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# WEEKLY TAX BULLETIN

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## THOMSON REUTERS WEEKLY TAX BULLETIN

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## PRACTITIONER ARTICLES

[\[658\]](#) **Taxation consequences of testamentary trust distributions - Part I**

**- by Matthew Burgess and Patrick Ellwood, Directors, View Legal**

In December 2013, the Federal Government announced its decision to abandon a number of proposed legislative

changes in relation to various aspects of the taxation of testamentary trusts - see 2013 WTB 53 [2270] and also 2014 WTB 12 [399]. As a result, there has been a refocus on what is likely to be the approach of the ATO in this area.

Part I of this 2-part article considers the taxation aspects of:

- the transfer of assets under a deceased estate;
- distributions from a will maker to a legal personal representative (LPR);
- distributions from a LPR to a testamentary trust.

Part II of this article will focus on distributions from testamentary trusts to beneficiaries and the abandonment of the previously announced legislative changes.

### **Transfer of assets**

On the death of a will maker, each asset of the estate will potentially be transferred 3 times:

- from the will maker to the LPR;
- from the LPR to the beneficiary of the estate, which may be the trustee of a testamentary trust; and
- where the recipient was the trustee of a testamentary trust, from that trustee to a beneficiary either as a capital distribution during the lifetime of the trust or as a distribution of corpus upon vesting.

The CGT consequences of each of the abovementioned transfers must be separately considered.

### **Distributions from will maker to LPR**

The first roll-over to examine is the initial transfer of a deceased's assets from the deceased person to their LPR for distribution under the terms of the deceased's will.

As a starting point, the general position is that, when a taxpayer dies, any capital gain or loss from any event relating to a CGT asset owned by the deceased is disregarded under s 128-10 of the ITAA 1997. This means that the distribution from the deceased to their LPR does not result in a CGT liability for the deceased.

As to the consequences for the LPR, the CGT assets are taken, under s 128-15 to have been acquired by the LPR on the date the deceased died. The cost base of each CGT asset (other than for a property which was a main residence for the deceased immediately before they died) for the LPR is modified under s 128-15(4) so that:

- **for pre-CGT assets** in the hands of the deceased - the first element of the LPR's cost base (and reduced cost base) is the market value of the asset on the day the deceased died (meaning that pre-CGT assets in the hands of the deceased become post-CGT assets in the hands of the LPR); and
- **for post-CGT assets** in the hands of the deceased - the first element of the LPR's cost base (and reduced cost base) is the deceased's cost base (or reduced cost base) at the date of their death (i.e. the deceased effectively passes their cost base and reduced cost base to the LPR).

### **Distributions from LPR to testamentary trust**

From a CGT perspective, a testamentary trust is treated much the same as other trusts. However, it should be noted that CGT event E1 does not apply to the creation of a testamentary trust since that event only applies to the creation of a trust "by declaration or settlement".

In the testamentary trust scenario, there is no such declaration of trust and there is no initial settlement sum.

The CGT rules which apply to the distribution from the deceased to the LPR apply in the same manner to subsequent distributions from the LPR to a "beneficiary" of the estate.

It would appear that "beneficiary" for the purposes of the ITAA 1997 includes the trustee of a testamentary trust (however, as will be explained in Part II of this article, for the purpose of Div 128, the trustee of a testamentary trust

is also treated the same as an LPR by the ATO), meaning that distributions from an LPR to the trustee of a testamentary trust are treated in the same manner as distributions from an LPR to an individual beneficiary.

A CGT asset is taken to have passed to a beneficiary of a deceased's estate if the beneficiary (or in this case, the trustee of the testamentary trust) becomes the owner of the asset whether under the terms of:

- the deceased's will;
- under the intestacy laws; or
- under a deed of arrangement.

Section 128-15(3) provides that on a subsequent distribution from the LPR to a beneficiary (including the trustee of a testamentary trust), any capital gain or loss that the LPR makes is disregarded.

Again, the trustee of the testamentary trust is taken to have acquired the CGT assets of the deceased at the date of the deceased's death (rather than on the date they were distributed by the LPR) and the first element of the cost base (and reduced cost base) for the testamentary trust trustee will be:

- for pre-CGT assets in the hands of the deceased - the market value of the asset on the day the deceased died; and
- for post-CGT assets in the hands of the deceased - the deceased's costs base (or reduced cost base) at the date of their death.

The testamentary trust trustee is also able include in its cost base any expenditure the LPR has incurred, up to the time of the disposal by the LPR, that the LPR would have been entitled to include in its cost base had it retained the asset.

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## TAX PRACTICE UPDATE

### [\[659\]](#) ATO reminder about 15 May lodgment program deadlines

Tax agents with a 15 May lodgment program date have until 5 June 2014 to lodge tax returns, including companies and super funds. The ATO has [reminded them](#) that the 5 June due date applies to income tax return lodgment, including companies and super funds, where the return is not required earlier and *both* of the following criteria are met:

- non-taxable or refund as per latest year lodged;
- non-taxable or receiving a refund in the current year.

This 5 June date is for all entities with a lodgment end date of 15 May 2014, excluding large/medium business taxpayers and head companies of consolidated groups.

Income tax returns for individuals and trusts with a lodgment end date of 15 May 2014 are also due by 5 June provided they also pay any liability due by that date.

by Terry Hayes

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### [\[660\]](#) BEPS: Thinking inside or outside the box? Former Tax Commissioner's views

Writing in the *Australian Tax Review* journal (published by Thomson Reuters) – see para [694] of this *Bulletin*, former Commissioner of Taxation Michael D'Ascenzo considers the OECD's BEPS Action Plan from the perspective of whether it is likely to provide holistic and globally acceptable solutions to the BEPS problem. He concludes that while the BEPS Action Plan constitutes a good start, some radical thinking and much political consensus will be at a premium.

Mr D'Ascenzo says the main concern of the OECD Action Plan is the coherence of the international corporate tax base. In short, the OECD's concerns have been described as "the divorce between real activity and the derivation of profits". The BEPS project assumes that the corporate tax base can survive and that corporate profits can be more fairly allocated to different jurisdictions with appropriate adjustments to current rules and new international norms. If this assumption proves to be unsound, Mr D'Ascenzo says countries will seek to shift their tax mix in ways that will have their own complications and implications, both domestically and globally.

The question that arises, Mr D'Ascenzo says, is how bold and fundamental are the actions proposed by the OECD?

The current international rules allocating taxing rights have been criticised as resulting in income generated in the digital economy (and from intangible assets generally) being allocated for tax purposes to neither the country where the intellectual property was developed, nor the market in which intellectual property protection is provided. To address this problem, Mr D'Ascenzo says the tasks outlined in the OECD's Action Plan are ambitious and will require some out of the box thinking as well as ambition and pragmatism. The expected outcome of the OECD's work would be a report identifying the key issues and possible actions to address them. However, these issues have been under consideration for some time, and time will tell how much progress is possible by September 2014.

Mr D'Ascenzo notes that, according to Greenwoods & Freehills (in their *Tax Brief: BEPS Action Plan and More* (26 July 2013) p 6): "It looks like international tax arbitrage may finally come to an end, which may be one of the easier 'wins' for the BEPS project, though it involves some big (unspecified) issues such as the killing off of the US check-the-box rules." However, he says it needs to be remembered that multinational enterprises are integrated global businesses, but tax is national and an area relevant to national sovereignty. In addition, there has been a general shift away from worldwide to territorial tax bases which reduce the risk of double taxation but heighten the risks for mismatches and profit shifting.

In Mr D'Ascenzo's view, the focus on BEPS may require a reconsideration of the recent review of Australia's CFC rules. The OECD recommendations scheduled for September 2015 may go against the recent tide of watering down of CFC regimes worldwide, he said.

Re transfer pricing, Mr D'Ascenzo says a desirable outcome may be the allocation of profits based on where the activities occur rather than the functional analysis of assets, liabilities and risks, particularly the current emphasis on the ownership of intangibles. He said that updating transfer pricing guidance on cost contribution arrangements, management fees, and head office expenses is do-able and overdue. However, it will be dependent on the allocation mechanism that is adopted.

You can read Mr D'Ascenzo's full article in *Australian Tax Review*, Vol 43 No 2, 2014.

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## **[661] Thin cap rules to be tightened; s 23AJ exemption to be rewritten – draft legislation released**

On 6 November 2013, the Government announced that it would proceed with reforms to tighten the thin capitalisation rules to prevent erosion of the tax base - see 2013 WTB 47 [1983]. These reforms are intended to

ensure that multinationals do not allocate a disproportionate amount of debt to their Australian operations. [Draft legislation](#) has now been released to give effect to this announcement.

### Thin cap changes

The draft legislation proposes to make the following thin cap changes:

- tighten the debt limit settings in the thin capitalisation regime to more closely align with commercial debt levels. The proposed changes seek to ensure that multinationals do not allocate a disproportionate amount of debt to their Australian operations. The changes would:
  - reduce the maximum debt limit from 3:1 to 1.5:1 (on a debt-to-equity basis) for general entities and from 20:1 to 15:1 (on a debt-to-equity basis) for non-bank financial entities;
  - reduce the "outbound" worldwide gearing ratio from 120% to 100% with an equivalent adjustment to worldwide capital ratio for ADIs; and
  - increase the safe harbour capital limit for ADIs from 4% to 6% of their risk weighted Australian assets;
- increase the de minimis threshold from \$250,000 to \$2m to minimise compliance costs for small businesses;
- introduce a test for inbound investors to allow gearing of Australian operations up to the level of gearing of the worldwide group. To provide greater flexibility for inward investors, a new "inbound" worldwide gearing ratio test is proposed to be introduced. This test would allow the financial markets to limit gearing, and mirrors market outcomes for businesses that, as a whole, have naturally higher gearing levels. This is designed to provide a further option to inward investing entities, where they do not fall within the safe harbour limit, and do not meet the arm's length debt test. To minimise compliance costs, this test would utilise the consolidated financial statements that are already required to be prepared by the foreign parent.

### *Proposed date of effect*

The above changes would apply to income years starting on or after 1 July 2014.

### Section 23AJ rewrite

Amendments are also proposed to reform the current s 23AJ exemption for foreign non-portfolio dividends to address integrity issues.

Currently, a non-portfolio foreign dividend (ie a dividend on a voting interest of at least 10% in a foreign resident company) is non-assessable non-exempt (NANE) income when paid to an Australian resident company - s 23AJ of the ITAA 1936. The intention of this exemption is to make non-portfolio returns on equity to Australian resident companies exempt of Australian tax, to remove the Australian tax burden from active business income earned by a foreign subsidiary of an Australian owned company.

Under the proposed changes, the s 23AJ exemption would be re-written into the ITAA 1997 to:

- ensure it applies to returns on instruments treated as "equity interests" under the debt-equity rules. This is intended to exclude any returns on "debt interests" from the exemption and also allow the exemption to apply in respect of a broader range of equity-like interests, rather than interests that involve significant voting rights;
- allow it to apply where a distribution flows through interposed trusts and partnerships other than corporate tax entities; and
- allow it to apply in respect of distributions of a non-share dividend, which is not included in the definition of a distribution.

In addition, the ability to pool portfolio dividends (ie where the interest is less than 10%) in an offshore entity in order to qualify for an exemption under s 23AJ will be removed. The Government says this type of arrangement is contrary to the intention of the exemption, which is intended to apply to non-portfolio dividends where the interest is

at least 10%.

### **Key points**

Under the proposed new provisions:

- The exemption will apply where an Australian company holds a *participation interest* of at least 10% in a foreign company.
- The exemption will apply where the foreign equity distribution is made in respect of an equity interest in the foreign company. This is designed to ensure the exemption is not available in respect of returns on debt interests. It will also allow the exemption to apply in respect of a broader range of equity interests, not only voting interests.
- The exemption will apply in respect of distributions of a non-share dividend.
- The exemption for foreign dividends will apply where a dividend flows through an interposed trust or partnership, other than a corporate tax entity.
- The ability to pool portfolio dividends in an offshore entity to qualify for the non-portfolio exemption will be removed.

### **Proposed date of effect**

No date of effect was stated in the draft legislation. However, Ernst & Young has noted that the dividend exemption changes were originally proposed to apply from the 2013-14 year. The firm suggests that not stating a date of effect probably reflects the delay in the issue of the draft and potential submissions which might call for a later start date.

### **Comments**

Comments are due by 6 June 2014 and should be sent to: General Manager, Law Design Practice, Revenue Group, The Treasury, Langton Crescent, PARKES ACT 2600; Email: [taxlawdesign@treasury.gov.au](mailto:taxlawdesign@treasury.gov.au). Enquiries should be directed to Michael Atfield (02) 6263 3920 or Ronita Ram (02) 6263 3168.

by Terry Hayes

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## **[662] Miscellaneous changes to tax laws: some not insignificant amendments – draft legislation released**

The Government has [released draft legislation](#) covering proposed miscellaneous amendments to taxation and superannuation laws. The amendments seek to ensure the law operates as intended by, among other things, correcting technical or drafting defects, removing anomalies and addressing unintended outcomes. There are however a number of significant amendments, noted below. The draft legislation proposes to amend a number of Acts including the ITAA 1936, ITAA 1997, GST Act, *Taxation Administration Act 1953*, SIS Act, *Superannuation Guarantee (Administration) Act 1992*. A number of the amendments also relate to issues lodged on the Tax Issues Entry System (TIES).

Some of the more significant proposed amendments in the draft Bill include:

- Clarifying the continuity of ownership test following the death of a beneficial owner of shares - For the purpose of applying the continuity of ownership test after a shareholder dies, the shares that were beneficially owned by the deceased person at the time of death are treated as continuing to be owned by that person so long as the shares are owned by either the trustee of the deceased person's estate or by a beneficiary of the estate. As a result, a company will not fail the continuity of ownership test simply because



a shareholder dies. This concessional treatment for deceased estates only applies in respect of ownership, not voting power and control. Therefore, the concession does not currently operate effectively for the purpose of applying the alternate continuity of ownership test. The proposed amendments would ensure that, for the purposes of applying both the primary test and the alternative test, the deceased individual is considered to retain all voting power, dividend entitlements and capital distributions so long as the shares are owned by either the trustee of the deceased person's estate or by a beneficiary of the estate.

- Removing technical defects in the franking deficit tax offset rules re life insurance companies - Division 63 of the ITAA 1997 contains rules that prioritise the order in which tax offsets are applied. When the Division was inserted in 2006, consequential amendments were made to the franking deficit tax offset rules in s 205-70. As a result, the modified franking deficit tax offset rules for life insurance companies do not operate effectively. To overcome this concern, the proposed amendments would modify ss 219-70 and 219-75 to ensure that, for the purposes of applying s 205-70 to a life insurance company, the section applies as if the reference to the company's basic income tax liability in s 63-10 were a reference to the part of such an amount in respect of the company that is attributable to its shareholders.
- Time at which input tax credit entitlements cease – Currently, s 93-15 of the GST Act ensures that the input tax credit entitlement for a creditable acquisition ceased if the GST was no longer payable on a supply that would otherwise have given rise to that credit. For tax periods starting prior to 1 July 2012, s 93-15 denied an input tax credit where the GST had ceased to be payable because the Commissioner was out of time to recover it. This was primarily due to se 105-50 in Sch 1 to the TAA. As s 105-50 does not apply to tax periods starting on or after 1 July 2012, there is no longer another provision that uses the term "ceases to be payable". Therefore, the proposed amendment would make it clear that an entitlement to an ITC concerning GST on a supply ceases when the Commissioner is no longer able to amend an assessment of an assessable amount relating to the GST.
- Repeal of Assessed Net Amount Concept in the GST Act – it is proposed to remove s 17-15 of the GST Act as it is redundant. Currently, s 17-15 provides that a taxpayer's net amount for a tax period was worked out in accordance with the information provided in their GST return.
- Clarifying the operation of the consolidation tax cost setting rules for depreciating assets – a technical correction will be made re calculating the effective life of assets.
- Clarifying the operation of the consolidation provisions where an entity joins or leaves a group holding a bad debt.
- Benefit Certificates for Defined Benefit Superannuation Schemes - The proposed amendment would provide that superannuation funds must obtain a new benefit certificate only when there has been a change to the minimum benefits of a class of employees.
- Correct an error in the new special conditions for deductible gift recipients as a result of the introduction of the ACNC. The amendment would correct an incorrect allocation of category that currently incorrectly requires certain organisations to restructure existing arrangements even though they are already covered by the ACNC regulatory framework.

## Comments

Comments are due by 6 June 2014 and should be sent to: Jesse Murphy, Law Design Practice, The Treasury, Langton Crescent, PARKES ACT 2600; Email: [MiscTaxAmends@treasury.gov.au](mailto:MiscTaxAmends@treasury.gov.au). Enquiries should be directed to Jesse Murphy on (02) 6263 3690.

by Terry Hayes

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[\[663\]](#)    **The G20 tax agenda under Australia's presidency**



Speaking at the G20 Tax Symposium in Tokyo on 9 May 2014, [Mr Barry Sterland](#), G20 Finance Deputy, Australia, said that under Australia's Presidency, the G20 tax agenda is focused on 3 inter-related streams of work:

- The G20 and OECD project to address base erosion and profit shifting (so-called BEPS) to ensure profits are taxed in the location where the economic activity takes place. Mr Sterland said the digitalisation of the economy across all sectors has made it possible for businesses to have scale in a market without actually having a physical presence. Current transfer pricing rules are also challenged when attributing value to services and intellectual property, on which the digital world relies. As a result, "we are observing an increasing incidence of double non-taxation or unintended low taxation of certain multinational companies", he said. Mr Sterland said the G20 outcomes will need to meet the following key tests if they are to be durable:
  - They should be based on a conceptually rigorous framework.
  - The outcomes need to be inclusive and have buy-in from a wide range of stakeholders.
  - They must be seen to address the concerns of taxpayers that tax should be paid where the economic activity takes place. Artificial arrangements that rely on excessively technical arguments and solutions that don't address this in an intuitive sense "will no longer cut it". Any G20 proposed solutions will need to pass the "smell test".
  - Responses must be proportionate and targeted so as not to impose unnecessary red tape and uncertainty on business.
- The work on promoting and enhancing international tax transparency through greater exchange of information between tax administrators. This is designed to help address BEPS and will also be important in the broader fight against global tax avoidance and evasion. Together with G20 countries, the OECD has developed a new global standard for automatic exchange of information, whereby bulk taxpayer information can be exchanged between tax authorities without first requiring a request be made. For all G20 countries, plans will be presented to Ministers in September 2014, which will detail the timeframes for implementing the standard. Mr Sterland said the Australian Government will be consulting closely with stakeholders as it develops its implementation approach.
- To ensure that low-income and developing countries benefit from the G20/OECD work on BEPS and the exchange of information. For many developing and low-income countries, addressing BEPS and automatically exchanging tax information will be long-term goals. There will be other priorities that will also demand their attention. Mr Sterland said that is why engagement is key to the G20 understanding the obstacles those countries face, and to outline the paths that could be taken towards these goals.

by Terry Hayes

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#### [\[664\]](#) "Promoters" of tax scheme: ATO view of *Ludekens* case

On 7 May 2014, the ATO issued a [Decision Impact Statement](#) on the Full Federal Court's decision in *FCT v Ludekens* [2013] FCAFC 100, reported at 2013 WTB 37 [1632].

The Full Court had unanimously allowed the Commissioner's appeal and held that 2 persons were "scheme promoters" in terms of Div 290 of the TAA and therefore were liable for civil penalties. In doing so, it overturned the decision at first instance (in *FCT v Ludekens & Anor* [2013] FCA 142: reported at 2013 WTB 10 [411]) which found, among other things, that the individuals could not be regarded as "promoters" or "marketers" of the managed investment scheme in question as they were merely involved in "developing and implementing" the scheme. On 11 April 2014, the High Court refused the 2 individuals special leave to appeal against the decision (see [\[2014\] HCATrans 86](#): reported at 2014 WTB 16 [589]).

Some of the key findings of the Full Court as noted by the ATO in its Decision Impact Statement are as follows:

- The Full Court concluded that Middleton J (at first instance) was wrong to find that the definition of "scheme benefit", when read as part of s 290-65, required the pleading and proving by the Commissioner of what would have been the tax-related liabilities of the relevant entities apart from the scheme, ie the "alternative postulate". The proper starting point for the statutory interaction is to recognise that s 290-65(1) is concerned with the purpose for which an entity has entered into or carried out a scheme. The focus of the provision, at the time of the conduct in s 290-50(1), is on what it was reasonable to conclude that the entity was proposing to do and why, and not on positing what might have been done, removed from what was done.
- The Full Court concluded that Middleton J was wrong to find that it was not reasonable to conclude that each respondent entered into or carried out the Plan with the dominant purpose of the signatories or the Secondary Investors getting a scheme benefit.
- The Full Court concluded that the construction by Middleton J of the definition of "promoter" in s 290-60 was too narrow. The words used in para 290-60(1)(a) are wide, and are not limited to making offers to participate in a scheme. In an appropriate context, "otherwise encourages the growth of the scheme or interest in it", can include conduct of developing and implementing a scheme.
- The Full Court concluded that the construction by Middleton J of "consideration in respect of that marketing or encouragement" in para 290-60(1)(b) was too narrow, and that his Honour was wrong to conclude that there was no consideration received by the respondents in respect of marketing or encouragement.

The ATO said the views of the Full Court about the operation of ss 290-60 and 290-65 were consistent with the Commissioner's submissions to the Court. The ATO said it also respectfully accepted the views of both Middleton J and the Full Court about why neither individual had contravened s 290-50(2).

by Lisa Lynch

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## [\[665\]](#) **Simpler MyTax prefilled tax returns to be introduced**

The Government [has announced](#) that it will introduce new and simpler tax returns, known as *MyTax*, that will allow people to lodge their tax return through a smartphone, tablet or computer using their web browser. From 1 July 2014, the ATO will provide an online and substantially pre-prepared tax return for people without complex tax affairs.

The Treasurer said millions of taxpayers will only need to review or change prefilled information before lodging their return. The ATO will prefill tax returns with information provided by other organisations such as banks and employers. *MyTax* will have some key differences to the current service. It will be fully online rather than requiring a software download and installation, it will be a more contemporary design, it will be available on mobile devices and will automatically pre-fills information.

Taxpayers will be able to use *MyTax* if:

- they were an Australian resident for the financial year;
- they have income only from salary, wages, allowances, bank interest, dividends and/or Australian government payments;
- their only deductions are for work-related expenses, expenses related to interest or dividend income, donations and/or the costs of managing their tax affairs; and
- the only offsets they want to claim are the senior and pensioner tax offset and/or zone and overseas forces tax offset.

Taxpayers will receive an SMS or email from the ATO advising that *MyTax* may be right for them.

**Exclusions:** Taxpayers will not be eligible to use *MyTax* if they have business income or losses, rental properties, partnerships or trusts (including managed investment trusts), capital gains or losses, foreign income, lump sum payments, employee share schemes, or superannuation income streams and superannuation lump sum payments.

Source: [Treasurer's media release, 4 May 2014](#)

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## **[666] Tax and BAS agents' personal tax obligations; beware of tax fraud: TPB**

The Tax Practitioners Board (TPB) has [reminded registered tax and BAS agents](#) that it is important for them to keep their personal tax obligations up-to-date. Registered tax and BAS agents who fail to meet their personal tax obligations are breaching the Code of Professional Conduct (Code item 2) contained in the *Tax Agent Services Act 2009* (TASA).

In the last 12 months, the Board said it completed around 145 investigations of registered tax and BAS agents who had failed to lodge their personal income tax returns or BASs. It said the investigations have resulted in 17 agents' registrations being terminated, 96 formal written cautions issued, and 4 formal orders to take action being issued.

The Board said it plans to continue investigating tax and BAS agents who have failed to lodge their personal income tax returns or BASs. It will also investigate where an agent has an outstanding tax bill and has not come to an arrangement with the Tax Commissioner to pay amounts owing.

### **Beware of tax fraud**

The TPB has also [reminded tax agents](#) to be wary of requests by third parties to lodge multiple income tax returns on behalf of community groups, workplace groups, overseas students or itinerant workers. Third parties may claim to be acting on the authority of a number of taxpayers and approach an agent to lodge their income tax returns. However, the Board said registered tax agents have an obligation to take reasonable steps to ascertain a client's state of affairs and to verify information. It added that agents should also protect their business from fraudulent activities by keeping personal information safe and secure from unauthorised access and misuse.

### **Other updates**

The Tax Practitioners Board (TPB) has also issued the following updates:

- [Getting your renewal processed faster](#) - the TPB has reminded agents that they must apply to renew their registration 30 days before it expires. It has also reminded agents to provide all relevant documentation and information and pay the application fee when lodging the application (otherwise the application may take longer for the Board to process).
- [Update your details online](#) - the TPB says agents should update any changes to their contact details online through the Login on the TPB website.
- [Meet the TPB in Queensland](#) - the TPB will be in Brisbane, the Sunshine Coast and the Gold Coast on 10-12 June 2014. There will be specific presentations for tax agents and BAS agents, and also presentations for financial advisers who provide tax advice in the context of financial services.

by Lisa Lynch

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[▲Return to Top](#)**[667] ATO releases updated Large business and tax compliance booklet**

The Tax Commissioner has released a "refreshed" version of [Large business and tax compliance booklet](#). The booklet sets out the ATO's views on good tax governance, ATO's approach to "working together" with large businesses, how the ATO manages tax risk, and active compliance approaches. Mr Jordan said the publication "seeks to provide a tangible demonstration of [the ATO's] commitment to transparency and accountability". He said he was also "pleased to see the mutual expectations outlined in the LBTC publication are already being used to guide a consistent and professional relationship".

The Commissioner noted the ATO's risk-differentiation framework (RDF) has been refined and enhanced since the last LBTC publication 2 years ago. Mr Jordan added the ATO was now also extending the framework to small-to-medium enterprises and tax practitioners. The booklet set out factors the ATO uses to determine RDF categorisation and how it uses the RDF to address tax risk.

Mr Jordan said looking forward, the ATO remains "committed to administering the tax system efficiently and exploring ways to provide practical certainty". He said the introduction of the reportable tax position schedule and pre-lodgment compliance reviews are part of this approach. "Both our reportable tax positions and pre-lodgment compliance reviews emphasise the importance we place on the early identification and resolution of issues and support our shift from post-lodgment compliance activities to a real-time engagement model," the Commissioner said.

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[▲Return to Top](#)**[668] Age Pension age to rise to 70 by 2035, says Treasurer**

The Treasurer [has confirmed](#) that the Government plans to raise the eligibility age for the Age Pension to 70 by 2035. He said, however, that people who are 65 today will not lose their pension.

Mr Hockey said the Government was focused on "what is deliverable and achievable [sustainable] over the medium and long term and one area that needs to be properly addressed is the eligibility for the Age Pension". He said the Age Pension expenditure today (\$39bn a year, and growing rapidly) is currently more than Australia spends on defence. Mr Hockey said that when Labor increased the Age Pension age to 67 by 2023, the Coalition gave them bi-partisan support. He said "when we introduce legislation to increase it to 70 by July 2035, 2035 that's when it will go to 70, we expect that there will be bi-partisan support".

The Treasurer said the Budget would prepare Australia for some of the demographic challenges ahead including the ageing of the population. He said that of every child born today, 1 in 3 will live to 100, and the country [and the Budget] has to prepare for that.

In flagging the need to rebuild the institutions and infrastructure of government, as identified by the Commission of Audit, the Treasurer said the Commission found that of the nearly 700 government bodies in existence at a Federal level, 93 non-principal bodies exist to provide advice to 194 principal bodies. Some 238 bodies exist to facilitate discussions between the State and the Commonwealth. In other words, Mr Hockey said "45% of government bodies exist to do what departments should be doing on a day-to-day basis".

Source: [Treasurer's address to the Australia-Israel Chamber of Commerce, Melbourne, 2 May 2014](#)

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### **[669] ATO online services now available through myGov**

The Acting Assistant Treasurer, Senator Mathias Cormann, [has announced](#) that the ATO's online services are now accessible through *myGov*. The *myGov* portal provides people with a quick and easy way to access online government. He said people can now link the ATO's online services to their *myGov* account and will soon be able to complete *myTax* or e-tax using *myGov* as their authentication.

Senator Cormann said people who set up *myGov* accounts can already link them to online member services from Medicare, Centrelink, Child Support, the Department of Veterans' Affairs, the National Disability Insurance Scheme and e-Health.

Source: [Acting Assistant Treasurer's media release, 6 May 2014](#)

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### **[670] Australian experiences of identity crime and misuse: national survey**

The Australian Institute of Criminology (AIC) has released [results of a national online survey](#) exploring the nature and scope of identity crime in Australia. The report commissioned by the Australian Government noted the misuse of personal information has been recognised in income tax evasion, customs duty and GST fraud, superannuation fraud, and welfare fraud.

The survey found that almost 1 in 10 people experienced misuse of their personal information in the previous 12 months, and 1 in 5 people experienced misuse of their personal information at some point in their lives. The survey also found that 5% of people experienced identity crime or misuse resulting in a financial loss in the previous 12 months. In announcing the results of the survey, Attorney-General George Brandis said the results "suggest identity crime directly affects around 1m Australians each year and is one of the most common types of crime in Australia".

Participants were asked how they believed their personal information had been misused on the most serious occasion in the previous 12 months. Most participants believed their personal information was misused to obtain money from a bank account (35.4%). Some participants believed their information was misused to file a fraudulent tax return (7.2%), to apply for government benefits (4.1%), or to obtain superannuation monies (5.1%). (Source: [Attorney-General's media release, 5 May 2014](#).)

#### **Document Verification Service launched**

In addition, the Attorney-General announced the Government's electronic Document Verification Service (DVS) is now available for use by businesses. The DVS helps businesses to protect themselves against identity crime and also makes it easier for businesses to meet regulatory obligations to verify customer identities. The DVS allows businesses to verify information "in real-time" on driver licences, passports, visas and Medicare cards directly with the issuing agency. The Government noted the system is not a database and does not store any personal information. Further, all DVS checks must be done with the informed consent of the person involved. Further information is available on the [DVS website](#). (Source: [Attorney-General's media release, 5 May 2014](#).)

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## **[671] OECD automatic exchange of tax information: over 60 countries have signed up**

Switzerland and Singapore have joined the ranks of countries agreeing to share tax information in a major step towards restriction of bank secrecy, the OECD has announced.

The *Declaration on Automatic Exchange of Information in Tax Matters* was endorsed during the [OECD's annual Ministerial Council meeting](#) in Paris on 6 May 2014 by all 34 member countries (including Australia), along with Argentina, Brazil, China, Colombia, Costa Rica, India, Indonesia, Latvia, Lithuania, Malaysia, Saudi Arabia, Singapore and South Africa. The OECD said that more than 60 countries and jurisdictions have now committed to early adoption of the standard, and additional Global Forum members are expected to join this group in the coming months.

The Declaration commits countries to implement a new single global standard on automatic exchange of information. The standard, which was developed at the OECD and endorsed by G20 finance ministers last February, obliges countries and jurisdictions to obtain all financial information from their financial institutions and exchange that information automatically with other jurisdictions on an annual basis.

While most of the countries had already in the past committed to sharing tax information on an automatic basis, Switzerland and Singapore, which both have important bank sectors built in part on banking secrecy, have now also signed up. "It's clearly the end of bank secrecy abused for tax purposes," OECD tax director Pascal Saint Amans told journalists.

The OECD will deliver a detailed Commentary on the new standard, as well as technical solutions to implement the actual information exchanges, during a meeting of G20 finance ministers in September 2014. G20 governments have mandated the OECD-hosted Global Forum on Transparency and Exchange of Information for Tax Purposes to monitor and review implementation of the standard.

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## **[672] Exchange rates for April 2014 and non-30 June year end**

The ATO has released the foreign currency exchange rates for April 2014.

All foreign income, deductions and foreign tax paid must be converted to Australian dollars before including it in tax returns. From 1 July 2003, there are specific rules that determine which exchange rate to use to convert these amounts - the core conversion rules are in s 960-50(1) of the ITAA 1997. Generally, these require amounts to be converted at the exchange rate prevailing at the time of a transaction, or at an average rate. If taxpayers require a foreign exchange rate for a currency not listed in the schedule, the ATO says they may use any reasonable externally sourced exchange rate for that currency.

Country	Av Apr 2014	Country	Av Apr 2014
Canada	1.0600	Philippines	43.2911
Denmark	5.2111	Poland	2.9193



Europe	0.7060	Saudi	3.5918
Fiji	1.7600	Singapore	1.2162
Hong Kong	7.4445	Solomon Islands	7.1270
India	56.8917	South Africa	10.1784
Israel	3.3549	Sri Lanka	124.9858
Japan	99.2326	Sweden	6.2923
Kuwait	0.2698	Switzerland	0.8520
New Cal/Tahiti	82.7242	Thailand	30.8111
New Zealand	1.1117	Turkey	2.0305
Norway	5.7782	UK	0.5774
Oman	0.3807	USA	0.9648
PNG	2.7517	Vanuatu	95.8800

**Thomson Reuters note:** the exchange rate for Europe in the above table applies to those countries that operate under the Euro, for example Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Portugal and Spain.

The ATO has also released the following end of financial year exchange rate information for countries whose financial year end falls in the first half of 2014:

Country	Year ended	Av exchange rate	Actual exchange rate: date - rate
South Africa	28/02/2014	9.7515	28/02/2014 - 9.9240
Hong Kong	31/03/2014	7.4621	31/03/2014 - 7.3987
New Zealand	31/03/2014	1.1688	31/03/2014 - 1.0983
UK companies	31/03/2014	0.6107	31/03/2014 - 0.5763
UK individuals	05/04/2014	0.6086	05/04/2014 - 0.5772

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### [\[673\]](#) Govt defers start date of super choice product dashboard

Acting Assistant Treasurer Senator Mathias Cormann has announced that the Government has [decided to defer the start date](#) for the choice product dashboard and the introduction of a portfolio holdings disclosure regime to 1 July 2015. The choice product dashboard is intended to enable greater comparability of superannuation products, while the introduction of a portfolio holdings disclosure regime will require reporting of specific superannuation fund investments.

He said it had become clear that large parts of the industry were not ready for implementation and that many issues remain unresolved. To proceed with the original timetable now would force too many industry participants into a state of non-compliance with legal requirements, Senator Cormann said. Therefore, the Government will defer the start date to 1 July 2015.

Comments received on a discussion paper that was released last year on the dashboard have been released on the [Treasury website](#).



Source: [Acting Assistant Treasurer's media release, 5 May 2014](#)

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## [674] Tax Office website updates

From the ATO website:

- [Public Rulings Program as at 30 April 2014](#) - Topics covered include: FBT; superannuation; foreign currency (Bitcoin); and GST.
- [Do your clients need to lodge a PAYG withholding variation?](#) - The [PAYG withholding variation application \(e-variation\)](#) for 2014-15 is now available to use. The ATO says the e-variation form should be used when the payee (the person receiving a payment) wants to reduce their PAYG withholding rate for the year ending 30 June 2015.
- [Secure activity statement payments](#) - Information on secure ways to make activity statement payments without needing to use a payment slip.
- [Tips for avoiding common errors on activity statements](#) - The ATO says taxpayers can avoid common mistakes by checking that all tax invoices are valid, checking that expenses and sales are for the current tax period, and checking that invoices are only entered once.
- [Progress of return](#) - Information on different ways to check the progress of income tax returns lodged for individuals.
- [ATO myGov Terms and Conditions and Privacy Notices](#) - Contains information on the rights and responsibilities of myGov account users accessing online services for individuals. See also para [669] of this *Bulletin*.
- [Tax evasion and crime - Deputy Commissioner update](#) - The first of a regular update from the ATO Deputy Commissioner Serious Non-compliance on the fight against tax crime. Also covers Project DO IT.
- [About the cash and hidden economy](#) - Information on the cash economy and what the ATO is doing about it.
- [Keeping it fair - the cash and hidden economy](#) - The ATO has produced a video highlighting the affect unfair competition has on honest small businesses.
- [SMSF messaging service providers](#) - To help SMSF trustees obtain an electronic service address, the ATO has published a register of SuperStream messaging solution providers that may be able to assist. Updated as at 9 May 2014.
- [SMSF annual returns](#) - The ATO has reminded all SMSFs that they need to lodge an SMSF annual return each year in order to: report income tax; report super regulatory information; report member contributions; and pay the supervisory levy.
- [SuperSeeker](#) and [Your 5-step super check](#) and [Young workers and super](#) - Information on ways to keep track of and manage super.

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## [675] Deductibility of vaccination expenses: ATO ID withdrawn

On 9 May 2014, the ATO withdrew [ATO ID 2002/776](#) (Deductibility of vaccination expenses) as it said the decision

is implied with Taxation Ruling TR 93/15 and Draft TR 2007/D10. The ATO ID had stated that an employer was entitled to a deduction under s 8-1 of the ITAA 1997 for medical expenses incurred to vaccinate employees against Q fever, which is a well recognised occupational hazard in the cattle industry.

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## LEGISLATION

### [676] Resumption of debate on Bills in Federal Parliament

Federal Parliament resumes on Tuesday, 13 May 2014 (with the Federal Budget to be handed down on that day). Debate on Bills is scheduled to resume as follows.

#### HOUSE OF REPS

Tuesday 13 May 2014 after 7:30pm has been set aside for the introduction of any Budget-related Bills.

#### SENATE

##### Tue 13 May 2014

- **[Social Security Amendment \(Increased Employment Participation\) Bill 2014](#)** - proposes to amend the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, and the ITAA 1997 to enable the implementation of the Government's Job Commitment Bonus and the Relocation Assistance to Take Up a Job programme - see 2014 WTB 9 [296]. Young Australians aged from 18-30 who have been receiving Newstart Allowance or Youth Allowance (other than as an apprentice or a full-time student) for a period of at least 12 months will be eligible to receive a tax-free payment of \$2,500 if they remain in gainful work and off income support for a continuous period of at least 12 months. The Bill had passed the House of Reps without amendment.

##### Wed 14 May 2014

- **[Higher Education Support Amendment \(Savings and Other Measures\) Bill 2013](#)** - proposes to remove the current 10% HECS-HELP up-front payment discount - see 2013 WTB 49 [2111]. It had been passed by the House of Reps without amendment on 3 December 2013.

##### Thur 15 May 2014

- **[Tax Laws Amendment \(2014 Measures No 1\) Bill 2014](#)** - The Bill contains amendments: (i) to amend the GST Act and the *Taxation Administration Act 1953* to ensure that excess GST paid is only refundable in certain circumstances; and (ii) to make changes concerning the Farm Management Deposits Scheme - see 2014 WTB 13 [462]. The Bill was introduced in the House of Reps on 27 May 2014 and is still before the House, so its debate in the Senate is subject to it passing the House.
- **[Tax Laws Amendment \(Research and Development\) Bill 2013](#)** - proposes to limit access to the R&D tax incentive to companies with an aggregated assessable income of less than \$20bn - see 2013 WTB 48 [2058]. Companies that have aggregated assessable incomes of \$20bn or more will be able to apply the normal income tax rules to their expenditure on R&D activities. The Bill had been passed by the House of Reps without amendment. The Senate Economics Legislation Committee has recommended that the Bill be passed.
- **[Tax Bonus for Working Australians' Repeal Bill 2013](#)** - proposes to repeal the *Tax Bonus for Working Australians Act (No 2) 2009* to ensure that the Commissioner of Taxation does not make any further tax bonus payments. The Bill also makes consequential amendments to the taxation laws as a result of the

repeal of the Tax Bonus Act. See 2013 WTB 52 [2246]. Tax bonuses were paid to Australian residents who paid tax in the 2007-08 income year and who met certain income tests. Eligible taxpayers received \$900 where their taxable income was up to \$80,000; \$600 where their taxable income was over \$80,000 but less than \$90,000; or \$250 where their taxable income was over \$90,000 but less than \$100,000. The Bill had passed the House of Reps without amendment.

- **[Statute Law Revision Bill \(No 1\) 2014](#)** and **[Amending Acts 1901 to 1969 Repeal Bill 2014](#)** – together with the *Omnibus Repeal Day (Autumn 2014) Bill 2014* (which has been referred to the Senate Finance and Public Administration Legislation Committee for report by 14 May 2014), these Bills propose to amend or repeal legislation across 10 portfolios, including Treasury. The Bills also include measures that repeal redundant and spent Acts and provisions in Commonwealth Acts. All 3 Bills had been passed by the House of Reps without amendment. In total, the 3 Bills will repeal over 1,000 Commonwealth Acts - see 2014 WTB 12 [417].
- **[Regulatory Powers \(Standard Provisions\) Bill 2014](#)** - the *Regulatory Powers (Standard Provisions) Bill 2013* sought to provide for a framework of standard regulatory powers exercised by agencies across the Commonwealth. The Bill was amended in the House of Reps (61 Government amendments) and was before the Senate when the election was called - see 2012 WTB 43 [1778]. The Bill was re-introduced by the Government as the **[Regulatory Powers \(Standard Provisions\) Bill 2014](#)** on 20 March 2014 and is still before the House of Reps, so its debate in the Senate is conditional on its passage by the House.

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## **[677] Tax and related legislation proposed for introduction in Winter Sittings**

The following Bills are proposed for introduction in Federal Parliament's 2014 Winter Sittings (to run 13 May to 17 July 2014) - Bills marked # are proposed for introduction and passage in the Winter Sittings:

- **[Tax and Superannuation Laws Amendment \(2014 Measures No 2\) Bill 2014 #](#)** - would:
  - protect taxpayers who self-assessed in reliance on unenacted measures not proceeded with. This would implement the Government's announcement on [6 November 2013](#) that there will be legislated protection for any taxpayer who has self-assessed with announced changes that the Government will not proceed with": see also 2013 WTB 47 [1983];
  - restate and standardise the special conditions (particularly the "in Australia" conditions) that apply to tax exempt entities. Would implement a 2009-10 Budget measure and the announcement on [14 December 2013](#): see also 2013 WTB 53 [2270];
  - make amendments to the investment manager regime rules to introduce the final stage of reforms. Would implement a 2013-14 Budget measure and announcement on [6 November 2013](#): see also 2013 WTB 47 [1983];
- **[Tax and Superannuation Laws Amendment \(2014 Measures No 3\) Bill 2014 #](#)** - would:
  - protect the corporate tax base by restricting the current immediate deduction for exploration to genuine exploration expenditure. Would implement an election commitment and the announcement on [6 November 2013](#): see also 2013 WTB 47 [1983];
  - protect the corporate tax base by removing loopholes from the income tax consolidation regime. Would implement an election commitment and the announcement on [6 November 2013](#): see also 2013 WTB 47 [1983];
  - introduce an integrity rule to limit the gross-up and tax offset rules within the dividend imputation system applying in cases where taxpayers have engaged in an arrangement referred to as "dividend washing". Would implement a 2013-14 Budget measure and announcement on [6 November 2013](#): see also 2013 WTB 47 [1983];

- **Tax and Superannuation Laws Amendment (2014 Measures No 4) Bill 2014 #** - would:
  - ensure foreign pension funds can access the Managed Investment Trust Withholding Tax regime. Would implement an election commitment and the announcement on [6 November 2013](#): see also 2013 WTB 47 [1983];
  - improve the integrity of the foreign resident CGT regime through technical amendments to the principal asset test in Div 855. Would implement an election commitment and the announcement on [6 November 2013](#): see also 2013 WTB 47 [1983]; and
- **International Tax Agreements Amendment Bill (No 1) 2014** - would give the force of law to the revised tax treaty with Switzerland. Would implement an election commitment and announcement on [6 November 2013](#): see also 2013 WTB 47 [1983];

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## CASES

### [\[678\]](#) Final orders re TARP "principal asset" test in *Resource Capital Fund* case

#### - *FCT v Resource Capital Fund III LP (No 2)*

Following the decision of the Full Federal Court in *FCT v Resource Capital Fund III LP* [2014] FCAFC 37 (see 2014 WTB 14 [508]) in which the Full Court unanimously allowed the Commissioner's appeal and held that the taxpayer, a non-resident limited partnership, was assessable on a capital gain of \$58m it made on the sale of shares it held in an Australian company that carried out mining operations in Australia, the Full Court has given its final orders in the matter after directing that the parties confer and serve agreed minutes of orders. The parties could not agree on the form of orders and each filed their own submissions.

In particular, the orders sought directions from the parties as to which of 2 dates (July 2007 and January 2008) the taxpayer breached the "principal asset" test under the "taxable Australian real property" (TARP) provisions of Div 855 of the ITAA 1997. In disposing of the matter, the Full Court accepted that the taxpayer's concession, on the basis of the relevant valuation evidence, that the test was breached on the second relevant date in question, but not the first.

The issue was of importance because, in agreeing to the second date, it was acknowledged by both parties that it was possible to attribute market values to the mining information and plant and equipment on the basis of an assumed simultaneous sale of relevant assets to the same hypothetical purchaser with the capacity to use those assets in combination in a gold mining operation at their highest and best use. Furthermore, in doing so, it was also acknowledged there was evidence of their replacement and scrap values and that, as rational negotiating parties would each take half the difference rather than none of it, a figure could be arrived at by taking the mid-point between the replacement and scrap values of those assets.

Finally in dismissing the matter, the Full Court also re-emphasised that it did not accept as a proper basis for valuation an unsupported and speculative proposition that market value was to be assessed in this way. Moreover, it restated its original finding that as the taxpayer's adopted valuation hypotheses and methods were inconsistent with the hypotheses and methods that the Full Court considered to be the correct approach, the taxpayer had not discharged its burden of proof that the Commissioner's assessments were excessive. The end result was that the Commissioner's appeal was allowed and he succeeded on the TARP issue on both of the dates in question.

#### Thomson Reuters comment

Note that in the 2013-14 Budget, the then Government announced that the "principal asset" test would be amended so that the value of intangible assets, and in particular mining information, that is connected to the mining, quarrying or prospecting rights for natural resources (which are defined TARP assets) will be treated as part of the value of the rights to which they relate. Also, the amendments will apply to other intangible assets such as quarrying or prospecting information, rights to such information and goodwill.

*FCT v Resource Capital Fund III LP (No 2) [2014] FCAFC 54, Full Federal Court, Middleton, Robertson and Davies JJ, 2 May 2014*

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## **[679] Tax agent registration suspension period increased to 12 months**

### **- AAT Case [2014] AATA 260, Re Cleary and Tax Practitioners Board**

The AAT has increased the period of suspension of a tax agent's registration under s 30-25 of the *Tax Agent Services Act 2009* (TASA) from 3 months to 12 months with effect from 17 April 2014.

In May 2013, the Tax Practitioners Board notified the tax agent of its decision to suspend his registration for a period of 3 months (from 26 June 2013 to 26 September 2013). That decision was stayed until the present proceedings.

The Tribunal heard that the tax agent did not dispute the details of alleged breaches of the Code of Professional Conduct, which included: failing to lodge his personal income tax returns for the 2009 to 2011 financial years by the due dates; failing to lodge his BASs for the period 1 July 2011 to 30 September 2012 by the due dates; failing to lodge partnership income tax returns for the 2009, 2010 and 2011 financial years by the due dates; failing to lodge the partnership's BASs for the July 2011 to September 2012 quarters by the due dates; failing to pay personal tax debts and his client account centre debt by the due dates; and failing to pay employee super contributions during the 2007, 2010 and 2012 financial years (the agent disputed the non-payment of super contributions for 2 of his employees).

The tax agent claimed his reasons for non-compliance included the costs and issues arising from his wife's spinal surgery treatments, lack of available finances and insufficient time to attend to his personal affairs due to his professional workload. The tax agent argued he had already served a period of self-imposed suspension and that further suspension would be deleterious to his business and his ability to satisfy his tax liability.

The Tribunal noted the evidence presented and found the agent had not taken steps to modify his practices in an effort to avoid breaches or to attend to his ongoing breaches. It was also in evidence that the agent was still not paying super guarantee contributions to his current employees. The Tribunal was also of the view the agent had not demonstrated any contrition for his actions nor appeared to appreciate the seriousness of his breaches of the tax laws. In the circumstances, the Tribunal determined the agent's registration suspension should be varied by increasing it to 12 months with effect from 17 April 2014.

*AAT Case [2014] AATA 260, Re Cleary and Tax Practitioners Board, AAT, Ref No: 2013/3064, Cunningham SM, 2 May 2014*

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## RULINGS

### [\[680\]](#) Return of capital; scrip-for-scrip

#### - Class Rulings CR 2014/41-42

On 7 May 2014, the ATO issued the following Class Rulings:

- **CR 2014/41:** Aviva Corporation Limited: return of capital. It applies to ordinary shareholders of Aviva Corporation Ltd who were listed on the share register at the record date of 24 March 2014. The Ruling states that the return of capital to shareholders is not a dividend as defined in s 6(1) of the ITAA 1936. It also outlines the CGT consequences for Australian and foreign resident shareholders. The Ruling applies from 1 July 2013 to 30 June 2014.
- **CR 2014/42:** Scrip-for-scrip: exchange of shares in Envestra for APA stapled securities. It applies to Australian resident shareholders of Envestra who participate in the exchange of shares as outlined in the Ruling. The Ruling states that if a capital gain is made, shareholders are able to choose a partial scrip-for-scrip rollover under s 124-790(1) of the ITAA 1997 in relation to the disposal of Envestra shares and replacement APT units. It also sets out the consequences where rollover is not chosen, and identifies the cost base of the APT units issued. The Ruling applies from 1 July 2013 to 30 June 2015.

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### [\[681\]](#) Addendum to Class Ruling: FBT and gift cards

On 7 May 2014, the ATO issued an **Addendum to Class Ruling CR 2014/26** (FBT: employer clients of Universal Gift Card Pty Ltd who make use of Universal Gift Card Pty Ltd's Minor expenses card) to broadly reflect changes in the amount that is preloaded on the Minor expenses card, and the monthly limit on the use of the Minor expenses card. It applies on and from 12 March 2014.

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### [\[682\]](#) Erratum to GST Ruling: supplies to non-residents

On 7 May 2014, the ATO issued an **Erratum to GST Ruling GSTR 2005/6** (The scope of s 38-190(3) and its application to supplies of things (other than goods or real property) made to non-residents that are GST-free under item 2 in the table in s 38-190(1) of the GST Act) to correct it for a typographical error. It applies on and from 3 April 2013.

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**[683] Withdrawal of GST Advice: face value vouchers**

The ATO has *withdrawn GST Advice GSTA TPP 022* (Is the fee for services provided by an entity to a retail outlet for the administration of an arrangement involving section 100-5 vouchers, commonly referred to as face value vouchers (FVVs), subject to GST?) with effect from 7 May 2014 as it says the Commissioner's view regarding the GST consequences of fees for administrative services for an arrangement involving FVVs are now contained in GSTR 2003/5 (Vouchers), and as such the Advice is no longer necessary.

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**STATE TAXES****[684] NSW payroll tax: rebate under Fresh Start Support: Bill update**

The *Payroll Tax Rebate Scheme (Jobs Action Plan) Amendment (Fresh Start Support) Bill 2014* (NSW) has passed the NSW Legislative Assembly without amendment and has moved to the Legislative Council. The Bill proposes to amend the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011* (NSW) to implement the NSW Government's proposed support scheme to provide for an additional payroll tax rebate in respect of the employment of persons whose employment with particular employers has been terminated because of redundancy. The proposed rebate amount of \$1,000 is to apply in relation to the first year of eligible employment under the Act of a person who has been made redundant: see 2014 WTB 10 [356].

by Lisa Lynch

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**[685] NSW payroll tax: de-grouping allowed****- *Seovic Civil Engineering Pty Ltd & Ors v Chief Comr of State Revenue***

The NSW Civil and Administrative Tribunal has ordered the Commissioner to exercise his discretion to de-group 3 taxpayers under s 79 of the *Payroll Tax Act 2007* (NSW).

The Commissioner had issued payroll tax assessments to the taxpayers for the financial years 2008 and 2012. During the relevant years, one of the taxpayers (Excell Management Pty Ltd) supplied contract workers to the other 2 taxpayers (Seovic Civil Engineering Pty Ltd and Seovic Engineering Pty Ltd). It was common ground that Civil and Excell constituted a group and Engineering and Excell constituted a group under s 72 of the Payroll Tax Act. It was also not disputed that the 3 taxpayers were a group under s 74 of the Payroll Tax Act. The directors and shareholders of the 3 taxpayers were various members of the S family. The only issue was whether the Commissioner should exercise his discretion to de-group the taxpayers.

The Tribunal noted the Commissioner has accepted that Civil and Engineering each carried on a business independently of each other and without any connection with each other. They were only grouped under s 72 during the relevant period because the provisions applied when contract workers were supplied by Excell to Civil and to Engineering. The larger group was created by the automatic operation of the provisions of s 74, and as soon as Excell ceased its business to supply contract workers to Civil and Engineering, both Civil and Engineering



were again entitled to their respective threshold.

The Tribunal remitted the matter to the Commissioner to exercise his discretion to de-group the taxpayers. It held there were "ample grounds" for the exercise of the discretion "to avoid of what can be best described as a harsh and unreasonable outcome on the technical application of the grouping provisions". In this matter, the Tribunal said "Excell was conducting quite an independent business in the relevant period, being the supply of contract workers." It added that although Excell was owned by a member of the S family, "there was no evidence of any control by either Civil or Engineering in the management of Excell."

*Seovic Civil Engineering Pty Ltd & Ors v Chief Comr of State Revenue [2014] NSWCATAD 52, NSW Civil and Administrative Tribunal, Verick SM, 30 April 2014*

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## **[686] NSW land tax: primary production exemption refused**

### **- Jamsapi Pty Ltd v Chief Comr of State Revenue**

The NSW Civil and Administrative Tribunal has affirmed land tax assessments issued to a taxpayer for the 2010, 2012 and 2013 land tax years and refused the taxpayer's claim for the primary production land tax exemption under the *Land Tax Management Act 1956* (NSW).

The matter concerned 5 parcels of rural land owned by the taxpayer during the relevant years. The taxpayer claimed the land was used for primary production – this included cattle grazing but mainly for horse breeding (ponies). The Commissioner refused the taxpayer's claim and contended the land was substantially unused land.

The Tribunal held the taxpayer had failed to discharge the onus to establish "all matters necessary to enable the Tribunal to answer the statutory question in its favour". The Tribunal said the taxpayer was required to produce evidence that, in the relevant years, the dominant use of the land was for the maintenance of cattle or horses for the purpose of selling them or their natural increase or bodily produce. The Tribunal said there was no evidence before it to determine the intensity of the claimed primary production activity on the land.

*Jamsapi Pty Ltd v Chief Comr of State Revenue [2014] NSWCATAD 57, NSW Civil and Administrative Tribunal, Verick SM, 8 May 2014*

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## **[687] Victorian Budget 2014: payroll tax rate to be reduced; life insurance stamp duty to be abolished**

The [Victorian Budget 2014-15](#) was handed down on 6 May 2014. The Victorian Treasurer Michael O'Brien announced the State Budget "will deliver an operating surplus of \$1.3bn in 2014-15 growing to \$3.3bn by 2017-18." Revenue measures announced included:

- from 1 July 2014, payroll tax rate will be reduced from 4.9% to 4.85%;
- from 1 July 2014, the duty payable on life insurance in Victoria will be abolished;
- from 1 July 2014, the motor vehicle duty rate will be increased by \$0.40 per \$200 of the dutiable value of a

vehicle; and

- from 1 July 2015, a new Metropolitan Planning Levy will be introduced.

### Life insurance stamp duty abolition welcomed: FSC

The Financial Services Council (FSC) has welcomed the Victorian Budget proposal to abolish stamp duty on life insurance. In doing so, it called on other Australian states and the NT to follow Victoria and the ACT in abolishing stamp duty on life insurance products. (Source: [FSC media release, 6 May 2014](#).)

### Budget and Other Measures Bill introduced

The ***Building a Better Victoria (State Tax and Other Legislation Amendment) Bill 2014*** (Vic) was introduced into the Victorian Legislative Assembly on 6 May 2014. It proposes to implement the Budget proposals, as well as other changes.

Some of the key amendments are as follows:

- amendments to the *Payroll Tax Act 2007* (Vic) to reduce the rate of payroll tax from 4.90% to 4.85% with effect from 1 July 2014;
- amendments to the *Duties Act 2000* (Vic) to: abolish duty on life insurance; provide for the duty treatment of insurance riders; increase the rate of duty on the application for registration or transfer of a motor vehicle by \$0.40 per \$200 from 1 July 2014;
- amendments to the *Land Tax Act 2005* (Vic) to, among other things, address minor technical and administrative issues identified in respect of land held on trust and primary production land;
- amendments to the *Taxation Administration Act 1997* (Vic) to: permit the disclosure of information obtained under or in relation to the administration of a taxation law in connection with the administration of the First Home Owner Grant in another Australian jurisdiction; and permit the disclosure of information obtained under or in relation to the administration of a taxation law to additional persons for specified purposes.

The amendments listed above to the Land Tax Act and the TAA are proposed to commence on the day after the Bill receives Royal Assent.

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### [688] Vic: State Taxation Legislation Amendment Bill awaits Royal Assent

The ***State Taxation Legislation Amendment Bill 2014*** (Vic) has passed all stages of the Victorian Parliament, with 4 Government amendments made in the Legislative Assembly, and awaits Royal Assent. The Bill implements a number of measures announced in the Victorian State Budget Update for 2013-14 (handed down in December 2013), including measures in relation to the congestion levy and gaming arrangements. Among other things, the Bill also makes changes to the fire services property levy to address various technical and administrative issues, and to ensure that the fire services property levy can be adjusted retrospectively, where a supplementary valuation gives rise to a change in the levy: see 2014 WTB 6 [199]. The Government amendments concern transitional arrangements in relation to changes to the *Gambling Regulation Act 2003* (Vic).

### Date of effect

The changes concerning the *Congestion Levy Act 2005* (Vic), the *Gambling Regulation Act 2003* (Vic), and the *Valuation of Land Act 1960* (Vic) will commence on the day after the Bill receives Royal Assent. The amendments to the *Fire Services Property Levy Act 2012* (Vic) will commence from 1 July 2014 to coincide with the beginning of the new levy year.

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### **[689] Vic payroll tax: 2014 annual reconciliation - SRO video**

The Victorian State Revenue Office (SRO) has produced a video to assist payroll tax taxpayers, or their agents, to complete their 2013-14 Annual Reconciliation. The SRO noted the Annual Reconciliation is due on 21 July 2014. The video is available via the [SRO YouTube channel](#).

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### **[690] WA Budget 2014-15: first homebuyers - stamp duty concession reduced**

The [WA Budget 2014-15](#) was handed down on 8 May 2014. The WA Treasurer Mike Nahan announced the following revenue proposals:

- a change to the thresholds for the first home owner rate (FHOR) of duty for established homes to lower the maximum eligibility threshold for the concession from \$600,000 to \$530,000, and lower the tax-free threshold for an eligible transaction from \$500,000 to \$430,000; and
- a 10% increase in the land tax rates applying from the 2014-15 land tax assessment year.

The change to the FHOR of duty is to commence from the later of 1 July 2014 or the day after the amending legislation receives Royal Assent. There is no change to the eligibility thresholds for vacant land, which remain at \$400,000 and \$300,000 respectively.

The Government also reaffirmed the commitment announced in the 2013-14 State Budget to increase the annual tax free threshold for payroll tax from \$750,000 to \$800,000 from 1 July 2014 and \$850,000 from 1 July 2016.

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### **[691] WA land tax: changes to primary producer exemption on the way**

The WA Government says it has "informally reviewed the operation of the existing land tax exemption for primary production to look at options for modernising and simplifying the exemption". WA Treasurer Mike Nahan said the review's recommendations included simplifying existing exemption requirements, clarifying the application of the exemption where land is used for both primary production and secondary processing, and extending the exemption to situations where the land is used for primary production by another family member. Dr Nahan said "the proposed changes will ensure primary producers are eligible for the exemption on land used to grow, for example, grapes or olives even if the produce is sold as wine or olive oil."

WA Finance Minister Dean Nalder said the WA Government was "proposing to dispense with some of the more complex and onerous exemption requirements and replace these with more modern and flexible business tests". In this regard, the WA Government says "targeted consultation" will commence once draft legislation is available,

which is expected to occur during June-July 2014, with possible introduction of legislation in the WA Parliament in the second half of 2014. Mr Nalder indicated that the changes would apply from the 2014-15 land tax assessment year.

Source: [WA Treasurer and WA Finance Minister's joint media release. 7 May 2014](#)

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## [\[692\]](#) **Tas: Payroll Tax Rebate; First Home Owner Grant: Amendment Bills introduced**

The following Tasmanian Bills were introduced in the Tasmanian House of Assembly on 7 May 2014:

- **Employment Incentive Scheme (Payroll Tax Rebate) Amendment Bill 2014** - proposes to amend the *Employment Incentive Scheme (Payroll Tax Rebate) Act 2009* (Tas) to implement a fourth tranche of the payroll tax rebate scheme and provide payroll tax incentives for medium and large businesses to create and retain new jobs in Tasmania. The amendments establish a scheme for the payment of rebates equivalent to the payroll tax paid on new employment created between 30 June 2014 and 30 June 2015 (the job creation phase), provided that the new positions are maintained until 30 June 2016 (the end of the job retention phase). The scheme will be capped at \$4m. If it is likely that the scheme during the job creation phase would be exceeded, the amendments include a provision allowing the Treasurer to publish a notice to limit the scheme in terms of duration and the amount of rebate payable.
- **First Home Owner Grant Amendment Bill 2014** - proposes to amend the *First Home Owner Grant Act 2000* (Tas) to provide legislative certainty to the previous State Government's policy of increasing the First Home Builder Boost (FHBB) from \$15,000 to \$30,000 for the period 7 November 2013 to 31 December 2014. The increased grant is currently being administered under a grant deed and the Government said it was preferable that the increased Boost be legislated.

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## THOMSON REUTERS NEWS

### [\[693\]](#) **Federal Budget 2014 - fast Thomson Reuters analysis**

The 2014-15 Federal Budget will be handed down on Tuesday, 13 May 2014. Some harsh measures are expected and confirmation of a temporary budget deficit levy, welfare cuts, and who knows what tax changes have created an air of keen anticipation around this year's Budget. The Government's pitch that everyone needs to share the Budget pain, including households, corporates, the public sector, and even parliamentarians themselves, has got our attention.

Despite the leaks and the kite-flying, the Budget always contains tax surprises. Get the first word on those surprises, and all the Budget news, from Thomson Reuters ... in our special Budget night *Weekly Tax Bulletin* report.

This year more than ever, it will be essential to get the details on Budget night, especially if some announced changes apply from Budget night. That's where Thomson Reuters can help. We will have our team of tax experts in

the Budget media lock-up reporting and analysing the Budget changes. It will be available soon after the Treasurer commences his Budget speech on 13 May.

As the first Budget of the new Coalition Government, anticipation and speculation concerning this year's Budget is high. The Budget is sure to contain many tax, superannuation, welfare and other changes, so it's important to **Get all the Federal Budget's relevant news on the night** - from Thomson Reuters. Look out for your special 2014 Budget Night Edition of the *Weekly Tax Bulletin*, Issue 20, which will come to you as part of your *Weekly Tax Bulletin* subscription.

by Terry Hayes

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