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Russell

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## Tax Alert

### Compensation for ATO systems outages

After the recent ATO's unplanned systems outages, it provided lodgment deferrals, and remitted interest and penalties where the outages affected practitioners and their clients' lodgments.

The ATO has also advised that it assesses claims for compensation in two ways:

- compensation for legal liability (eg negligence); and
- compensation under the Compensation for Detriment caused by Defective Administration (CDDA) scheme, which allows the ATO to consider claims and pay compensation for disadvantage or loss because of defective administration.

The ATO considers claims in accordance with guidelines issued by the Department of Finance.

### Small business restructure rollover: changes

The ATO is proposing to modify how the small business restructure rollover (SBRR) operates.

The SBRR means that small businesses can restructure from one legal entity to another – for example, from a company to a trust – and transfer the business's assets to the new structure without immediately causing a capital gains tax liability. The ATO's latest proposed changes address the fact that the transferred business assets in this type of restructure could still give rise to a dividend for the transferee.

### Foreign resident CGT withholding: early recognition of tax credit

The Commissioner has made a determination to modify the time at which the vendor is entitled to a tax credit in respect of an amount withheld under the foreign resident CGT withholding rules. The modification, applicable for transactions entered into on or after 1 July 2016, ensures that, where a settlement period for a transaction covers more than one income year for the vendor, the credit entitlement will be available in the same year as that in which the transaction giving rise to the payment to the ATO is recognised for tax purposes for the vendor.

### Tax cut closed off for passive investment companies

The Federal government has released exposure draft legislation to deny access to the lower corporate tax rate of 27.5% (down from 30%) for companies with predominantly passive income. Under the changes, companies will qualify for the lower tax rate only if:

- their passive income is less than 80% of their assessable income for the year;
- they "carry on a business" in that year; and
- they come below the aggregated turnover threshold for the year (\$25 million for 2017–2018).

### Identification numbers for directors: an Icarus moment for phoenix activities?

The Federal government has announced a package of reforms to combat phoenix activities, including the introduction of a Director Identification Number (DIN).

Phoenixing involves deliberately transferring assets from a failed or insolvent company to a new company, with the intention to avoid paying the original company's creditors, tax and employee entitlements (that is, the new company illegally "rises from the ashes" of the indebted company).

The DIN would identify each director with a unique number, allowing regulators to map the relationships directors have with entities and other people.

### Tax measures for affordable housing

The Federal government has released draft tax legislation to implement elements of its housing affordability plan. The proposed measures include an increased capital gains tax discount for people who hold affordable rental housing investments for at least three years.

Under the draft legislation, managed investment trusts would be allowed to hold affordable housing investments with the main aim of deriving long-term rental income, but purchasing residential property that is not affordable housing would no longer be permitted for these trusts.



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**TIP: If this legislation is passed, there will be a transitional period for managed investment trusts that already hold non-affordable housing residential property to change their investments to comply with the changes.**

### Legislation for First Home Super Saver scheme and downsizer super contributions

A Bill has been introduced into Parliament to establish the First Home Super Saver (FHSS) scheme and allow people aged 65 or over to make "downsizer contributions" to their super.

The FHSS scheme will allow people to make voluntary contributions into super, take advantage of the associated tax concessions, and later withdraw the contributions and associated earnings to buy their first home.

The downsizer contribution changes will allow older Australians who sell their main residence from 1 July 2018 to make non-deductible contributions of up to \$300,000 to their superannuation from the sale proceeds.

### No GST on digital currency

The GST Act is being amended to ensure that digital currency, such as Bitcoin, is disregarded for GST purposes unless the supply is made in exchange for a payment of money or digital currency.

To achieve this, a definition of "digital currency" will be inserted into the GST Act. Under the new definition, a digital currency has broadly the same

features as state fiat currencies (legal tender). In particular, the value of a digital currency must derive from the market's assessment of its value. A digital currency's value cannot be based on the value of anything else, so it must not have, for example, a value pegged to Australian or United States dollars.

The currency units must be useable as consideration for any type of supply, and must be generally available to the public.

Units will not be considered digital currency if they give the holder benefits (such as memberships or vouchers), other than entitlements incidental to holding the unit or using it as consideration.

**TIP: When the new definition passes into law, no GST will apply for supplies of digital currency made on or after 1 July 2017.**

### New financial and superannuation complaints authority

Legislation has now been introduced to establish a new external dispute resolution framework and an enhanced internal dispute resolution framework for the Australian financial system.

Consumers will have easy access to a single external dispute resolution scheme, the Australian Financial Complaints Authority (AFCA). Certain firms that provide financial and credit services will need to be members of AFCA, including Australian financial services licensees, unlicensed product issuers, unlicensed secondary sellers, Australian credit licensees and credit representatives, regulated superannuation funds (other

than SMSFs), approved deposit funds, retirement savings account providers, annuity providers, and life policy funds and insurers.

Before AFCA will consider a dispute, it will refer the complaint back to the financial firm so it can attempt to resolve the dispute within a defined timeframe. AFCA will also have an independent assessor to investigate any complaints about how disputes are handled.

### Superannuation guarantee

The Federal government has announced a package of reforms to give the ATO near-real-time visibility over employers' superannuation guarantee (SG) compliance. The package includes measures to:

- require super funds to report contributions at least monthly to the ATO;
- roll out Single Touch Payroll (STP); and
- give the ATO the ability to seek court-ordered penalties in severe cases of non-payment.

### Salary sacrifice integrity

Legislation has also been introduced to prevent employers from using an employee's salary sacrifice contributions to reduce the employer's own minimum SG contributions. This change would apply to working out employers' SG shortfalls for quarters beginning on or after 1 July 2018.



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## 4% Surcharge for foreign purchasers of residential land in South Australia effective 1 January 2018

Following on from the introduction of similar legislation in New South Wales, Queensland and Victoria, Foreign purchasers that acquire residential property in South Australia will be required to pay a surcharge of 4% of the value of their interest acquired in the property. This surcharge is in addition to the duty which is otherwise payable on the purchase.

The surcharge will apply where a foreign purchaser acquires an interest in all or part of a property. It will also apply to acquisitions of interest in trusts or companies which are captured by the land holder duty provisions.

This surcharge will not apply to acquisitions of properties which are exempted from stamp duty.

The surcharge will apply to all agreements entered into on or after 1 January 2018.

These amendments have not been passed by the South Australian Parliament as at the date of this alert. However, the Stamp Duties Act 1923 will be amended to provide for the surcharge.

## Change in Status

Where a person is a foreign purchaser at the time of entering into the agreement to purchase the land, but ceases to be a foreign person within 12 months of the acquisition, they may apply for a refund of the surcharge paid.

If the purchaser is not a foreign person for the purposes of these rules at the time of the acquisition, but becomes a foreign person within 3 years, they must notify the Commissioner and will be liable for the surcharge retrospectively.

## Foreign Person

For the purposes of these rules, a purchaser will be a foreign person where they are either:

- An individual who is not an Australian citizen, Australian permanent resident or New Zealand citizen who holds a special category visa;
- A company incorporated outside of Australia;
- An Australian incorporated company where at least 50% of the shares are foreign owned; or
- A trust which is controlled by foreign persons.

**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this Tax Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Tax Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval. Liability limited by a scheme approved under Professional Standards Legislation.

## Thomas Noble & Russell

31 Keen Street Lismore NSW 2480 Australia  
Telephone +61 2 6621 8544 | Fax +61 2 6621 9035  
Email: [enquiries@tnr.com.au](mailto:enquiries@tnr.com.au) | Website: [www.tnr.com.au](http://www.tnr.com.au)

