

## Corporate Tax Update

1 July 2014

### **Taxation Determination on support payments published**

On 4 June 2014, the Commissioner of Taxation published Taxation Determination TD 2014/14 *Income tax: are the capital support payments described in this Determination deductible under section 8-1, section 40-880, subsection 230-15(2) or subsection 230-15(3) of the Income Tax Assessment Act 1997?* The TD sets out the Commissioner's view that capital support payments as described in the TD are not deductible under section 8-1 of the Income Tax Assessment Act 1997 (ITAA 1997) because they are capital in nature, and are not deductible under Division 230 of the ITAA 1997 because they are not a loss from a 'financial arrangement'.

In addition, the Commissioner expresses the view that such payments are considered to be included in the capital gains tax (CGT) cost base and reduced cost base of the parent entity's investment in the subsidiary, with the consequence that they are therefore not deductible under section 40-880 of the ITAA 1997 which covers 'blackhole' expenditure.

TD 2014/14 was previously issued as draft Taxation Determination TD 2014/D7 and the positions taken by the Commissioner in TD 2014/14 are substantially the same as the positions taken by the Commissioner in TD 2014/D7.

Paragraph 4 of the TD 2014/14 describes those arrangements to which TD 2014/14 applies. The arrangement must have the following features:

- (a) A parent entity ('parent') agrees to provide its subsidiary with one or more of the following:
  - i. a lease, license or other right to use one or more assets, (which is not a 'cash settleable' right)
  - ii. a legal or equitable interest (other than a 'cash settleable' right) in one or more such assets, or
  - iii. services.
- (b) The subsidiary agrees to provide consideration to the parent for the things referred to in paragraph (a).
- (c) The parent also agrees to make a payment (referred to in the TD as a capital support payment) to the subsidiary which, objectively:

- i. is made because all or a part of the subsidiary:
  - has made a loss or losses
  - is not, in the opinion of the parent entity or as agreed between the parent entity and one or more other parties (such as the subsidiary and/or a third party) sufficiently profitable (such as may be the case if the profit of the subsidiary is less than an agreed benchmark), or
  - would or is likely to have made a loss or losses, or not have been sufficiently profitable in the sense used above, were it not for that payment, and
- ii. the payment referred to in paragraph (c) does not have the character of:
  - a price for assets or services supplied by the subsidiary to the parent
  - a genuine adjustment to the price of assets or services supplied by the parent to the subsidiary or by the

<p>subsidiary to the parent or</p> <ul style="list-style-type: none"> <li>• a loan to the subsidiary or the repayment of such a loan.</li> </ul> <p>(d) The parent's obligation to provide the things referred to in paragraph (a) is not insignificant compared with the rights and obligations</p>	<p>referred to in paragraphs (b) and (c).</p> <p>Relevantly, the capital support payments are effectively paid to support the subsidiary's activities and are not paid for any of the matters referred to in (c)(ii) above. TD 2014/14 applies to years of income commencing both before and</p>	<p>after its date of issue. However, it will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of TD 2014/14.</p> <p>For further information contact Derek Ivers on +61 (2) 8266 8451.</p>
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### ***Let's talk***

For a deeper discussion of how these issues might affect your business, please contact:

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