

## TAX UPDATE

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- [Commissioner Loses Appeal on Prompt Payment of GST Refunds - Multiflex Pty Ltd v Commissioner of Taxation. Full Federal Court](#)
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### Reform of Taxation of Trusts – Consultation Paper

On 21 November 2011, as part of the reform of the taxation of trusts, the Government released a consultation paper which explores some of the key issues, including changes to improve the current taxing provision of trust income (i.e. Division 6).

Three models were proposed, those being:

» The Patch Model – retains the existing structure of Division 6 but uses tax concepts to ascertain distributable income. i.e., the taxable income of a trust is adjusted for notional income and expenses (e.g. franking credits and deductions for building allowances) to arrive at distributable income.

» Proportionate within Class Model – involves the allocation of income into certain classes (e.g. capital, business and or investment classes). A beneficiary is then assessed on their proportionate share of so much of the taxable income of each class.

» Trustee Assessment and Deduction Model - whereby the taxable income of a trust is assessed in the hands of those beneficiaries who receive the economic benefit of the income. Taxable amounts that are not distributed would be taxed in the hands of the trustee. This model effectively adopts a 'quantum approach'.

The Paper contains an example for each model. According to Treasury's timeline their aim is to release an exposure draft of legislation by July 2012 assuming an effective start date of 1 July 2013.

### Commissioner Loses Appeal on Prompt Payment of GST Refunds - Multiflex Pty Ltd v Commissioner of Taxation, Full Federal Court

In this case the Full Federal Court has denied the Commissioner's appeal from a previous decision of the Federal Court, both of which held that the Tax Office cannot delay the payment of GST refunds to a taxpayer beyond a reasonable time period.

The initial case and its appeal have been held in quick succession because the outstanding GST refunds for the January to May monthly Business Activity Statements (BASs) total \$970,759 which is said to be essential to the solvency of Multiflex. Multiflex was granted a writ of mandamus by

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the Federal Court, to direct the Commissioner to pay the outstanding GST refunds, prior to the Tax Office finalising their investigation into what they suspect are potentially fraudulent claims for input tax credits.

The Commissioner was seeking a withdrawal of the mandamus, which the Full Federal Court has denied.

The Court noted that the provisions of the relevant legislation state that the Commissioner must pay a GST refund to the taxpayer and the entitlement to a GST refund arises when the taxpayer gives the Commissioner a return (i.e. lodges a BAS).

The Court concluded that whilst it may be readily accepted that the language of the GST legislation in regard to refunds implies that a refund must be made within a time which is reasonable in the circumstances, those circumstances are only those which must be attended to in order to pay the refund. They do not extend to cover the time required to investigate a taxpayer's affairs.

The Commissioner's application to appeal this case to the High Court has been refused.

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## Victorian State Tax Amendments

The State Taxation Acts (Further Amendment) Act 2011 has received Royal Assent and introduces a number of changes to Victorian taxation legislation. Notable changes include the following.

Amendments to the *Duties Act 2000* will reduce the period of time available for the payment of duty from 3 months to 30 days after a transaction occurs. This amendment applies to transactions occurring on or after 1 April 2012.

The *Payroll Tax Act 2007* will be amended effective 1 July 2012 to restore the long-standing policy position that wages payable to employees engaged in the commercial activities of a charity that are unrelated to its charitable purposes are not exempt from payroll tax. This amendment is in response to the High Court decision in the case of *Word Investments Limited*.

A number of amendments were made to the *Land Tax Act 2005* in relation to the Primary Production (PP) exemption, including:

- » The definition of urban zone will be amended such that any part of a zone which is unsuitable for urban development will be excluded from the urban zone, and therefore subject to less stringent PP exemption eligibility requirements.
- » Clarification that the PP ownership requirements for companies do not apply to corporate trustees, and that discretionary trusts will be excluded from the ownership requirements that apply to a trust generally.

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## Administration of Penalties for False or Misleading Statements – Practice Statements

The Tax Office has released two draft Practice Statements on the administration of penalties for making false or misleading statements that do not result in a tax shortfall (PS LA 3550) and those that do result in a tax shortfall (PS LA 3551).

A statement is false if it is contrary to fact, wrong or because of something that is omitted. A statement is misleading if it creates a false impression, is uninformative, unclear or deceptive.

Taxpayers are liable to an administrative penalty for statements made by them or their authorised agent that are false or misleading in relation to a tax-related matter; unless an exception to shortfall penalties apply (i.e. the taxpayer provided all the relevant taxation information to the registered agent, or the tax law was applied in an accepted way).

The level of penalty for a false or misleading statement depends on the severity involved. Where a statement results in a tax shortfall, the level of penalty can range from 75% to 25% of the shortfall. If no shortfall arises, the penalty is levied based on penalty units which can range from 20

to 60 units (which are each worth \$110). The base penalty may be increased, decreased or remitted in full, depending on the circumstances.

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### Government to Review Transfer Pricing Legislation

Following the recent Federal Court decision in *SNF (Australia) Pty Ltd*, on 1 November 2011, the Assistant Treasurer announced that the Government would reform the transfer pricing rules to better align with international best practice.

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### Superannuation Guarantee- Age Limit Abolished

The Superannuation Guarantee (Administration) Amendment Bill was passed with amendments. The amendments provide that effective 1 July 2013, there is no age limit at which employees can receive super guarantee contributions.

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### Division 7A Discretion – PS LA 2011/29

This Practice Statement provides guidance on the Commissioner's discretion to disregard a deemed dividend (or allow it to be franked) where a taxpayer triggers a deemed dividend under Division 7A due to an honest mistake or inadvertent omission.

The Practice Statement outlines the factors which tax officers will consider in exercising the discretion and contains a number of examples. It is noted that when a taxpayer's affairs are being audited or reviewed, taxpayers will be provided the opportunity to make submissions about the exercise of the discretion. A taxpayer can object if they are dissatisfied with the Commissioner's refusal to exercise the discretion.

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### Business Related Capital Expenditure - TR 2011/6

This ruling sets out the Commissioner's view on the 'black hole' provision which provides a 5 year write-off for business related capital expenditure. The Ruling considers the type of expenditure which may be eligible for the write-off and the nexus required for capital expenditure to be 'in relation to' a current, prior or proposed business.

To the extent that expenditure relates to the overall business of which a part is carried on to derive non-assessable income, the expenditure must be apportioned. However, apportionment is not required if the expenditure relates exclusively to that part of the business that is carried on to produce assessable income.

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### New Legislation – Bill No 9

Tax Laws Amendment (2011 Measures No 9) Bill 2011 was introduced into the House of Representatives on 23 November 2011. Included in this Bill are amendments:

- » to increase the GST financial acquisitions threshold from \$50,000 to \$150,000;
- » that would treat the sales or long-term leases of new residential premises as taxable supplies and therefore liable to GST in response to the decision handed by the Full Federal Court in *Gloxinia Investments (Trustee)*;
- » to provide the Commissioner with a discretion to extend the 2 year period in which a beneficiary under a will or a trustee of a deceased estate, must dispose of their interest in a dwelling whilst still being able to access either a full or part main residence CGT exemption;
- » to ensure that where the trustee of a self managed superannuation fund is a company, a parent or guardian can be a director of the trustee in place of a member who is a minor that doesn't have a legal representative.