



Australian Government
Australian Taxation Office

Large Business Bulletin

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Welcome message

Welcome to the latest edition of the *Large business bulletin*.

The ATO has committed to an extensive program of change under the direction of our Commissioner, Chris Jordan. These changes so far for large business taxpayers have included reshaping our law and administrative design function, the introduction of our independent review process and changes to some of our senior leadership roles at the ATO.

I have recently been appointed to the position of Deputy Commissioner, Public Groups and International (PG&I). You may have noticed from my title that we are no longer known as Large Business and International. The shift to PG&I is driven by our commitment to deliver services and communications that match contemporary business practices, and better aligns us with your operations.

My predecessor Mark Konza is now leading our work on corporate tax base erosion and profit shifting in his new role as Deputy Commissioner, Corporate Tax Erosion. I look forward to working with Mark as he tackles this important work. We will provide an update on the progress of this work in the next edition of the *Large business bulletin*.

Our *Compliance in focus* publication was recently released. It outlines the key risks and issues in Australia's tax system for the upcoming year and how we will treat them. This publication replaces our previous annual *Compliance program*. Read our [Headline](#) article to find out about the key risks we will be focusing on in the large market.

In this edition we feature an article on research and development record keeping, which illustrates just how much money it can cost if you fail to keep accurate records. We give two examples from recent cases that emphasise how important it is to keep records that meet the standards required under the law.

We are continuing our work on improving the transparency of Australia's corporate tax system. This includes implementing a requirement from government for the Commissioner to publish certain information about corporate entities, including the amount of minerals resource rent tax or petroleum resource rent tax paid. The legislation received royal assent on 29 June 2013. We will be consulting with stakeholders, including the Large Business Liaison Group (formerly Large Business Advisory Group), on these corporate transparency measures.

Also in this edition is an update on our Risk-differentiation framework and an outline of our new relationship model for large business. We also tell you what you need to do to prepare for the new superannuation data and payment standard.

Since starting in this role in July, I have met with a number of taxpayers from our large market. These meetings have been very productive and allow me to better understand the perspective and the issues facing large business. I look forward to having more of these conversations in the future.

Shane Reardon
Deputy Commissioner
Public Groups and International
Australian Taxation Office

Engaging with you and the community – *Compliance in focus released*



We have released our [Compliance in focus 2013](#) publication. It provides you with information on the key risks and issues in Australia's tax and super systems for the upcoming year and how we will address them. *Compliance in focus* replaces our previous *Compliance program* publication.

The key areas of focus for us this year include profit shifting, misuse of trusts, tax crime, and expanding our data and information matching capability.

In the large market we have a significant number of multinational companies. A major concern for the community, government and ATO is the tax arrangements some of these companies adopt to avoid their obligations, including:

- profit shifting
- thin capitalisation – loading debt into high taxing countries and equity to low taxing jurisdictions
- establishing complex international structures involving entities in lower taxing countries.

We have additional funding to specifically address these concerns and we plan to undertake 125 risk reviews and 26 audits this financial year. Our compliance activities on domestic matters will continue with risk reviews and audits covering tax consolidation issues, capital gains and complex structures in the large market.

Our activities also include supporting and educating those who are willing to do the right thing, as well as providing more contemporary services to help large market taxpayers with their tax and super obligations.

One way we do this is by offering large market taxpayers real-time certainty about their tax affairs, including double taxation risks on international dealings. To assist in this, we encourage good working relationships characterised by open communication and information exchange on matters related to compliance issues.

This is primarily through products such as annual compliance arrangements (ACAs) and advance pricing arrangements. Last year we negotiated two new ACAs in the mining and defence services industries and renewed one ACA in the banking industry.

Last financial year we raised \$2.164 billion in tax liabilities, after 328 income tax risk reviews and 57 audits, from large business. We also commenced 92 pre-lodgment reviews and completed 54 pre-lodgment reviews.

We will continue to update *Compliance in focus* online throughout the year as new and emerging risks and issues arise.

Improving the transparency of Australia's corporate tax system

On 29 June 2013, legislation to improve the transparency of Australia's corporate tax system received royal assent (Schedule 5 of the Tax Laws Amendment (2013 Measures No. 2) Act 2013).

The *Taxation Administration Act 1953* amendments impose a requirement for the Commissioner to annually publish certain information on corporate tax entities that return a total income of \$100 million or more for any income year, including:

- name
- Australian business number
- total income
- taxable income and tax payable, as reported in the company tax return.

The Commissioner must also annually publish the amount of mineral resource rent tax (MRRT) or petroleum resource rent tax (PRRT) payable by an entity – whatever the amount.

The policy intent is to discourage large corporate tax entities from engaging in aggressive tax avoidance practices and to encourage public debate about corporate tax policy.

We will be consulting with stakeholders on the corporate transparency measure through our consultative forums, including the Large Business Liaison Group.

Further exceptions to taxpayer confidentiality offence provisions allow the Commissioner to publish and disclose periodic aggregate information. This can be in relation to a specific tax, excise duty or custom duty that has been collected, assessed or predicted for a particular period.

This will enable better public disclosure of total revenue collections, even when the identity of a particular entity (but not an individual) is apparent or could potentially be inferred. It also allows the Commonwealth to fulfil its financial reporting obligations.

The last transparency measure improves information-sharing powers between the ATO and Treasury. This enables the Treasurer to make a decision about the *Foreign Acquisitions and Takeovers Act 1975* or Australia's Foreign Investment Policy.

This will enhance the ability of the government to assess national interest implications of foreign investment proposals, in particular, the impact a proposal may have on Australia's revenue base.



Changing how we manage relationships with large business

The ATO is reviewing how large business access services. This includes a review of our relationship management approaches. As a result, a single entry point is being set up to respond to queries from large business.

Large businesses that do not have access to a relationship manager in the ATO will be able to access the large service team (LST) through this single entry point. This team will resolve complex administrative issues that have not been able to

be resolved through the normal ATO channels. They will also ensure taxpayer enquiries about tax law interpretation are directed to the most appropriate area for action.

By setting up the LST to provide service across income tax, GST and excise, large businesses can expect one consistent experience from the ATO.

For the ATO, it means we have an integrated and coherent picture of the large business taxpayer and

that resolving large business tax matters is more efficient with reduced double handling.

Large businesses that have a relationship manager will already be getting this level of service and it will be maintained.

Review of relationship managers

In the coming months we will also be looking at how we provide relationship managers to large



business. Currently, relationship managers are allocated to taxpayers categorised in our [Risk-differentiation framework \(RDF\)](#) as key or higher risk.

The purpose of this review is not to change the level of service we provide, but to make sure it is being delivered in the most efficient way.

This year's RDF letter will include our updated contact details for your business to access either the LST or your relationship manager.

new independent review process

A new process for the independent review of audit position papers has been established. This new process is available for income tax audits undertaken for large business taxpayers.

Large businesses can request an independent review if they received an income tax audit position paper that was issued on or after 1 July 2013.

Specific criteria apply for when an independent review will be available. You have 10 working days from when you receive our *Statement of audit position* to request an independent review.

The independent review:

- is conducted by a senior technical officer from our Review and Dispute Resolution business line
- results in a written recommendation made to you and the audit team by the independent reviewer

- does not consider information that you have not provided to the audit team. If you raise new facts, evidence or arguments when requesting or during an independent review these will be referred to the audit team for their consideration. The independent review will be finalised and no further opportunity for an independent review will be available

- is limited to specific areas of disagreement that remain after the *Statement of audit position* has issued.

Find out more

[The independent review process](#)

Costly R&D record keeping mistakes



The importance of keeping good records, for your research and development (R&D) claims, has again been highlighted by the Administrative Appeals Tribunal (AAT).

In two recent cases, a failure to keep good records cost the companies involved hundreds of thousands of dollars.

Case 1

In the case of Ozone Manufacturing Pty Ltd v Commissioner of Taxation, the AAT found that companies must have records:

- that substantiate the carrying on of claimed R&D activities and the incurring of expenditure in relation to those activities
- to support the apportionment of expenditure between R&D activities and other business activities – these records can be time sheets or timecards and should be capable of reasonably straightforward analysis.

Failure to keep these records led to the AAT denying the company an R&D offset of over \$380,000.

Case 2

In the case of Hadrian Fraval Nominees Pty Ltd v Commissioner of Taxation, the AAT found that the entity did not take reasonable care to account for its R&D expenditure.

The AAT ruled that:

- journal entries in the book of accounts simply recorded a transaction and were not evidence of a transaction
- entries in accounts that had no apparent source documents were questionable and needed to be examined very closely.

Failure to keep good records in this case denied the company R&D offsets of \$225,563 and \$174,118 over two years.

Keeping good records is not just good business practice – it's a legal requirement. These decisions in the AAT have highlighted that activities and expenditure must be supported and substantiated by relevant source documentation.

Transition to monthly PAYG instalments

From 1 January 2014, corporate tax entities that meet or exceed the \$1 billion annual turnover threshold (as at 1 October 2013) will transition to monthly pay as you go (PAYG) instalments. The measure was introduced to align instalments with an entity's income and trading conditions.

If you are required to change your instalments, you will soon receive a letter confirming your entry into the monthly instalments system.

If you apply the taxation of financial arrangements (TOFA) rules and you are not otherwise required to be a monthly PAYG instalments payer you will be required to use an adjusted base assessment instalment income. This figure is calculated by including the gross amount of ordinary income from financial arrangements, not the net gain or loss amount calculated under the TOFA rules.

You will need to calculate your adjusted base assessment instalment income in order to determine your eligibility into the monthly cycle. If the adjusted base assessment instalment income exceeds the threshold, you will

need to pay monthly PAYG instalments and notify us for your inclusion by 30 November 2013.

This adjusted amount is only used for determining whether you are required to be a monthly payer. The normal TOFA rules apply when determining your PAYG instalment liability.

The Commissioner has also been given the power to develop an alternate method of calculating instalment income for monthly payers. We are currently in the process of developing a simplified method to assist existing PAYG instalment taxpayers during the transition to monthly instalments. We will provide further information on this method in the near future.



Find out more

- contact [PAYG monthly instalments](#)
- [Monthly pay as you go instalments](#)



Update on the status of the RDF letters

As part of our approach to managing risk in the large market, we have commenced writing to inform you of your [RDF categorisation](#).

This year we are categorising large businesses into one of the four RDF categories for each of income tax, GST, excise and resource rent tax.

Similar to last year, we have assessed risk on an economic group basis and will issue letters to over 1,300 large business groups with our view of the level of risk these groups represent.

If we identify risks or issues, usually through our [large market income tax risk filters](#), we will outline these in your letter.

Over time we are seeing genuine positive behavioural and compliance shifts in the large market. This has led to the number of taxpayers categorised as higher risk reducing significantly each year. Many are demonstrating a genuine commitment to openly share risks and issues with us in real time and working with us to respond in a more complete and timely manner to information requests.

It is likely that there will always be some large businesses that we perceive have a relatively higher risk compared to others, and understandably we assign appropriate resources to allow for continuous review of these taxpayers.

Our activities may include comprehensive audit and other intensive risk analysis approaches. This will enable us to identify and understand risks as they arise and provide information about our concerns; allowing you to make a more informed choice about your compliance approach.

The majority of key and higher risk taxpayers have now moved into a real-time disclosure framework, often through products such as ACAs and pre-lodgement compliance reviews. Under these products, risks and issues can now be managed much more effectively resulting in reduced compliance costs for both the ATO and large businesses.



Compliance, capability, coverage and conversion rates – understanding the numbers



In administering the tax system in the large market, one of the things we closely monitor are our conversion rates; that is, the rate at which our risk reviews turn into audits. For years this conversion rate in the large market averaged about 16%. In the last two years it has dropped to less than 10%.

An understandable question we hear is: 'Why are your conversion rates so low – why are you burdening compliant taxpayers by conducting so many risk reviews?'

This is a valid question; however, it isn't the most productive one to ask. In the large market, you should think about three key elements when considering the low conversion rate.

First, conversion rates are largely dependent on our taxpayer compliance rate and our capability to detect non-compliance. High compliance rates magnify the impact of any error rate in our selection system. For example, if our system is 70% accurate and the population is 90% compliant, the result will be a 21% conversion rate.

Second, the data we collect is weakly correlated to the possibility of significant contentious tax positions. To better understand the outcomes, we need to do additional profiling and review. We conduct reviews for many different reasons, including prudential reviews, reviewing the implementation of new law and checking outcomes we don't understand. The significance of the large market in the Australian tax system means that many reviews are undertaken for assurance purposes.

Finally, our taxpayer base is relatively small, very diverse, unpredictable and highly skewed. This means there isn't one standard approach we can take that will work with all taxpayers.

The very nature of our market, combined with the other factors, makes our case selection an area of ongoing interest and focus for improvement.



Limited recourse debt changes

The parliament recently passed legislation to clarify the scope of the limited recourse debt provisions. This measure was announced as part of the 2012–13 Budget. It follows the High Court’s decision in [Commissioner of Taxation v BHP Billiton Finance Limited](#); [Commissioner of Taxation v BHP Billiton Limited](#) on the definition of Limited Recourse Debt in Divisions 243 of the *Income Tax Assessment Act 1997*.

This measure will clarify that tax deductions are not available for capital expenditure on assets that have been financed by limited recourse debt, to the extent that the taxpayer is not effectively at risk for the expenditure and does not make an economic loss.

Taxpayers will need to review their positions back to the 2011–12 income year. Those taxpayers who:

- lodged in accordance with the changes do not need to do anything more
- did not lodge in accordance with the changes should seek amendments and if:
 - a reduction in liability results, interest on overpayment will be paid where applicable

- an increase in liability results, no tax shortfall penalties will be applied and any interest accrued will be remitted to the base interest rate up to the date of enactment of the law change. In addition, any interest in excess of the base rate accruing after the date of enactment will be remitted where taxpayers actively seek to amend assessments within a reasonable timeframe after enactment.

Find out more
[Amending the limited recourse debt definition](#)

Enhanced loss utilisation for designated infrastructure projects

Legislation was recently passed to remove impediments in the tax system that discourage private investment in infrastructure projects.

Infrastructure projects often experience long lead times between incurring deductible expenditure in the construction phase and earning assessable income in the operational phase. This can lead to the accumulation of significant tax losses that can be carried forward to later years, awaiting the receipt of income.

The Infrastructure Coordinator can designate infrastructure projects as nationally significant. Subject to certain conditions, companies and fixed trusts that carry on a designated infrastructure project or part of such a project can:

- uplift their tax losses by the long-term bond rate
- use those losses without applying the company continuity of ownership and same business tests or the equivalent trust loss rules.

You must notify the Commissioner that you are a designated infrastructure project entity in order to access the tax loss uplift or to use tax losses. To do this you will need to complete a notification form, then lodge the attached form in a secure email by the ATO Tax Agent or Business Portal.

To access the form go to [Designated infrastructure project entities](#)

Find out more
[Infrastructure – enhanced loss utilisations for designated projects](#)

Extended petroleum resource rent tax – annual and starting base returns

If you are affected by the extended PRRT you may have annual and starting base return lodgment obligations.

An annual return should be lodged if you hold an interest in an onshore petroleum project or the North West Shelf project that is in commercial production. If you hold an interest in more than one project, you will need to lodge separate annual returns for each project interest. If you elect to have a starting base for your project interest, you will need to lodge a starting base return with your annual return.

Lodgment dates for annual and starting base returns depend on whether you have a liability to pay PRRT. If you:

- had a PRRT liability for the 2012–13 financial year, your returns are due on 1 October 2013
- do not expect to have a liability, your returns are due on 1 June 2014.

If you have not already done so, consider registering your details with us to receive timely information about PRRT. We will also issue you with a unique payment reference number that will enable you to pay electronically. To register, download the [Application to register for petroleum resource rent tax](#).



Find out more
[PRRT Lodging, reporting and paying](#)

Start preparing now for the new data and payment standard

From next July, employers with 20 or more employees will need to send their superannuation contributions electronically. This includes sending data electronically to the fund and making payments through the banking system.

You've probably heard this referred to as the data and e-commerce standard (or the Standard) and it is a big change for many employers. However, with big changes come big benefits, including simpler, more consistent processes and lower processing costs.

Chances are that you will need to make some changes to meet the Standard. Every business is different, so there are many options available to get on board and use the Standard.

Most solutions for meeting the Standard fall into two broad categories: using software that conforms to the Standard, or using a service provider who can meet the Standard on your behalf. There are many options within each of these categories.

If you already use payroll software, you should talk to your software provider to find out what services they intend to provide that complies with the Standard.

Clearing houses are already a popular choice to streamline the super contributions process and most are getting ready to process contributions and data using the Standard. If you already use a clearing house – or want to in the future – it's a good idea to get in touch to find out about their data standards solution.

Similarly, if you use a payroll provider or accountant, they should be able to help you.

If you already transact electronically with super funds, they will be giving you updated processes and procedures to ensure you comply with the Standard.



Find out more
Keep an eye on [Data standards](#) as we release more information



Correcting GST errors or fuel tax credit errors

From 10 May 2013, the circumstances in which a business is able to use a later activity statement to correct GST errors or fuel tax credit errors made in an earlier activity statement is based on two new determinations:

- [GSTE 2013/1 Goods and Services Tax: Correcting GST Errors Determination 2013](#)
- [FTE 2013/1 Fuel Tax: Correcting Fuel Tax Errors Determination 2013](#).



Find out more

- [Correcting GST errors](#)
- [Fuel tax credits: making adjustments and correcting errors](#)

Use the right fuel tax credit rates

Fuel tax credit rates changed on 1 July. Rates change regularly, so make sure you keep up to date and use the right rates by checking the rates online every time you lodge your business activity statement (BAS).

Our improved online fuel tax credit tools are now easier and quicker to use. Check out our:

- [Fuel tax credit eligibility tool](#), which helps you determine which of your activities are eligible and what rates apply
- [Fuel tax credit calculator](#), which helps you work out how much you can claim.

You can also refer to the following for the latest fuel tax credit rates:

- [Fuel tax credit rates and eligible fuels](#)
- [Fuel tax credits calculation worksheet](#).



Find out more

[Fuel schemes](#)

We need your help

Don't forget, the Registrar of the Australian Business Register (ABR) will soon contact you to discuss the assistance available to help you update your business location information.

By recording multiple business locations in the ABR we will be able to improve the accuracy of the data available. This information will help guide government planning, service delivery, management of infrastructure and assist with disaster recovery for you and your community.

It is your responsibility to maintain your Australian business number (ABN) details. You must notify the ABR of changes to your registration details such as name, address or email address within 28 days of becoming aware of changes.



Get it done

To view or update your ABN details, visit abr.gov.au and select 'Keep your details up to date' in the Top tips menu on the right.





More information

Subscribing

Don't miss out on what the ATO is doing in the large business market; subscribe to our [Large business alert](#) service and our quarterly e-magazine, the [Large business bulletin](#).

Visit our website

- Find out how we work with large business; check out the [Large business and tax compliance](#) publication.
- Find the latest [public rulings](#) relevant to large businesses.
- Read the latest [speeches](#) by the Commissioner and other ATO leaders.

If you have any questions about tax matters for large business, phone us on **1300 137 286** Monday to Friday, 8.00am to 6.00pm.

Your feedback is important to us

The *Large business bulletin* is issued quarterly. If you have any suggestions or feedback, email [Large business bulletin](#).

OUR COMMITMENT TO YOU

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

If you make an honest mistake in trying to follow our information in this publication and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest.

If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for more recent information on our website at [ato.gov.au](#) or contact us.

This publication was current at **September 2013**.

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