



## Working for your future... wherever you are

### INCREASE TO PERSONAL TAX RATES FROM 1 JULY 2011

The introduction of the temporary flood and cyclone reconstruction levy (flood levy) from 1 July 2011 means new income tax rates for the 2011-12 income year. The levy has been built in to the new tax tables and all employers need to ensure they use the new pay as you go withholding tax tables from 1 July 2011 when withholding tax from their employees.

#### INCOME TAX RATES FROM 1 JULY 2011

TAXABLE INCOME (\$)	TAX RATE (%)*
0 - 6,000	0
6,001 - 37,000	15
37,001 - 50,000	30
50,001 - 80,000	30.5
80,001 - 100,000	37.5
100,001 - 180,000	38
180,001 +	46

\* Does not include Medicare Levy of 1.5%.

Employers should note that individuals (both resident, temporary and foreign residents) must pay the flood levy if they earn more than \$50,000 in the 2011-12 income year unless they were affected by a natural disaster. Employees who are exempt should complete the Flood levy exemption declaration form to ensure that no flood levy component is withheld from their wages throughout the year, irrespective of how much they earn per pay period. The declaration should be completed by both the employee and employer and then filed for the employer's records.

For casual or contract staff, employers must be cognisant of an employee's obligation to pay the flood levy should the employee earn an equivalent annual salary of more than \$50,000 for a particular pay period in the 2011-12 income year.

### Example

Penny earns a wage of \$1,769 per fortnight which is equivalent to a yearly salary of \$46,000. Ordinarily, as Penny will not earn more than \$50,000 in the 2011-12 income year, she does not pay the flood levy. However, in one fortnightly pay period she earns an additional \$1,000 due to overtime. For this particular pay period, the yearly equivalent salary is over \$50,000 and therefore, the amount that is withheld must include a flood levy component.

For those who pay tax instalments through the pay as you go instalments system because you are self-employed, an investor or a self-funded retiree, the flood levy will automatically be included in your instalment rate.

## New Australian Mining Tax Regime

On 10 June 2011 the Australian Treasury released an exposure draft and draft explanatory memorandum (EM) on the impending Minerals Resource Rent Tax (MRRT). The preliminary exposure draft legislation is based on the recommendations of the government-appointed Policy Transition Group (PTG) following extensive consultation with industry. Legislation implementing the new resource taxation arrangements is expected to be introduced into Parliament towards the end of 2011 and the supposedly improved resource taxation arrangements are expected to apply from 1 July 2012.

The PTG made recommendations in December 2010 to the Government about the development of the technical design of the new MRRT and the transition of existing petroleum projects to the Petroleum Resource Rent Tax (PRRT) regime. The PTG report was formally accepted by the Government on 24 March 2011. The new resource tax arrangements will focus on Australia's biggest and apparently most profitable commodities: iron ore, coal, oil and gas which represents nearly two-thirds of the value of Australia's exports and resource operating profits.

Treasury is expected to release exposure draft legislation relating to amendments to the PRRT in the near future. The introduction of the MRRT, as well as changes to the PRRT, is expected to come into operation from 1 July 2012, however, a second and final exposure draft should be released for public consultation later in the year.

### SO FAR, THE KEY FEATURES OF THE MRRT ARE:

- Companies with resource profits below \$50 million per annum are exempt from MRRT.
- The MRRT will apply a rate of 30 per cent.
- New investment from 1 July 2012 may be immediately written-off, rather than depreciated over a number of years.
- The MRRT will carry forward unutilised losses at the government long term bond rate plus 7 per cent.
- The MRRT will provide transferability of deductions. This supports mine development because it means a taxpayer can use the deductions that flow from investments in the construction phase of a project to offset the MRRT liability from another of its projects that is in the production phase.
- The MRRT will also provide a full credit for state royalties paid by a taxpayer in respect of a mining project. Unused credits for royalties paid will be uplifted at the long term government bond rate plus 7 per cent, as per other expenses. However, unused royalty credits will not be transferrable between projects or refundable.

- The MRRT will provide recognition of past investments through a credit that recognises the market value of that investment, written down over a period of up to 25 years. These costs will not be uplifted.
- Companies that wish to use their current written down book values of the project's assets, excluding the value of the resource, will be provided with accelerated depreciation over 5 years, uplifted at the government long term bond rate plus 7 per cent.
- The MRRT attempts to recognise the particular characteristics of different commodities by applying a taxing point close to the point of extraction, and using appropriate pricing arrangements to ensure only the value of the resources extracted is taxed.
- A 25 per cent extraction allowance will be available to recognise the value add that mining companies bring to mineral extraction.

The Australian Government believes the PRRT, which has been in place since 1 July 1987, has been providing a stable and effective taxation regime for offshore oil and gas projects. The Government has, therefore, decided to extend the PRRT regime to cover all Australian oil and gas projects whether they are onshore or offshore.

### THE KEY FEATURES OF THE PRRT ARE:

- A 40 per cent tax rate;
- A range of uplift allowances for unutilised losses and capital write-offs;
- Immediate expensing is available for all expenditure;
- In very limited circumstances, losses can be transferred;
- All state and federal resource taxes will be creditable against current and future PRRT liabilities from a project; and
- Transition provisions will also be provided for oil and gas projects moving into the PRRT.

The Government has stated that the community owns the rights to these resources. For this reason, the Australian Government has expressed its commitment to ensuring that the Australian people receive a better return on the profits made from extracting Australia's resources and that a strong resource sector remains sustainable into the future. These regimes are based on the fundamental fact that these are non-renewable resources which can only be extracted once. With this in mind, one wonders if the real issue is whether the Government needs to deliver a profits based resource tax that delivers improved returns for the community or whether the community in general would be better off if the Government spent their efforts strategising over the sustainability of Australia's limited resources?

## *New R&D Credit Scheme*

The new Research and Development (R&D) tax incentive called the R&D Tax Credit is contained in the Tax Laws Amendment (Research and Development) Bill 2010 and the Income Tax Rates Amendment (Research and Development) Bill 2010. It was first proposed by the Government on 12 May 2009 to replace the existing R&D Tax Concession. It's been a long wait but the new R&D tax incentive finally received joint support from the Government and the Greens on 15 June 2011. It is expected the Bills introducing the R&D Tax Credit will be passed by Parliament in August 2011, however, the law will retrospectively commence from 1 July 2011. This has been despite criticisms made in relation to, the narrowing of the scope of the definition of R&D activities which by implication now reduces the number of eligible R&D activities, and some of the anti-commercialisation measures that may otherwise reward only failed R&D.

Underpinning the new R&D Tax Credit is in the quantum of the refundable tax offset which would be generally available to companies with a turnover of less than \$20 million per annum. It will now be possible for companies to obtain a reduction in tax equal to 45 per cent of their notional R&D deduction, whereas under the existing regime, if a corporation chose to convert a 125 per cent deduction to a tax offset, it was only equivalent to a 37.5 per cent tax offset on relevant amounts.

Broadly, under the new regime, an R&D entity will be entitled to a tax offset if the total of its notional R&D deductions is at least \$20,000. The types of entity eligible for the offsets are a corporation that is an Australian resident, a foreign corporation that is carrying on R&D activities through a permanent establishment in Australia and a public trading trust with a corporate trustee. An entity that is exempt from income tax is not an R&D entity.

### **AN R&D ENTITY CAN NOTIONALLY DEDUCT AMOUNTS UNDER THE NEW R&D PROVISIONS FOR THE INCOME YEAR FOR:**

- certain expenditure on registered R&D activities;
- a decline in value of depreciating assets used for registered R&D activities;
- a balancing adjustment for those depreciating assets used only for R&D activities;
- R&D expenditure incurred to an associate in an earlier income year and paid in the current income year;
- a decline in value of R&D partnership assets; and
- a monetary contribution to a Cooperative Research Centre.

### **UNDER THE NEW R&D TAX INCENTIVE THE MAIN BENEFITS ARE AVAILABLE AS TAX OFFSETS. IT IS EXPECTED THAT THE NEW R&D TAX CREDIT WILL CONSIST OF TWO CORE COMPONENTS:**

- a 45 per cent refundable tax credit (the equivalent to a 150 per cent concession for eligible entities with an aggregated turnover of less than \$20 million per annum); and
- a non-refundable 40 per cent R&D tax credit (the equivalent of a 133 per cent deduction for all other eligible entities).

The initiative will continue to operate on a self assessment basis and claimants will need to assess whether they are eligible for the incentive under the rules contained in new Division 355 of the Income Tax Assessment Act 1997 (ITAA 1997). To claim a tax offset for R&D activities conducted in Australia or the external Territories, R&D entities are still expected to follow the registration process with Innovation Australia (i.e. the Board) and meet all eligibility requirements before being allowed deductions in respect of eligible R&D expenditure.

The Government has stated that the R&D Tax Credit will be simpler, fairer and more accessible than the R&D Tax Concession. No one knows at present if this is true but one difference between the old and the new regimes that we believe will provide greater certainty in R&D investment, is the ability to obtain a determination. Under the new regime, companies will be able to seek an advance finding from the Board (Innovation Australia) where they are uncertain of the eligibility of the activity. Companies should consider their transition into the new R&D regime and whether the cost of a determination is a worthwhile investment in the long run.

## Bilateral Social-Security Agreements

Australia has signed several bilateral social security agreements to address the issue of 'double superannuation' which may occur if you work temporarily overseas for your employer and superannuation guarantee contributions (or the equivalent) are required to be paid in Australia as well as in the country you are working in. Double superannuation obligations can be financially burdensome on employers, however, Australia now has bilateral social security agreements with the following countries:

- Belgium
- Croatia
- Chile
- Czech Republic
- Finland
- Germany
- Greece
- Ireland
- Japan
- Korea
- former Yugoslav Republic of Macedonia
- the Netherlands
- Norway
- Poland
- Portugal
- Switzerland
- United States of America.

*Agreements with the following countries have also been signed and are expected to commence in the near future.*

COUNTRY	EXPECTED COMMENCEMENT DATE
Slovak Republic	Early 2012
Republic of Austria	Early 2012
Hungary	Mid 2012

### **SUPERANNUATION CONTRIBUTIONS (OR THE EQUIVALENT) DO NOT HAVE TO BE PAID IN THE OTHER COUNTRY SO LONG AS ALL OF THE FOLLOWING APPLY:**

- there is a bilateral social security agreement with Australia;
- you remain covered in Australia by the superannuation guarantee; and
- your employer has obtained a **Certificate of coverage** from the ATO.



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## Did you know...

### FROM OCTOBER 2011 THERE WILL BE ONE NATIONAL PERSONAL PROPERTY SECURITY (PPS) LAW AND ONE NATIONAL PPS REGISTER?

PPS reform is changing the law and practice for secured financing involving personal property. PPS reform is expected to harmonise and streamline more than 70 existing pieces of Commonwealth, State and Territory legislation and will establish a national personal property securities register with electronic registration. The PPS register will feature search processes that will incorporate over 40 different registers of security interests established under existing legislation.

Personal property is any form of property other than land or buildings and fixtures which form part of that land. It includes tangibles (i.e. cars, boats, machinery, crops) as well as intangibles (i.e. shares, intellectual property and contract rights).

The new regime will change the language, procedures and requirements of creating and enforcing interests in personal property. It is expected that the new regime will affect many aspects include financing arrangements, the supply of goods on a retention of title basis, leasing arrangements, company charges, the purchase and sale of personal property, bankruptcy and corporate insolvency. PPS reform brings with it a dramatic change in thinking. The foundation of the new regime is the Personal Property Securities Act 2009. We will be discussing PPS reform in greater detail over the next coming months as its start date draws closer.

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