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## GOVERNMENT ANNOUNCES THE INTRODUCTION OF A CARBON TRADING SCHEME

The Federal Government has controversially announced plans to introduce a carbon trading scheme, under a two-stage plan with first a carbon price mechanism with a fixed price period for three to five years before transitioning to an emissions trading scheme, as part of climate change and economic reforms for Australia.

The Government has foreshadowed that the proposed measures to price carbon will commence on 1 July 2012, subject to the ability to negotiate agreement with a majority in both houses of Parliament and the passing of legislation this year.

While details of the carbon trading scheme framework contains no pricing or costing and related business / economic impacts, the Government has indicated that "business with the highest levels of pollution will have a very strong incentive to reduce their pollution".

## FLOOD LEVY BILLS INTRODUCED INTO PARLIAMENT

The Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011 and the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011 (the Bills) were introduced into the House of Representatives 10 February 2011. Once

passed, the Bills will amend the law to introduce a one-year progressive flood reconstruction levy in the form of additional income tax on Australian resident and foreign resident individuals in the 2011-12 income year.

The amount of levy payable is at the rate of 0.5% where the taxpayer has a taxable income of between \$50,001 and \$100,000, and 1% where the taxpayer has a taxable income in excess of \$100,000. Furthermore, trustees will also be liable for the levy where they pay tax on trust income.

No levy is payable where the taxpayer has a taxable income of \$50,000 or less or where they fall into an exemption category. Individuals who were affected by a natural disaster in Australia in the 2010-11 and 2011-12 income years will be exempt from the new flood levy. It is also important to note that the levy cannot be reduced by non-refundable tax offsets. That is, the taxpayer's income tax liability for the 2011-12 income year is calculated as the taxpayer's basic income tax liability on taxable income less their tax offsets, to which the flood levy liability is then added.

## Transfer pricing and business restructuring by multinational enterprises - TR 2011/1

On 9 February 2011 the ATO issued final Taxation Ruling TR 2011/1 which concerns the application of Australia's transfer pricing provisions to business restructuring by multinational enterprises (MNEs) involving the transfer of functions, assets and risks of a business being transferred between jurisdictions. The Ruling was previously released in draft form as TR 2010/D2.

The Ruling considers situations where such transfers occur between MNE members to implement changes in the MNE's existing business arrangements or operations. Common examples are product supply chain restructurings involving conversion of a distributor into a sales agency arrangement or of a manufacturer into a provider of manufacturing services. Business restructurings also commonly involve the transfer of the ownership and management of intangibles such as patents, trademarks and brand names.

The Ruling set out the Commissioner's views on the application of Australia's transfer pricing provisions in Division 13 of Income Tax Assessment Act 1936 (ITAA 1936) and the Associated Enterprises Article (Article 9) of Australia's double tax treaties under the International Agreements Act 1953 to business restructuring arrangements.

In broad terms, the transfer pricing provisions contained in Division 13 of the ITAA 1936 allow the Commissioner to adjust the consideration taken to be received or paid by a taxpayer where the consideration for a supply or acquisition of property under an international agreement is not its arm's length amount. Throughout TR 2011/1, the ATO considers that Article 9 of Australia's double tax treaties has a similar effect.

TR 2011/1 is relevant for all MNE clients that have entered or are negotiating arrangements that involve sales agency arrangements, manufacturing services and business restructuring that involves the transfer of the ownership and management of intangibles such as patents, trademarks and brand names.



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## ATO TARGETING GST COMPLIANCE

In the 2009-10 income year the ATO successfully prosecuted 1,133 individuals and/or entities (including companies, company directors, trustees and partners) for a total of 1,827 breaches of the law. The compliance offences were mainly for non-lodgment of activity statements and failure to provide information.

Subsequently, the ATO received specific funding in the 2010 Budget to look closely at GST compliance. As a result, the ATO will be implementing a dedicated program over the next four years to deal with:

- the timely lodgment of activity statements
- verifying GST refund claims
- identifying and dealing with those that deliberately avoid GST
- addressing aging GST debts and those who deliberately use debt as a way of avoiding their tax obligations.

The ATO are focussed on GST compliance and will be continuing to expand their ability to identify non-lodgers and detect businesses that over claim entitlements, deliberately under report or omit income and use cash transactions to hide income. They will be ramping up efforts to verify refunds by phoning or visiting businesses and contacting third parties.

This is a reminder to all businesses to review their activity statement obligations and check that they are lodging correctly, and on time. Remember to always be able to substantiate your claims. We also note that for those who choose to disregard the law and work outside the tax system, there may be serious consequences including interest, penalties and even potential prosecution.

## Investment Manager Regime ...

### ALIGNING AUSTRALIAN TAXATION WITH INTERNATIONAL PRACTICE

The Federal Government has announced changes to the income tax treatment of investment income of foreign funds due to a key finding of the Johnson Report that current tax law discourages the use of Australian based investment advisers. These amendments are designed to address the situation where a foreign managed fund is taken to have a permanent establishment in Australia because of an Australian intermediary, namely, an agent, branch or subsidiary of the foreign fund.

Presently, where a foreign managed fund has a permanent establishment, Australia's taxing rules not only tax the fees earned by the intermediary but can potentially tax the investment income of the fund by attributing all or a part of the investment income (including capital gains) of the foreign to the permanent establishment even though the investor has no real presence in Australia. Whereas, had the foreign fund engaged a foreign fund manager, no Australian tax would have applied to the investment income of the fund, except to the extent that income was sourced in Australia.

The Government will consult closely with the Financial Centre Taskforce (formerly the Australian Financial Centre Forum) and industry representatives in designing the appropriate legislation and integrity measures. Such legislation is expected to apply retrospectively from the 2010-11 taxing only the arm's length fee for services provided by the Australian intermediary and exempting income to the extent the relevant investment income of a non-resident is taxed only because the foreign managed fund is taken to have a 'permanent establishment' in Australia.

The adoption of an Investment Manager Regime (IMR) framework will align Australia's taxing rules with international practice such as the United Kingdom's Investment Manager Exemption. It is hoped that this change is an important step towards improving Australia's international standing as a financial services centre, increasing the use of Australian-based fund managers by foreign-based funds.



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### SIMPLIFYING THE GST ON CROSS-BORDER TRANSACTIONS

As part of ongoing reforms to simplify Australia's tax system, a consultation paper on how the GST is applied to cross-border transactions has recently been released. The consultation paper provides further information on the announced changes that will:

- Limit the "connection with Australia rules" in certain circumstances,
- Expand the reverse charge rules to goods,
- Extend GST-free status to supplies made to a non-resident but provided to registered entities in Australia, and
- Remove the requirement for a non-resident to register for GST when they are not making any taxable supplies in Australia.

The Government is seeking feedback on the design of these GST cross-border measures and all submissions will be considered in developing legislation and explanatory material which will apply from 1 July 2012. The consultation paper is available on the Treasury website [www.treasury.gov.au](http://www.treasury.gov.au) and submissions are due by close of business on Thursday, 31 March 2011.

### TAXPAYER ALERT – PRIVATE COMPANY LOANS - LIMITED BY GUARANTEE LOAN ARRANGEMENT UNDER REVIEW

The ATO has released a Taxpayer Alert warning on arrangements involving loans to members of a company limited by guarantee and the operation of Division 7A. The ATO's alert covers an arrangement whereby a company limited by guarantee is established to receive income distributions from a trust and then lends that money to directors, members or associates of that company. Minimal or no interest or principal is paid on the loans giving rise to concern that these arrangements are being utilised merely to get income from trusts without paying the requisite tax.

The Commissioner of Taxation Mr D'Ascenzo said "the use of a company limited by guarantee makes no commercial sense aside from the tax advantage sought from these arrangements". Part IVA anti-avoidance provisions may apply to these arrangements which are subject to further analysis from the ATO.

Taxpayer alerts are intended as an "early warning" to taxpayers, superannuation fund trustees and advisers. The ATO is asking that anyone who has participated in these arrangements should come forward to make a voluntary disclosure prior to 30 April 2011 or provide information about people or companies who may be promoting such arrangements. This taxpayer alert does not include arrangements that involve not for profit entities whose ordinary or statutory income is exempt.

### Declare property transactions

#### OR RISK DETECTION

The ATO have increased their focus on property developers who intentionally remain outside of the GST system by claiming credits on purchases but not declaring when sales occur. The ATO's focus and drive is part of trying to provide a level playing field for all businesses to improve the wellbeing of all Australians.

Every property transaction may have a tax consequence that needs to be reported. As such, the ATO has warned it is increasing the use of data matching and detection methods which includes matching property data from the Office of State Revenue and Land Titles. Data mining and analytics will also be used to ensure the correct amount of GST is being paid by taxpayers.





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## Did you know...

...that a salary sacrificed superannuation contribution made to a complying superannuation fund is not considered a fringe benefit for tax purposes?

An effective salary sacrifice arrangement is a contractual agreement between you and your employer to alter your salary package by exchanging part of your future salary or wages for another benefit.

### THE BENEFIT OF SALARY SACRIFICE ARRANGEMENTS:

- your employer not being liable to pay fringe benefits tax (FBT) on the super contributions;
- your employer not needing to include the super contributions as a reportable fringe benefit amount on your payment summary, and
- your taxable income for the year being reduced by the amount that has been salary sacrificed.

However, your salary sacrificed super contribution will be treated as an employer contribution and count towards your employer's minimum 9% super obligation to you.

You should note that there are other factors such as concessional caps to consider and appropriate advice should be obtained first.

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