Session Outline

• Legislation
• Income
• Deductions
• CGT
• Indirect tax
• International Tax
• Taxation of superannuation
• Tax administration
• Tax controversy
• Tax reform.
Mining tax repeal start dates proclaimed

- Government will recommend 30 Sept 2014 as the commencement date for various schedules.
- It will have following dates of effect for most taxpayers:
  - Abolition of mining tax from 1 Oct 2014
  - Wind back of SME asset write-off from 1 Jan 2014
  - Abolition of accelerated depreciation for motor vehicles from 1 Jan 2014
  - Abolition of company loss carry-back from 1 Jul 2013
- ATO has also released its administrative treatment.
Tax and Super Amendment (No 5) Bill introduced

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

- Introduced in the House of Reps
- Proposes the following amendments:
  - Abolish the mature age worker tax offset from 2014-15
  - Abolish the seafarer tax offset from 2015-16
  - Reduce rates of tax offset available under the R&D tax incentive by 1.5 percentage points
  - Update list of specifically listed DGRs.
Freezing of Medicare levy surcharge thresholds Bill

- *Private Health Insurance Amendment Bill (No 1) 2014* has been introduced in the House of Reps
- Proposes to pause income thresholds which determine the tiers for Medicare levy surcharge and rebate on private health insurance from 1 July 2015 for three years.
International Agreements Bill receives Assent

*International Tax Agreements Amendment Act 2014*

- Received Royal Assent on 24 September 2014 as Act No 105 of 2014
- had been passed by Parliament without amendment
- Amends *International Tax Agreements Act 1953* to give force of law in Australia to revised double tax agreement between Australia and Switzerland.
Governor-General has proclaimed 30 September 2014 as start date for Sch 1 to 5 of Mining Tax Repeal Bill.

It will have the following dates of effect for most taxpayers:
- Abolition of mining tax from 1 October 2014
- Abolition of company loss carry-back from 1 July 2013
- Reduction of instant asset write-off from 1 January 2014
- Abolition of accelerated depreciation for vehicles from 1 January 2014.
• *Tax and Superannuation Laws Amendment (2014 Measures No 4) Bill 2014* has been passed by Parliament without amendment and awaits Royal Assent

• Bill contained amendments to:
  – Tighten debt limit setting in thin cap
  – Ensure foreign residents CGT regime operates as intended
  – Reforms existing s 23AJ exemption re foreign non-portfolio dividends
  – Require FCT to issue tax receipts to individuals.
Tax and Super Amendment No 5 passes Reps

- **Tax and Superannuation Laws Amendment (2014 Measures No 5) Bill 2014** has been passed by the House of Reps without amendment and moves to the Senate.

- Bill contains amendments to:
  - Abolish mature worker offset
  - Abolish seafarer tax offset
  - Reduce rates of tax offset available under R&D tax incentive.
Labor’s motion to have *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014* disallowed has been defeated in the Senate.

Regulation makes a number of interim changes including:

- Remove “catch all” requirements re best interests duty
- Remove fee disclosure requirements for some clients
- Remove “opt-in” requirement
- Modify best interests duty.
Major FOI amendments Bill introduced

• Freedom of Information Amendment (New Arrangements) Bill 2014 has been introduced in the House of Reps
• Broadly, the amendments would abolish the Office of Australian Information Commissioner and streamline arrangements for exercise of privacy and FOI functions.
PSI: payments from service acquirers

Draft Taxation Determination TD 2014/D15

• It states a payment received by a personal service entity from a service acquirer during a period where no service is performed is personal services income

• Date of effect: Proposed to apply before and after its date of issue

• Comments due by 24 October 2014.
Purported loans were income

**AAT Case [2014] AATA 668, Re K A Hicks and Associates Pty Ltd & Ors v FCT**

- AAT has held a taxpayer failed to discharge onus of proving deposits into his bank accounts were not income
- Taxpayer argued amounts received were loans from an informal syndicate
- AAT also found an amount distributed from a family company to the taxpayer was assessable income.
Compensation assessable as ordinary income

**AAT Case [2014] AATA 664, Re Riley v FCT**

- AAT has held a payment made to a taxpayer for compensation re domestic assistance was assessable as ordinary income under s 6-5 of the *ITAA 1997*
- Payment was awarded by Workers Compensation Commission re domestic assistance taxpayer provided to her husband following an injury.
Interest in shares and “indeterminate rights”

Draft Taxation Determination TD 2014/D16

• It states that where a right to acquire a beneficial interest in a share is subject to shareholder approval, it is not a “indeterminate right” under s 83A-340(1) of the ITAA 1997
• Date of effect: Proposed to apply both before and after its date of issue
• Comments due by 24 October 2014.
Vesting dates allowed to be varied

Re Arthur Brady Family Trust; Re Trekmore Trading Trust [2014] QSC 244

• Supreme Court of Qld has allowed two discretionary trusts to amend vesting dates in their deeds
• Trustees sought the change to avoid substantial tax consequences
• Court noted there was no proposed transaction in the sense of dealing with another person, but rather desire to avoid the need to deal with trust property upon vesting date.
Relief obtained re non-commercial loss provisions

**AAT Case [2014] AATA 620, Re Bentivoglio v FCT**

- AAT has allowed a taxpayer relief from non-commercial loss provisions re olive growing and olive oil business
- Taxpayer was a medical practitioner and also carried on an olive business from 2010 to 2014
- Based on the facts AAT held he should be granted relief for 2010 to 2013 years, but not for the 2014 income year.
R&D tax concession claims mostly allowed

**AAT Case [2014] AATA 515, Re GHP 104 160 689 Pty Ltd v FCT**

- AAT has allowed most of a taxpayer’s claim for R&D expenditure at the 125% rate
- However, it disallowed other claims re overlapping expenditure
- Decision was based on analysis of the complex factual situation.
Damages settlement subject to CGT

**AAT Case [2014] AATA 622, Re Coshott v FCT**

- AAT has affirmed a taxpayer was liable to CGT on settlement payment re damages for breach of contract and negligence
- It did so on the basis that it was clear law that damages received by way of settlement of a legal claim could be subject to CGT.
Draft legislation: CGT exemption for compensation

- Government has released [draft legislation](#) to ensure a CGT exemption is available to trustees and beneficiaries who receive compensation or damages from certain insurance
- Comments due by 21 October 2014.
Over-claimed GST credits: penalty affirmed

**AAT Case [2014] AATA 631, Re Moore v FCT**

- AAT has affirmed FCT’s decision to impose a 50% administrative penalty for “recklessness”
- Matter related to audit conducted by FCT on the taxpayer which discovered over-claimed input tax credits
- AAT held taxpayer had failed to discharge the onus of proving the penalty was excessive.
GST input tax credits denied

**AAT Case [2014] AATA 614, Re The Trustee of Oenoviva (Australia & New Zealand) Plant and Equipment Trust v FCT**

- AAT held an individual did not have standing to act on behalf of a taxpayer (as trustee of the trust)
- Matter related to FCT’s refusal to allow a claim made by taxpayer as trustee of a trust for input tax credits.
Decision Impact Statement: notice of GST refund

• ATO has issued a [Decision Impact Statement](#) on AAT Case [2014] AATA 363, Re North Sydney Developments Pty Ltd and FCT

• AAT had held taxpayer’s letter to FCT satisfied “notification” requirement thereby extending time limit re entitlement to input tax credits

• ATO said it will review MT 2009/1.
Draft GST Ruling GSTR 2014/D4

- It explains FCT’s view on the meaning of “passed on” and “reimburse” for determining whether s 142-10 of the GST Act applies to an amount of excess GST
- Date of effect: Proposed to apply both before and after its date of issue
- Comments due by 7 November 2014.
Lowering GST-free import threshold: no agreement

• Treasurer has met with State and Territory Treasurers and indicated that they had not agreed a preferred workable approach on lowering GST-free import threshold

• He said Treasurers will continue to discuss these issues throughout development of the government’s White Papers.
GST: motor vehicle incentive payments

GST Ruling GSTR 2014/1

• It explains FCT’s view on GST consequences of incentive payments made by manufacturers to vehicle dealers
• Broadly, it outlines the following incentive payment situations:
  – A supply is made to the manufacturer for consideration
  – A supply is made to the customer for consideration
  – Where no supply is made for consideration
• Date of effect: Applies on or after 1 May 2014.
Software license payments held to be royalties

*Task Technology Pty Ltd v FCT [2014] FCAFC 113*

- Full Federal Court unanimously confirmed licensing payments by taxpayer to a Canadian software supplier were not excluded from being royalties
- It held that payments were not excluded by the “proviso” in Article 12(7) of the Australia/Canada DTA.
OECD/G20 BEPS project recommendations

- OECD has released its **first seven recommendations** re coordinated approach to combat tax avoidance under BEPS project
- Recommendations will be a key item on the agenda when G20 Finance Ministers convene at a meeting on 20-21 September 2014.
ATO has released a Decision Impact Statement on AAT Case [2014] AATA 474, Re Dowling v FCT

Case was a rehearing of matter as ordered by the Federal Court re excess super contributions

ATO said the case does not change its approach to excess contributions cases

However, it will consider whether amendments to PS LA 2008/1 are necessary.
Draft legislation: super fund mergers

• Government has released draft legislation to clarify that a tax integrity rule will not be triggered when super benefits are rolled over or as a part of a merger
• Comments due by 20 October 2014.
ATO reminder: electronic lodgment for businesses

• ATO said it has started contacting some businesses re need to lodge and pay electronically to avoid fines
• Businesses with a GST turnover of $20m or more are require to lodge their BASs and pay debts electronically
• Businesses that do not comply will be subject to a penalty of $850 per event.
TPB: tax (financial) adviser registration options

- Tax Practitioners Board has released updates on the transitional and standard options for registering as a tax (financial) adviser.
- It also released qualifications and experience requirements for registering as a tax (financial) adviser from 1 January 2016.
In a recent speech, Treasurer Joe Hockey said the government was firmly committed to ensuring that Australia tax is paid on profits earned in Australia.

He noted legislation that will prevent multinational companies from using hybrid financial arrangements and tightening of thin cap rules.
ATO voice authentication for telephone calls

• ATO has launched voice authentication to help callers save time on the phone
• Taxpayers contacting the ATO will be given the choice to record a short “voiceprint” that can be used to verify their identity for future calls.
Financial advice and SoA regs made

**Corporations Amendment (Statement of Advice) Regulation 2014**

- Has been registered
- It makes a number of amendments to the financial disclosure requirements and Statements of Advice (SoA)
- It commences on 1 January 2015.
Prohibition period upheld re tax agent registration

**AAT Case [2014] AATA 644, Re Su v The Tax Practitioners Board**

- AAT has upheld a period of three years during which a de-registered agent is prohibited from applying for registration
- Matter concerned the lodgment of tax returns by the applicant containing false information.
In a recent speech, Secretary to the Treasury discussed structural challenges of the economy and tax reform. He said key challenges include:

- Reliance on personal income taxes and corporate taxes
- Competitiveness of the tax system to attract investment
- Balance of incentives for people to work.
ATO speech: implications of OECD BEPS

• ATO DCT has delivered a speech providing insight into the Base Erosion and Profit Shifting (BEPS) Action Items discussed at the recent G20 Finance Ministers meeting.
• He also discussed the effects of hybrid mismatch arrangements and transfer pricing of intangibles.
Tax agent registration renewal denied

**AAT Case [2014] AATA 687, Re Burnett v Tax Practitioners Board**

- AAT has rejected a tax agent’s application for renewal of registration
- It was of the view the agent did not possess the level of competence in handling her clients’ tax affairs and therefore is not a “fit and proper” person to be a tax agent.
Application refused for tax debt relief

**AAT Case [2014] AATA 691, Re KNNW v FCT**

- AAT has upheld FCT’s decision refusing to release a taxpayer from his tax debt on grounds of “serious hardship”
- Debt resulted from denial of deductions claimed by taxpayer under a managed investment scheme.
Tax Practitioners Board (TPB) has released two draft information sheets on:

- **Meaning of “fee or other reward” for tax (financial) advisers**
- **The sufficient number requirement for partnership and company registered tax (financial) advisers**

Comments due by 24 October 2014.
ATO access to family court proceeding documents

- ATO has released a [Decision Impact Statement](#) on the decision in *FCT & Darling and Anor [2014] FamCAFC 59*
- Full Court of the Family Court had ruled the Court at first instance wrongly applied its discretion to prevent FCT from using certain documents
- ATO said FCT will have regard to factors considered by the Full Court of the Family Court in making any applications.
ATO small business case studies

• ATO has released small business case studies for the 2013-14 financial year covering:
  – Reduction of instant asset write-off threshold
  – Removal of accelerated initial deduction for motor vehicles
• ATO notes the changes are effective from 1 January 2014 and may affect 2013-14 business tax returns.
Senate Committee inquiry into tax minimisation

- Senate has agreed to have the following matter referred to the Senate Economics Reference Committee for report:
  - Tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia
- The report is due by the first sitting day of June 2015.
Failure to provide security for tax liabilities

Soong v Director of Public Prosecutions (Cth) [2014] NSWSC 1030

- NSW Supreme Court has dismissed a company director’s appeal against a ruling that convicted and fined her for failing to provide security for tax liabilities.
- Matter related to seven notices from the DPP to give security for due payment of future tax-related liabilities.
Tax (financial) adviser registration options: updates

• Tax Practitioners Board has released updates on the registration requirements for tax (financial) advisers:
  – [Summary of qualifications and experience requirements for registration under the standard option](https://www taxpbd.gov.my)
  – [Qualification and experience for financial advisers](https://www taxpbd.gov.my)
Gift to family trust to defeat tax liability clawed back

_Windoval Pty Ltd (Trustee) v Donnelly (Trustee), in the Matter of Donnelly (Trustee) [2014] FCAFC 127_

- Full Federal Court has refused to order a retrial re declaration allowing a bankruptcy trustee to claw-back a former tax lawyer’s gift to his family trust
- It did so on the grounds that the gift was intended to defeat an impending tax liability.
Appeals update

• *MBI Properties Pty Ltd v FCT* [2013] FCAFC 112
  – High Court has released the transcript of FCT’s appeal against the Full Federal Court decision
  – High Court adjourned appeal to a date to be fixed
  – Full Federal Court had overturned an earlier decision and held taxpayer did not have an increasing adjustment re GST.
Appeals update

- **AAT Case [2014] AATA 622, Re Coshott v FCT**
  - Taxpayer has appealed to the Federal Court
  - AAT had affirmed taxpayer was liable to CGT on a payment received re settlement of litigation for negligence.
ATO draft guidelines: professional firms and Pt IVA

- ATO has released draft guidelines re assessment of Pt IVA risk applying to allocation of profits from professional firms
- It applies to arrangements carried on through a partnership, trust or company where the income is not PSI
- It sets out what ATO considers to be low risk and high risk arrangements and will be applied from 2014-15 income year.
ATO speech: global tax evasion

• In a recent speech, ATO DCT Mark Konza said ATO is working with a number of overseas’ tax administrators.
• He said this allows joint analysis of whether multinational enterprises’ tax planning complies with existing laws.
• He noted ATO saw this type of joint action as being a solution to base erosion and profit shifting.
Draft legislation: miscellaneous amendments

- Government has released draft legislation to give effect to various amendments to tax and super laws.
- Changes are minor and technical and include removing errors, updating cross referencing etc.
- Proposed amendments also address some issues in Tax Issues Entry System (TIES).
- Comments due by 22 October 2014.