IGOT’s report on The Management of Tax Disputes released

The Government has released the report of the Inspector-General of Taxation (IGOT) on ‘The Management of Tax Disputes’. The report to the Assistant Treasurer was prepared at the request of the House of Representatives Standing Committee on Tax and Revenue, which is conducting an Inquiry into Tax Disputes.

Recommendations of the IGOT will be considered by the Committee, and the Government will then consider both the Committee’s and the IGOT’s recommendations on conclusion of the Inquiry.

Key conclusions reached in the IGOT’s report include that:

- the underlying cause of concerns raised regarding the ATO’s management of tax disputes is a relative lack of independence between its original decision makers and its officers reviewing such decisions upon the taxpayer’s request (compared with other revenue authorities).
- further structural separation is recommended, including the establishment of a separate and dedicated Appeals Group, to be headed by a new Second Commissioner. The new group would
be responsible for managing pre-assessment reviews, objections and litigation for all taxpayers including small businesses and individuals.

The IGOT notes that such separation provides the highest level of independence, without creating a separate agency. It allows a fresh and impartial review of the taxpayer's case, while also ensuring that any settlements are adequately scrutinised by the ATO in the best interests of the community.

> Foreign investment in residential real estate – proposed ATO compliance function

Treasury has issued a Consultation Paper on ‘Strengthening Australia's Foreign Investment Framework’, particularly around residential real estate and agriculture.

The proposed reforms include:

- increasing compliance and enforcement activities through the creation of a specialised investigative and enforcement area within the Australian Taxation Office; and
- introducing new civil penalties and increased criminal penalties for foreign investors and third parties who breach the foreign investment rules.

The introduction of an application fee on all foreign investment proposals, based on the type of investment, is being considered. Also, a new $55 million screening threshold for foreign investment in Australian agribusiness is proposed, subject to public consultation on the definition of ‘agri-business’.

Submissions on the paper are due by 20 March 2015.

This new development adds to the many complex issues CAs need to consider when advising inbound investors on Australian real estate issues. See Michael Croker's Blog accompanying this tax Bulletin.

> ATO warns tax professionals to get their own tax affairs in order

The ATO has asked all professional bodies to contact members who practice in tax and remind them of the importance of timely compliance with their own tax obligations. The Tax Practitioners Board also has an interest in this topic, given that a tax agent's personal tax compliance is part of the Code of Professional Conduct administered by the Board.

The ATO says it will soon be targeting the 17% of tax agents who fail to lodge on time, with the first contact being by mail followed up with phone calls. Those who still don't lodge outstanding tax returns face prosecution action and the TPB will be made aware of the agent's non-compliance.

> Senior Executive changes at the ATO

Farewell and best wishes to Mr Shane Reardon, who has retired as the Deputy Commissioner in charge of Public Groups and International at the ATO. The CA Tax Team understands that, as an interim arrangement, Mr Jeremy Hirschhorn (Chief Tax Counsel) will fill the position.

> ATO Tax Practitioners Advisory Group (ATPAG) meeting

Michael Croker represented Chartered Accountants at the ATPAG meeting in Melbourne on Friday 27 February 2015. Agenda items discussed at the meeting included:

- ATO Reinvention blueprint;
- ato.gov.au improvement project;
Tailored Business Returns future client experience;
Pay as you go instalments future client experience;
Risk Investment; Lodgment strategy for tax and BAS agents;
GST verification activities;
Tax Practitioner Engagement Strategy;
myTax and myGov limited life working group.

The meeting minutes will be published in due course on the ATO website.

ATO Working Group on Dispute Resolution

Ashley King (PwC) represented CAs at the 23 February 2015 meeting of the ATO’s Working Group on Dispute Resolution. Issues discussed included:

- The ATO is considering the adoption of a new process for independent review (IR) in cases involving transfer pricing issues. The complexities of transfer pricing issues (including the need for industry and economic analysis, functional analysis, pricing methodologies, application of law and treaties, and use of independent experts) mean the existing IR framework is not well suited to resolving these cases. CAs will be represented on a small working group that will canvas wider views on the new IR process.
- The ATO is developing a brief Dispute Resolution Charter that will set out the behaviours and service that taxpayers can expect when dealing with the ATO on disputes. It will promote ATO behaviours that are transparent, respectful, fair and professional. It will also spell out taxpayers rights and options.
- The ATO discussed the findings of a recent report by the Australian Centre for Justice Innovation (ACJI) on the effectiveness of ADR in tax disputes. The feedback suggests there is scope for improvement in preparation by both sides before an ADR process. The ATO will consider the findings along with input from the Inspector-General of Taxation and the House Committee on Tax and Revenue.

CASES

> LHRC & Ors v DCT (No 3) [2015] FCA 52

The Federal Court has dismissed the application by a taxpayer, a director of an investment bank, which sought to prevent the ATO from using evidence, for the purposes of a ‘section 264 interview’ of the taxpayer, which the taxpayer had previously given in an examination by the Australian Crime Commission (ACC) concerning a Project Wickenby investigation.

> LHRC & Ors v DCT (No 4) [2015] FCA 70

In a decision related to the above matter, the Federal Court granted the taxpayers' application for confidentiality in relation to the identity of the parties, the contents of any documents filed or tendered in the proceedings and the non-disclosure of the transcript of any hearing in the proceedings to anyone other than the parties to the proceedings and their legal representatives, the Commonwealth and the courts. The orders will remain in place for the next two decades until 1 January 2034. However, the Court did not accept that suppression of the entire proceedings could be justified, such as the reasons for judgment and orders disposing of the matter.

> Re Bryxl Pty Ltd as Trustee for the Kypu Trust and FCT [2015] AATA 89

The Tribunal has affirmed the Commissioner’s objection decisions, finding that the taxpayer failed to discharge its onus of proving that it was entitled to input tax credits of $226,128 in relation to a proposed subdivision of land. The Tribunal held that all of the input tax credits were claimed when the taxpayer was not carrying on an enterprise. Despite obtaining a planning permit for the subdivision, the taxpayer...
never became the registered owner of the land as it was unable to obtain finance for the purchase. Accordingly, the taxpayer's ABN and GST registration was cancelled. The Tribunal was also satisfied that the taxpayer was reckless in lodging the input tax credit claims, and there were no grounds for remission of the 50% shortfall penalties

LEGISLATION UPDATE

> House of Representatives

The following Bills were introduced last week:

- **Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015** - contains various amendments to the Customs Act 1901 to strengthen Australia's anti-dumping provisions, simplify and modernise anti-dumping rules, and clarify certain provisions.
- **Customs Tariff (Anti-Dumping) Amendment Bill 2015** - amends the Customs Tariff (Anti-Dumping) Act 1975 to simplify and modernise publication provisions for anti-dumping notices, clarify 'lesser duty' provisions and clarify exemption provisions.

The following Bills were passed by the House last week and have moved to the Senate:

- **Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014** – contains amendments: to provide individuals with an option to be taxed on the earnings from superannuation excess non concessional contributions at their marginal tax rate; Inspector-General of Taxation hearing tax complaints; CGT exemption for compensation and insurance; fund mergers; Exploration development incentive (supported by the Excess Exploration Credit Tax Bill); Miscellaneous amendments.
- **Excess Exploration Credit Tax Bill 2014** – imposes an excess exploration credit tax to recover costs

> Senate

The Draft Legislation Programme for the Senate lists the following tax-related Bills for debate this week:

- **Tax and Superannuation Laws Amendment (2014 Measures No. 5) Bill 2014** - contains amendments to: reduce the tax offset rates of the research and development tax incentive by 1.5 per cent; update the list of deductible gift recipients; abolish the mature age worker tax offset; and abolish the seafarer tax offset.
- **Tax and Superannuation Laws Amendment (2014 Measures No.7) Bill 2014**
- **Excess Exploration Credit Tax Bill 2014**

> Bills which have received Royal Assent

- The **Customs Amendment Bill 2014** (various technical amendments to the Customs Act 1901)
- **Treasury Legislation Amendment (Repeal Day) Bill 2014** (various red tape reduction measures)

ATO RULINGS


> TR 2015/1 - Income tax: special conditions for various entities whose ordinary and statutory income is exempt

> MT 2006/1A2 - Addendum - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number

> PS LA 2015/3 - Approval process for the application of subsections 815-130(2) to 815-130(4) of the Income Tax Assessment Act 1997 (ITAA 1997) – Transfer pricing
ATO PUBLICATIONS

View all ATO publications, including the following important updates:

> **ATO launches ‘Building Confidence’ messaging and branding on its website**

The ATO has embarked on a new website-communication strategy which highlights the work it is doing to build confidence in the way our tax laws are administered. The ‘Building Confidence’ message was launched at a meeting of the ATPAG held in Melbourne on 27 February 2015. Rather than have an annual Compliance Program or other stand alone initiatives, the website will - on an ongoing basis - identify current ATO strategies targeting the relatively small population of taxpayers who fail to comply, promote new compliance products and communicate the results achieved by the ATO.

The ATO welcomes feedback on this initiative.

> **ATO help for taxpayers impacted by recent cyclones**

The ATO website has been updated to advise taxpayers and practitioners on assistance available.

> **ATO Code of Settlement**

The ATO has released its Code of Settlement in the form of Practice Statement PS LA 2015/1. The Code sets out the ATO's new policy on the settlement of tax and superannuation disputes, including disputes involving debt.

The Code acknowledges that the ATO has an obligation to administer the taxation system in an efficient and effective way, balancing competing considerations and applying discretion and good sense. It states that settlement negotiations or offers can be initiated by any party to the dispute and can occur at any stage including prior to assessments being raised.

When deciding whether or not to settle, all of the following factors must be considered:

- the relative strength of the parties’ position;
- the cost versus the benefits of continuing the dispute; and
- the impact on future compliance for the taxpayer and broader community.

Settlement would not generally be considered where:

- there is a contentious point of law which requires clarification;
- it is in the public interest to litigate; or
- the taxpayer’s behaviour is such that the ATO needs to send a strong message to the community.

A copy of the Code of Settlement is also available on the ATO’s ‘Settlement’ webpage, together with A practical guide to the ATO code of settlement, which provides examples and illustrations of how the code operates.

> **ATO ends pilot of new debt collection letters – Expect more direct written communications with clients**

The ATO has advised the CA Tax Team that it has completed a pilot project involving the testing of plain English, short form debt collection letters, and will now use the new stationery for all taxpayers with unpaid tax. The letters are colour-coded – reflecting escalating levels of urgent attention required – and use very direct language, telling the taxpayer in no uncertain terms what needs to be done (e.g. pay or enter into a payment plan).

The letters are just part of a revamped ATO response to growing levels of aged tax debt (refer Michael Croker’s recent Blog on this topic).

> **ATO website updates**

- Providing a TFN saves time (proof of identity when applying for an ABN)
- Review of tax professionals email alert (ATO retracts email concerning SMS notifications)
- Tax basics materials (useful for junior staff training):
  - TB1 Tax basics for small business - an introduction
  - TB12 Tax basics for small business - issues for contractors
  - TB4 Tax basics for small business - motor vehicle deductions
- Capital allowances: draft effective life recommendations for certain determinations in Table B of TR 2014/4

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TAX-RELATED TECHNOLOGY

> Business and practitioner - troubleshooting
Lists as at 27 February 2015 the known system issues affecting access to or use of ATO online services for tax practitioners or business, including the portals, electronic commerce interface (ECI) and the electronic lodgment service (ELS).

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OTHER TAX NEWS

> New Treasury Secretary speaks about tax fairness, super concessions and the need for expenditure restraint

Mr John Fraser, the recently installed Secretary to the Treasury, has given a speech to CEDA (27 February 2015) highlighting the importance of fairness in a well-functioning tax system: “For example, substantial tax assistance is provided to superannuation savings. We need to consider whether the level and distribution of these concessions remains appropriate.” Mr Fraser also noted Australia’s comparatively high company tax rate.

On the broader question of targeting spending or revenue, he said: “More fundamentally, those that say the government should spend its way to stronger growth in the near term tend to ignore the costs to growth in the medium to long term of higher government debt or higher average tax rates. My view is that we need to address Australia’s structural budget problem through greater expenditure restraint, where the international experience shows what can be achieved over relatively short time periods.”

> Industry Skills Fund – Applications open

AusIndustry has announced that applications are now open for the $476 million Industry Skills Fund – Growth Stream (the Fund), which will assist industry to invest in training and support services and to develop innovative training solutions.

The Fund is targeting Small to Medium Enterprises (SMEs), including micro businesses, which are ‘positioning for growth’ opportunities outside of their normal day-to-day business operations. This involves pursuing activities that fall into one or more of the following categories:

- diversifying into new or emerging markets and/or;
- adopting new or emerging technologies and/or;
- entering export markets for the first time and/or;
- responding to significant new domestic market opportunities and/or;
- repositioning because of market driven structural adjustment.

View the Eligibility criteria and Merit criteria to see if your business or your client’s business could take advantage of this funding opportunity.

> Australian Innovation System Report released

The Australian Innovation System Report examines various aspects of Australian innovation as a driver of competitiveness. The report’s findings include: Australia’s small and medium sized businesses appear innovative by OECD standards (ranking 5th). Innovation remains a key tool for businesses to stay
competitive. The proportion of employing businesses that were innovative was 42% in 2012-13. In that same year, these innovative businesses accounted for a 70% share of the economy’s employment, capital expenditure and business income.

> ACNC to revoke charity status of ‘double defaulters’

The Australian Charities and Not-for-profits Commission (ACNC) has announced that it will revoke the registration of up to 1,400 charities for not lodging an Annual Information Statement for two consecutive years. The ‘double defaulters’ have 28 days to submit their 2013 and 2014 Annual Information Statements, or they will have their charity status revoked with effect from 30 March 2015.

The ACNC warns that charities that have their status revoked by the ACNC will lose access to Commonwealth charity tax concessions, such as income tax exemption, FBT rebates and GST concessions.

View the full list of charities facing revocation on the ACNC website.

> India Budget – Company tax rate going down as hunt ramps up for offshore assets and income

The Indian Government’s 2015-16 Budget (28 February 2015) proposes a gradual reduction in the company tax (from 30% to 25%) and sets an objective of “stable taxation policy and a non-adversarial tax administration”. Indian tax authorities will be aggressively targeting so-called ‘black money’ (undisclosed foreign assets and income), supported by new laws to be introduced shortly and enhanced information sharing arrangements. A new penalty regime will include imprisonment and a penalty rate of 300%. See summary.

> Greece aggressively targets tax evaders as part of bail-out commitment to EU

This article from Liz Alderman of The New York Times highlights the strategy being pursued by Greek anti-corruption officials as they seek to tackle tax evasion as part of Greece’s commitment to the EU in exchange for extended bail-out arrangements.

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TRAINING & DEVELOPMENT

> Trending Tax Topics - Trust Losses Case Study

The ability to utilise losses in a trust under the relevant Trust Loss Measures remains one of the most critical issues for taxpayers. This comprehensive session will focus on providing a practical illustration of the various Trust Loss Measures available and will equip you with the knowledge you need to provide appropriate advice to your clients.

Check out Navigate Online >

SEE ALL TRAINING >

MEMBER SERVICES

The weekly Tax Bulletin is an initiative of the Tax Policy Team of the Chartered Accountants Australia and New Zealand.

We invite your input on tax policy and administration issues. Please direct comments to Tax Policy Team.

Please be aware that the Tax Policy Team’s comments service is limited to the following areas:

- Where members believe they have identified a problem with the law/ATO interpretation of the law and want to bring it to our attention as a potential advocacy activity, or if they want to find out more
about our advocacy activities more generally.

- Where members are experiencing difficulties dealing with the ATO, or if they believe they are being treated unfairly.
- When members want to find out more about submissions lodged or meetings with stakeholders that they have read about in the Tax Bulletin.

For specific advice or guidance, members can take advantage of the **Chartered Accountants Tax Helpline** service (CATH) that has been established with Crowe Horwath.

This is a subscription service with an annual cost of $495 (GST inclusive), which entitles members to eight advisory calls of up to ten minutes duration. A 10% discount to the normal hourly rates applies for extended consultation and written advice.

**Telephone:** 1800 069 330
The phone is staffed business days 8.30am - 5.30pm, Sydney time - answering service outside these hours.
**Email:** cataxhelp@crowehorwath.com.au

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