireland, and it ordered full recovery of the aid in an amount of up to €13 billion plus compound interest. The EC has clearly stated that the decision does not call into account Ireland's general tax system or its corporate tax rate and notes also that no other companies in Ireland are subject to this decision. The Irish government has stated publicly that it will contest the negative decision. For further analysis on the European Commission findings, refer to this [PwC Tax Insights](#).

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

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# Superannuation update

## **Draft law on some Budget measures**

An exposure draft of the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016* has been released for public consultation, along with proposed accompanying regulations. This exposure draft law deals with certain measures announced as part of the 2016-17 Federal Budget relating to:

- deductions for personal contributions
- tax offsets for spouse contributions
- low income superannuation tax offset, and
- contribution rules for people aged 65 to 74 years.

The deadline for comments to be made to Treasury on the proposed law was 16 September 2016. We will continue to follow the progress of the exposure draft.

## **Government's superannuation reform policy revised**

In addition to the developments on the 2016-17 Federal Budget announcements relating to superannuation, on 15 September 2016, the Government announced a revision of some of its previously announced superannuation reforms. Specifically, the Government announced that:

- the originally proposed \$500,000 lifetime non-concessional cap will be replaced by a new measure to reduce the existing annual non-concessional contributions cap from \$180,000 per year to \$100,000 per year, and
- individuals with a superannuation balance of more than \$1.6 million will no longer be eligible to make non-concessional contributions from 1 July 2017.

Further details of these measures and the other proposed superannuation reforms are available on the [Treasury website](#).

Refer to our feature article, [Superannuation: where are we since the 2016-17 Federal Budget?](#) for a snapshot of the status of all currently proposed reforms to superannuation.

## **United States Investment – related party debt**

In the [May edition of TaxTalk Monthly](#), we noted that the United States (US) Treasury had proposed regulations relating to interest deductions on related party debt. Given the potential for impact on the US investment structuring options for Australian superannuation funds, we have followed up with a paper describing the application of these regulations in greater detail. For further information, see [PwC Tax Insights](#).

## **ATO's risk and review focus for superannuation funds**

The Australian Taxation Office (ATO) has stated its areas of risk and review focus for superannuation funds in a presentation delivered by James O'Halloran (Deputy Commissioner of Superannuation) and Peter O'Reilly (Assistant Commissioner of Public Groups and International) at the TIA National Superannuation Conference on 25 August 2016.

In a consistent theme with previous statements by the ATO, the income tax areas to receive ATO focus include tax governance, quality assurance for third party data, foreign income tax offsets, deductibility of certain types of expenses, international investment structuring, and isolated or significant transactions.

While the areas of focus for the ATO are reasonably consistent with prior statements, the ATO's review activity has certainly escalated in recent times. Funds should review this list of focus areas carefully and consider how they are placed in each case.

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## Legislative update

The 45th Federal Parliament commenced sitting on 30 August 2016 for the final Spring session of Parliament for the 2016 calendar year. Commonwealth revenue measures introduced into Parliament or registered as legislative instruments or regulations since our previous *TaxTalk* publication include the following:

*Budget Savings (Omnibus) Bill 2016* was introduced into the House of Representatives on 31 August 2016 and has since completed its passage through Parliament with amendments, and subsequently received Royal Assent on 16 September 2016. The measures included in this Act give effect to some of the Australian Government's budget savings agenda.

In relation to taxation matters, the measures adopted by this Act include the following:

- Reduction in the rates of the Research and Development (R&D) tax offset with effect for income years starting on or after 1 July 2016. Specifically, for the first \$100 million of eligible R&D expenditure, the relevant R&D tax offset rate is reduced by 1.5 percentage points so that the higher rate of the tax offset (refundable) is reduced from 45 per cent to 43.5 per cent and the lower rate of the tax offset (non-refundable) is reduced from 40 per cent to 38.5 per cent.
- Introduction of Single Touch Payroll with transitional application from 1 January 2017. Refer to the Employment Tax Update section for more information.

Other measures in the Act which have residual taxation consequences include:

- A new minimum repayment threshold for Higher Education Loan Program (HELP) debts
- Pause the income thresholds that determine the tiers for the imposition of the Medicare Levy Surcharge and the rebate on private health insurance at the 2014-15 rates until 2020-21
- Change the treatment of fringe benefits under the income tests for family assistance and youth income support payments and for other related purposes

- Amend the family assistance indexation provisions as relevant to the Family Tax Benefit (FTB) Part A and amend the primary earner income limit for FTB Part B
- Remove the exemption from the income test for FTB Part A recipients and the exemption from the parental income test for dependent young people receiving youth allowance and Aboriginal Study Grants Scheme (ABSTUDY) living allowance in certain circumstances
- Provide an income limit of \$80,000 on payment of the FTB Part A supplement

*Treasury Laws Amendment (Enterprise Tax Plan) Bill 2016*, which was introduced into the House of Representatives on 1 September 2016, proposes to give effect to the following 2016-17 Federal Budget proposals:

- progressively reduce the corporate tax rate to 25 per cent progressively over 10 years, with the first reduction to 27.5 per cent to apply to "small business entities" in the 2016-17 income year
- increase the tax discount for unincorporated small businesses progressively to 16 per cent of net small business income by the 2026-27 income year, with the first increase to the offset to apply from the 2016-17 income year
- increase the small business entity aggregated turnover threshold from \$2 million to \$10 million so as to result in greater access to certain small business concessions including the proposed corporate tax rate reduction, the immediate deductibility of small business start-up expenses and certain prepaid business expenses, the simpler depreciation and trading stock rules, roll-over relief for restructures of small businesses, and accounting for and paying goods and services tax (GST).

The Bill has been referred to the Senate Economics Legislation Committee and a report is due by 10 October 2016.

*Treasury Laws Amendment (Income Tax Relief) Bill 2016*, which was introduced into the House of Representatives on 1 September 2016, proposes to

increase the third personal tax bracket for resident individuals from \$80,000 to \$87,000 with effect from 1 July 2016 (as announced in the 2016-17 Federal Budget). The Bill has been referred to the Senate Economics Legislation Committee which is due to report by 10 October 2016.

Although the Bill has not yet been enacted, in anticipation of the change, the ATO has issued [updated PAYG withholding tax tables](#) to give effect to the increased threshold. The revised PAYG withholding rates apply to all employers from 1 October 2016. Any tax overpaid beforehand will be refunded by the ATO on assessment after the end of the 2016-17 financial year.

[Tax and Superannuation Laws Amendment \(2016 Measures No 2\) Bill 2016](#), which was introduced into the House of Representatives on 14 September 2016, proposes the following measures which were previously included in a Bill that lapsed with the proroguing of Parliament earlier this year:

- provide the Commissioner of Taxation with a statutory remedial power to resolve certain unforeseen or unintended outcomes in the tax and superannuation laws
- allow primary producers to access income tax averaging 10 income years after choosing to opt out
- provide relief from luxury car tax to certain public institutions that import or acquire luxury cars for the sole purpose of public display
- make other miscellaneous amendments to taxation, superannuation and other laws including style and formatting changes, repeal of redundant provisions, correction of anomalous outcomes and corrections.

[International Tax Agreements Amendment Bill 2016](#), which was introduced into the House of Representatives on 1 September 2016, proposes to give domestic effect to the new tax treaty between Australia and Germany.

[Excise Tariff Amendment \(Tobacco\) Bill 2016](#) and [Customs Tariff Amendment \(Tobacco\) Bill 2016](#), which were both introduced and passed by both Houses of Parliament in September 2016 and subsequently given Royal Assent, give effect to the Federal Budget measure to increase the rates of excise and excise-equivalent customs duty on tobacco by way of four annual increases in duty of 12.5 per cent each, commencing on 1 September 2017.

[Income Tax Assessment \(Infrastructure Project Designation\) Amendment Rule 2016](#), which was made on the 24 August 2016, amends the *Income Tax Assessment (Infrastructure Project Designation) Rule 2013* (the 2013 Rule) to update references to statutory positions and extrinsic documents, and to make other minor technical amendments. The 2013 Rule provides a process for the Infrastructure Coordinator to receive and consider applications for Designated Infrastructure Project (DIP) status to access the tax loss incentive for DIPs.

[Fuel Tax Regulations 2016](#), made and registered on 1 September 2016, repeals and remakes the Fuel Tax Regulations 2006 and simplifies the provisions by consolidating repeated requirements and improves readability. In addition to remaking the former regulations, the Government has identified opportunities to improve and streamline some of the arrangements in the *Fuel Tax Act 2006*.

## ***PAYG withholding variation for foreign resident Capital Gains Tax (CGT) withholding***

By making of a [legislative instrument](#), the Deputy Commissioner of Taxation has varied to nil the rate of withholding required under the foreign resident CGT withholding regime on the transfer of relevant assets to a legal personal representative, a beneficiary of the estate or a surviving joint tenant as a result of the death of an individual. The instrument has effect from 7 September 2016.

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## Other news

### **ATO releases new Practical Compliance Guidelines**

The Australian Taxation Office (ATO) has released the following Practical Compliance Guidelines (PCGs):

- [PCG 2016/11](#): Fuel tax credits - apportioning taxable fuel used in a heavy vehicle with auxiliary equipment
- [PCG 2016/12](#): Petroleum Resource Rent Tax (PRRT) - deductibility of general project expenditure relating to the overhead component of time written costs
- [PCG 2016/13](#): PRRT - deductibility of general project expenditure
- [PCG 2016/14](#): Discount to the valuation of housing fringe benefits provided by retirement village operators
- [PCG 2016/15](#): Effects of the Addendum to Taxation Ruling 2002/14 ([TR 2002/14A2](#) *Income Tax: taxation of retirement village operators* for retirement village operators making capital growth payments before, on or after 26 November 2014)

### **Update on the ATO's strategies**

The ATO continues with its [blueprint for change](#) and has updated on the progress of its reinvention program, including improvements that have been or will be delivered in 2016-17 for all taxpayers, including public business, privately owned and wealthy groups, individuals, small business, and superannuation funds.

In addition, the ATO recently released its [Corporate Plan for 2016-17](#), which outlines the following significant priorities it has set for the current financial year:

- delivering myTax for all individuals who wish to self-prepare
- a new practitioner lodgment service for tax professionals
- improved help and support for all clients
- leadership and contributions to international tax administration reform
- tackling tax avoidance, and
- streamlining the process for business registration.

The Commissioner will report on the results of this plan in the *Commissioner of Taxation annual report 2016-17*.

### **ANAO report on ATO's External Compliance Assurance Process**

The Australian National Audit Office (ANAO) has released its report on its review of the ATO's pilot of the External Compliance Assurance Process (ECAP) for large business taxpayers. In brief, the ECAP pilot involved taxpayer participants to choose to either have a registered company auditor check factual matters identified by the ATO or have a streamlined review performed by ATO staff.

The report concluded that the pilot provided the ATO with a sound basis for conducting ECAP for large business taxpayers in the future. The audit found that the pilot was conducted effectively and demonstrated the potential for better client experiences, cost reductions and increased efficiency, by satisfactorily verifying factual matters in company tax returns.

### **Wine Equalisation Tax (WET) rebate**

On 2 September 2016, the Federal Government released an implementation paper on measures to tighten eligibility criteria for the WET rebate that were announced in the 2016-17 Federal Budget. Submissions can be made until 7 October 2016.

### **Foreign-held agricultural land**

The Government has released Australia's first report from the Agricultural Land Register. The Land Register shows foreign investors hold 13.6 per cent of all Australian agricultural land as at 30 June 2016, with the United Kingdom as Australia's principal source of investment in agriculture. The countries with the next largest share of agricultural land holdings are the United States, Netherlands, Singapore and China.

### **New ATO review of penalties**

The ATO has commenced [consultation](#) on its approach to penalties for small business (with turnovers under \$2 million) and individuals. Specifically, the ATO is currently seeking views on its proposed approach to the imposition of penalties in cases where the ATO considers that there has been a failure to take reasonable care or a failure to lodge an activity statement or an income tax return on time.

The ATO's proposal is that taxpayers should be given one chance before receiving a penalty, that is, no penalty would be applied to the first error or first late lodgment in respect of an income tax return or activity statement that would otherwise be subject to penalty. The one chance timeframe will be refreshed after a set period of time.

Comments can be made to the ATO by 24 October 2016.

## Draft regulations for farm management deposits

The Commonwealth Treasury has [exposure draft regulations](#) to update and replace existing regulations for farm management deposits. The exposure draft regulations also include consequential amendments to information requirements following amendments to the farm management deposit legislation made by *the Tax and Superannuation Laws Amendment (2016 Measures No 1) Act 2016*. Comments were due to be made on the draft regulations by 22 September 2016.

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