

TAX ROUND UP

October 2014

The key issues for accountants
and advisers over the last month

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Applying from 1 July 2014, the amendments tightening the thin capitalisation rules have passed Parliament. It's just the start of an increasing focus on cross border taxation.

While many of the Budget measures are still pending, we have seen some movement with the repeal of the minerals resource rent tax and associated measures becoming law.



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Don't forget - our friends at [Audit Shield](#) are a regular part of the tax round up because of the level of audit activity by the regulators and the solution they offer to protect clients and your practice.

If you have any questions about any of the information contained in the **Tax Round Up**, please contact the [help desk online](#) (you will need to log in first) or call us on 1800 800 232.

Read on!

Rae Ni Corraidh
Tax Adviser, Knowledge Shop

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From Government

Profit shifting and tax evasion

If you have international clients in your client base, now is the time to look closely at how they operate and whether they are at risk from a renewed focus on tax avoidance. Key areas include the use of tax havens or low taxing jurisdictions, loading debt into Australian entities, and profit shifting.

The Finance Ministers at the recent G20 meeting endorsed a common reporting standard for the automatic exchange of information. The new standard will be implemented in Australia in 2017 with the first year of exchange a year later.

There are also numerous changes and ATO initiatives underway. Changes to thin capitalisation rules passed Parliament (see *Tax and Superannuation Laws Amendment (2014 Measures No. 4) Bill 2014* in the legislation section) on 25 September. The changes apply retrospectively from 1 July 2014.

Need more on international tax and cross border client needs? The [Cross Border Workshop](#) starts this month – read more.

More information

- [Global leaders to tackle profit shifting and tax evasion](#)

CGT exemption for compensation & insurance

Treasury has released exposure draft legislation clarifying existing tax law to ensure that a CGT exemption is available to certain trustees and beneficiaries who receive compensation or damages. The amendments would:

CGT exemption for compensation or damages received by trustees

Disregard a capital gain or capital loss made from a CGT event relating to compensation or damages received as the trustee of a trust (other than a trust that is a complying superannuation entity) for:

- any wrong or injury a beneficiary of the trust suffers in their occupation; or
- any wrong, injury or illness a beneficiary of the trust or the beneficiary's relative suffers personally.

CGT exemption for compensation or damages received by beneficiaries

Disregard a capital gain or capital loss made as the beneficiary of a trust, from a CGT asset (e.g., cash payment to beneficiary) received that relates to the compensation or damages the trustee of the trust receives (above), that relates to:

- any wrong or injury you suffer in your occupation; or
- any wrong, injury or illness you or your relative suffers personally.

CGT exemption for original owners of insurance policies for life and annuity instruments

Disregard a capital gain or capital loss made in relation to an insurance policy on the life of an individual or an annuity instrument if you are the original owner of the policy or instrument (but not a trustee of a complying superannuation entity, see below).

CGT exemption for complying superannuation entities: illnesses or injuries

Disregard a capital gain or capital loss made in relation to an insurance policy for an individual's illness or injury if you are the trustee of a complying superannuation entity for the income year in which the CGT event happened resulting in the capital gain or capital loss.

A subsequent capital gain or capital loss that arises when a payment is made to a trust beneficiary is also disregarded.

More Information

- [Capital Gains Tax exemption for compensation and insurance](#)

Tax treatment of super when funds merge

Treasury has released exposure draft legislation on the tax treatment of an individual's superannuation when superannuation funds merge.

Basically, the amendments ensure that if an individual's benefits are involuntarily transferred to a new superannuation plan, the individual will remain in the same tax position as if the transfer had not occurred.

If the amendment is enacted:

- The amount of the contributions segment and the crystallised segment of an individual's superannuation interest will no longer be limited to the value of their interest at any particular time.
- When an involuntary rollover superannuation benefit for a superannuation interest not supporting an income stream is paid to a new superannuation plan, the contributions segment in the new plan will include an amount equal to the contributions and crystallised segment in the

original plan immediately before the involuntary roll-over superannuation benefit payment.

- If an involuntary roll-over superannuation benefit is paid from a superannuation interest supporting an income stream, the proportions of the tax free and taxable components of the income stream commenced in the new plan will be the same as the income stream in the original plan.
- Transferring superannuation plans will not be required to give roll-over superannuation benefit statements to members, depositors, or account holders for involuntary roll-over superannuation benefits.

More information

- [Tax and Superannuation Laws Amendment \(2014 Measures no. 7\) Bill 2014: Providing certainty for superannuation fund mergers](#)

From the ATO

Allocation of profits within professional firms

The ATO have published guidelines to explain how it will assess the risk of Part IVA applying to the profits from a professional firm carried on through a partnership, trust or company, where the income is not personal services income.

While the ATO acknowledges that professional practices may operate as business structures, it has stated that it is reviewing remuneration arrangements used by accountants, lawyers or other professionals to ensure that those structures are used appropriately.

The principles set out in the ATO guide will apply if the following conditions are met:

- An individual professional practitioner (IPP) provides professional services to clients of the firm, or is actively involved in the management of the firm and, in either case, the IPP and/or associated entities have a legal or beneficial interest in the firm;
- The firm operates by way of a legally effective partnership, trust or company; and
- The income of the firm is not personal services income.

The ATO has set out some risk assessment guidelines that will be applied and indicated that it plans to allocate compliance resources to taxpayers who fall within the higher risk categories. However, taxpayers should be rated as low risk where their circumstances indicate that they meet at least one of the following safe harbour guidelines regarding their income from the practice:

- The IPP receives assessable income from the firm in their own hands as an appropriate return for the services they provide to the firm. In determining an appropriate level of income, the taxpayer may use the level of remuneration paid to the highest band of professional employees providing equivalent services to the firm, or if there are no such employees in the firm, comparable firms or relevant industry benchmarks – for example, industry benchmarks for a region provided by a professional association, agency or consultant.
- 50% or more of the income to which the IPP and their associated entities are collectively entitled (whether directly or indirectly through interposed entities) in the relevant year is assessable in the hands of the IPP.
- The IPP, and their associated entities, both have an effective tax rate of 30% or higher on the income received from the firm.

More information

- [ATO provides guidance on discretionary trust partnerships for professionals](#)

ATO clarifies position on divorce & payments from private companies

Following the issuance of *TR 2014/5 Income tax: matrimonial property proceedings and payments of money or transfers of property by a private company to a shareholder (or their associate)*, which was covered in the September 2014 Tax Round Up, the ATO have issued a fact sheet to assist with determining whether an amount paid by a private company due to a marriage or relationship breakdown should be taxed as an ordinary dividend or a deemed dividend.

More information

- [Marriage or relationship breakdown – dividends and deemed dividends](#)

ATO voice authentication

The ATO has stated that persons contacting the ATO by phone will be given the choice to record a 'voiceprint' that can be used to verify that person's identity for future phone calls. It is intended that this will provide a more secure and faster telephone call experience to the ATO.

Individuals that chose to enrol in the voiceprint system will need to establish their identity, including providing their TFN.

Initial reports are that 30,000 people had chosen to participate in the first two weeks of the scheme.

Rulings, IDs & determinations

Tax treatment of PSI received when no work is completed

TD 2014/D15 Income tax: where a personal services entity receives a payment from a service acquirer in relation to a period, is that payment personal services income within the meaning of subsection 84-5(1) of the Income Tax Assessment Act 1997 notwithstanding during that period the service provider is not providing services to the service acquirer until further called upon?

This draft taxation determination outlines what happens when an individual earning PSI receives payments (or through a personal services entity on their behalf) even though they did not actually provide their personal services during the period the payment was made - for example, if the personal services entity has a contract to fulfil and is paid monthly but for some reason, no work was completed during that month.

In the draft determination the Commissioner considers that salary like payments including retainers and payments of that type are personal services income. As such, even though no work was completed, the payment is still personal services income.

Interestingly, the draft determination also covers “gardening leave” arrangements – where contractual payments are still received by the individual (or the PSE on their behalf) but the work they would normally complete is no longer required. The draft determination also considers

these payments to be retainer like and as such, are considered personal services income.

In cases where the service acquirer is not compelled to, does not intend to and does not in fact keep the service provider engaged during the period of leave, but nevertheless retains the right to call upon the service provider's skills as required, the payment that is made is still in consideration of the promise made by the personal services entity to provide those skills.

Comments on the draft determination can be made until 24 October 2014.

More information

- [TD 2014/D15](#)

Decision impact statement – pursuit of tax debt

The ATO has issued a [Decision Impact Statement](#) in relation to the Full Federal Court’s decision in [Chemical Trustee Limited and Deputy Commissioner of Taxation \[2014\] FCAFC 27](#) regarding the Commissioner’s right to pursue a income tax debt from an amended assessment when an existing judgement for an income tax debt for the same year is still in effect. The Full Court held that the action resulting from the amended assessment is a separate cause of action to the original action arising from an earlier assessment for the same tax year.

Cases

Taxpayer win in non-commercial losses case

[Bentivoglio and FCT \[2014\] AATA 620](#)

The AAT held that a taxpayer, who was a medical practitioner and also an olive grower and producer of olive oil, should be granted relief from the non-commercial loss provisions for four out of five tax years, following a review of an objection decision in relation to a private ruling.

The AAT considered legislation both in relation to the non-commercial losses and private ruling requests.

The special circumstances included drought, fire, infestation of the olive trees by a bug and the illness of the taxpayer's wife, who was an experienced olive maker and blender. However, the AAT concluded that the losses incurred in the final tax year could not be attributed to the ongoing impact of the special circumstances faced by the taxpayer and therefore it was not unreasonable to apply the non-commercial loss provisions to that year.

Tax treatment of workers comp payments for domestic assistance

[Riley and FCT \[2014\] AATA 664](#)

The AAT held that a taxpayer was assessable on an amount paid to her as compensation for domestic assistance when she gave up full time work to care for her husband.

The taxpayer's spouse, not the taxpayer, lodged a claim for domestic assistance under Workers Compensation legislation covering a period of over 12 years after his employer's insurance provider offered to provide funding for domestic assistance in May 2012. A lump sum amount was awarded to the taxpayer in November 2012, and she applied for a Private Ruling Application, resulting in the ATO's statement that the amount was assessable income. The objection to this Private Ruling was disallowed.

Workers Compensation legislation referred to 'compensation', the amount payable was calculated based on an hourly rate, and payment was made in respect of services provided by the care giver to the injured worker.

The taxpayer's argument that the payment she received was a lump sum payment of capital was rejected.

Damages payment was capital gain

[Coshott and FCT \[2014\] AATA 622](#)

The AAT held payments received by the taxpayer in settlement of a damages claim against a third party was an assessable capital gain (CGT event C2).

The Commissioner had originally assessed the taxpayer on the full amount of the payment, later reducing the amount assessed by 50%, to account for the CGT discount, and imposed administrative penalties and general interest charges.

The taxpayer had argued that the damages set out in the Settlement Deed in relation to legal action she undertook, could not be a capital gain since they were intended to return her to a pre-damage

position. She also contended that the penalty should be reduced to nil or at most 25%.

The AAT upheld the Commissioner's view that the payment was an assessable capital gain and also upheld the penalty for recklessness imposed on the taxpayer.

Legislation

Tightening of thin cap laws pass Parliament

Tax and Superannuation Laws Amendment (2014 Measures No. 4) Bill 2014

Changes to the thin capitalisation laws contained in this Bill passed Parliament on 25 September 2014.

With effect from 1 July 2014, a series of amendments target the perceived shifting of profits by multinationals through the disproportionate allocation of debt to Australia. The amendments:

- Tighten the safe harbour limits. For general entities (i.e., excluding banks and financial entities) the safe harbour limit has been reduced from 3:1 to 1.5:1 on a debt to equity basis. This represents a move from 75% to 60% on a debt to net assets basis.
- Reduce the worldwide gearing ratio for outbound investors from 120% to 100%.
- Increase the de minimis threshold from \$250,000 to \$2 million of debt deductions. This saves many SMEs from having to comply with the thin capitalisation rules although they will still need to consider the transfer pricing provisions when it comes to funding arrangements with either foreign investors or foreign subsidiaries.

What is advice?

Corporations Amendment (Financial Advice) Bill 2014

This Bill, introduced into the Senate on 2 September, clarifies the use of the term advice.

Currently under the Corporations Act financial advice is classified under two categories. 'Personal advice' is financial product advice which takes into account the personal financial circumstances of the client. Any other financial product advice that does not take into account the client's personal circumstances is termed 'general advice.'

The purpose of this Bill is to ensure that in reference to financial advice the term 'advice' can only be utilised in reference to financial advice that takes into account the personal circumstances of the consumer. Any 'general advice' will now have to be termed 'general information.'

This will help ensure personal advice is differentiated from information that is provided to sell general financial products with little or no consideration of an individual's financial situation or needs.

The Bill also mandates that when 'general information' is provided to a retail client the client must be warned that the information is not advice.

Enacting the Korean Free Trade Agreement

A package of Bills currently before the Senate facilitate the Korea-Australia Free Trade Agreement:

Customs Amendment (Korea-Australia Free Trade Agreement Implementation) Bill 2014

This Bill: provides preferential rates of duty for Korean originating goods; and imposes certain obligations on exporters and producers of Australian goods who claim preferential tariff treatment.

Customs Tariff Amendment (Korea-Australia Free Trade Agreement Implementation) Bill 2014

This Bill: provides free rates of customs duty for goods that are Korean originating goods; maintains customs duty rates for certain Korean originating goods; phases the preferential rates of customs duty for certain goods to zero by 2021; and specifies excise-equivalent rates of duty on certain alcohol, tobacco and petroleum products.

Both Bills were introduced into the Senate on 30 September 2014.

R&D reduction

Tax and Superannuation Laws Amendment (2014 Measures No. 5) Bill 2014

This Bill enacts the Budget measure to reduce the tax offset under the R&D tax incentive by 1.5%. If enacted, the reduction will apply to income years starting on or after 1 July 2014.

The Bill also abolishes the mature age worker tax offset (for the 2014/2015 income years onwards) and seafarer tax offset (for the 2015/2016 income years onwards).

This Bill was introduced into the Senate on 25 September 2014.

Mining Tax repeal now law

The [Minerals Resource Rent Tax Repeal and Other Measures Bill 2014](#) (Mining Tax) was passed by Parliament and became law on 5 September 2014.

See Knowledge Shop's coverage of the repeal - [The Mining Tax Repeal – The impact on small business](#)

Included in the repealed measures were:

- The company carry back loss rules
- The instant asset write off threshold of \$6,500 under the simplified depreciation rules
- Accelerated deduction for motor vehicles of \$5,000

Some of the originally proposed measures were changed prior to the bills being passed, including:

- Superannuation Guarantee rate percentage increase being delayed (now rephased)
- Changing the repeal date of the schoolkids bonus to 31 December 2016 and applying an additional means test (adjustable taxable income of \$100,000 or less) between Royal Assent and the repeal date
- Changing the repeal date for the low income superannuation contribution so that it will cease to apply to concessional contributions made for the 2017/2018 financial year and later financial years
- Changing the repeal date for the income support bonus to 31 December 2016

As previously highlighted, the ATO advised that tax returns that were prepared and lodged based on the previous legislation (i.e. instant asset write-off threshold of \$6,500 and application of the loss carry-back rules) will be amended by them, without the taxpayer having to submit an amendment request.



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