

Key Messages

- ▶ Australia will take action in relation to three of the G20/OECD BEPS recommendations.
- ▶ Consultation will occur on the introduction of the recommendations from the G20/OECD anti-hybrid rules. Australia complies with the OECD Guidelines on Harmful Tax Practices.
- ▶ Australia is already exchanging rulings related to preferential regimes.
- ▶ Australia will adopt the G20/OECD Treaty abuse rules as part of its double tax agreement framework.
- ▶ In addition, the ATO will work with Australian business and industry to groups over the next 12 months to develop a voluntary code on greater disclosure of tax information.

Start Date

- ▶ The ATO has been exchanging preferential rulings Since December 2014.
- ▶ The other measures will require a phase-in period and there are currently no firm start dates.

How ready is the ATO at the start date of this measure?

- ▶ The ATO is ready. The only announcement that can be implemented before further work by government is the exchange of rulings on preferential regimes.

Background - Hybrid Mismatch Rules

- ▶ These recommendations were released in a report in September 2014 on G20/OECD BEPS Action Item 2 on neutralising the effects of hybrid mismatch arrangements.
- ▶ The rules relate to either hybrid financial instruments or entities in different tax jurisdictions to create mismatch outcomes.

- ▶ The rules propose standardised domestic rules that adjust the tax outcome for different types of hybrid arrangements, rather than re-characterising the instrument or entity.
- ▶ The rules are divided into a primary rule and a secondary/defensive rule to apply where the other country, who has the primary right to neutralise the mismatch, does not do so.
- ▶ Further work is being undertaken by the OECD on this issue with respect to regulatory capital and interaction with Controlled Foreign Corporation rules.

Background - Harmful Tax Practices

- ▶ As part of G20/OECD BEPS Action Item 5 on Countering Harmful Tax Practices, a review of Australia's preferential tax regimes was undertaken. None were found by the OECD to be harmful.
- ▶ As part of this initiative, the ATO started exchanging rulings (as of 4 December 2014) on Australia's preferential tax regimes with other jurisdictions. These are the conduit foreign income, Offshore banking unit and regional headquarter regimes.

Background - Preventing treaty abuse

- ▶ The G20/OECD BEPS recommendations on Action Item 6 on preventing treaty abuse have developed a minimum standard to be incorporated into bilateral tax treaties to prevent treaty abuse/shopping.
- ▶ The minimum standard rules provide for three options being a Principal Purpose Test (PPT), either alone or with a Limitation of Benefits (LOB) test, or a LOB test with a modified PPT.
- ▶ [s 33]
- ▶ Further work is being undertaken by the ATO on the application of these rules to Collective Investment Vehicles, sovereign wealth funds and the minimum standard concept.

Background – Public disclosure

- ▶ The Board of Taxation will lead development of a voluntary code to enhance corporate/tax transparency. Details disclosed may include effective average tax rate analysis or international related party dealings.

EST impacts

- ▶ Unknown – proposals have not been costed.

Hot-Spots

- ▶ There have been some concerns raised about compliance and administration costs of the anti-hybrid rules. Australia supports the approach that to avoid compliance and administration costs and address concerns, particularly by small business and individuals, the rules only apply to deliberate mismatches (e.g. related party and structured arrangements) and exclude unintended mismatches.

Critical Date for Implementation

- ▶ NA - The Board of Taxation will consult on the anti-hybrid rules, Further work will be undertaken on the treaty abuse rules, dependent upon how the OECD recommends these should be adopted.

Administrative Impacts

- ▶ At this stage, they are minimal for the ATO.

Critical Dates for Legislation & Proposed Consultation

- ▶ Nil

Taxpayer Impact Statement

- ▶ Reports on the first three of these issues were released in September 2014, so taxpayers would already be aware of these measures.

Resource Bids

- ▶ Not Applicable

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Key Messages

- ▶ The Government has announced three measures aimed at combatting multinational tax avoidance.
- ▶ The measures seek to improve compliance with taxation laws for multinationals with global revenue of more than \$1 billion.
- ▶ The first measure, a *targeted anti-avoidance law*, extends Part IVA to profit shifting by large multinationals supplying goods and services to Australians with contracts/funds flows to offshore subsidiaries (where low tax jurisdictions are involved).
- ▶ The second measure, *new transfer pricing documentation standards*, implements the G20 endorsed Country-by-Country (CbC) reporting scheme that is part of the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan.
- ▶ The third measure, *stronger penalties*, is a doubling of administrative penalties that apply to large multinational taxpayers in relation to tax avoidance and profit shifting (including transfer pricing schemes).
- ▶

Start Date

- ▶ Part IVA – applies to tax benefits obtained on or after 1 January 2016 irrespective of when the scheme was entered into.
- ▶ CbC – for the first income tax year beginning on or after 1 January 2016.
- ▶ Penalties - 1 July 2015 (income years commencing on or after).

How ready is the ATO at the start date of this measure?

- ▶ The ATO is ready.

Background – Measure 1 – Part IVA

- ▶ The measure will make changes to the existing Part IVA of the *Income Tax Assessment Act 1936*.
- ▶ The measure will apply to artificial or contrived arrangements where it is reasonable to conclude that the scheme was designed to avoid the attribution of profits to Australia through an Australian permanent establishment and the principle purpose or one of the principal purposes of the scheme was to obtain an Australian tax benefit or to obtain both an Australian and foreign tax benefit.
- ▶ The effect of the proposal will be to allow the Commissioner to tax the foreign entity that supplied the goods or services to Australian customers as if the foreign entity had undertaken the activities in relation to that supply through a Permanent Establishment (PE) in Australia. This would cover business profits attributable to the PE and obligations under royalty and interest withholding tax.
- ▶ The measure will only apply to taxpayers that have an annual global revenue of over \$1 billion and , a related party within their corporate structure that is subject to low or no tax (as a headline rate or through preferential regimes).
- ▶ The purpose test under the new measure will have regard of the matters in subsection 177D (2) of ITAA 1936 and any other relevant matters.
- ▶ Government will continue consultation as to whether further amendments are required to address profit shifting through contrived arrangements to achieve low or no taxation.

Background – Measure 2 – CbC

- ▶ The OECD report released in September 2014 on Action Item 13 of the G20/OECD BEPS Plan recommends standard transfer pricing documentation for multinationals including a master file, local file and CbC Report.

- ▶ Large multinationals that are headquartered in Australia and have over \$1 billion in global revenue will be required to file these reports with the ATO.
- ▶ The CbC report contains specific information which relates to the multinational's global allocation of income, tax paid and certain other indicators relevant to the geographic location of the economic activity (e.g. no. of employees) within the group. This report will be shared with other revenue authorities who would provide similar information from MNEs headquartered in their countries to the ATO under exchange of information.
- ▶ Australian based multinationals and foreign subsidiaries operating in Australia (with global turnover of \$1 billion or more) will be required to lodge the master file and local file no more than 12 months after the year-end.
- ▶ The master file contains standardised information about the multinational group. The local file provides information relevant for transfer pricing compliance, for material transactions for the subsidiary/taxpayer.

Background – Measure 3 – Penalties

- ▶ Administrative penalties in relation to tax avoidance and profit shifting (including transfer pricing schemes) under Division 284 of Schedule 1 to the *Tax Administration Act 1953 (TAA)* will be doubled for taxpayers that have annual global revenue of more than \$1 billion.
- ▶ The doubling of penalties applies to schemes entered into or positions taken by taxpayers on or after 1 July 2015. They will also apply to statements made after the start date or where the taxpayer provides documents to the Commissioner after the start date.
- ▶ The measure will double penalties for both base penalty amounts under section 284-90 of Schedule 1 to the *TAA* and increases to these base penalty amounts where a taxpayer obstructs the

Commissioner or makes false or misleading statements.

- ▶ The measure results in a doubling of base penalty units where there is no shortfall and a doubling of the percentage for both shortfall and scheme shortfall amounts.
- ▶ The increase in administrative penalties will not apply to taxpayers that have a reasonably arguable position or to schemes entered into or positions taken by taxpayers prior to the start date.
- ▶ The new measure will not alter the Commissioner's discretion to remit penalties.

Hot-Spots

- ▶ The Part IVA measure may be criticised as an attempt to redefine the Permanent Establishment definition contained with our treaties and undermine the G20/OECD approach or because Australia is pre-empting coordinated international reforms flowing from the G20/OECD BEPS program.
- ▶ **[s 47C]**
- ▶ It is likely that external stakeholders will publicly raise concerns about tainting the reputation of large companies, as well as the potential impact on legitimate business and the impact on Australia's tax base in other countries if they implement a similar rule in relation to the Part IVA measure.
- ▶ However the revenue threshold and the low/no tax condition in the Part IVA measure limit the scope and number of taxpayers to which these new measures apply.

EST Impacts (combination of the 4 measures)

- ▶ System implementation date is 1 July 2016 and 1 January 2017; delivered through TT16 and MR6 release.
- ▶ System change complexity is high.

Critical Date for Implementation

- ▶ Part IVA: 1 January 2016, applicable to tax benefits obtained on or after that date from new and existing schemes.
- ▶ CbC: 1 January 2016 but it is expected that the ATO will not start receiving reports from taxpayers and other revenue authorities until sometime in late 2018.
- ▶ Administrative penalties: 1 July 2016.

Administrative Impacts

- ▶ The Part IVA measure will fall within current compliance work of the ATO. The ATO will be instructed to provide guidance on the new law by the start date of 1 January 2016.
- ▶ The ATO will need to consider for CbC, the overlap between the information collected under this measure and a number of other disclosure regimes and adjust the requirements accordingly to ensure compliance and reporting costs for taxpayers are minimised where possible.
- ▶ In relation to the implementation of CbC, the ATO will need to consider administrative impacts around exchange of information with treaty partners. The ATO is currently drafting a scoping brief for exchanging country-by-country reports with its treaty partners.
- ▶ Changes to practice statements and other reference documents will be required to reflect the changes in the penalty regime.

Critical Dates for Legislation & Proposed Consultation

- ▶ Part IVA: An exposure draft and explanatory memorandum was released at the same time as the budget announcement. The ATO may be instructed to develop detailed guidance on the rule's application (in consultation with business) during the development of legislation and prior to 1 January 2016.
- ▶ CbC: No dates for legislation and proposed consultation have been announced.
- ▶ Penalties: An exposure draft for consultation is expected around May/June 2015. The measure is expected to be introduced August/September 2015.

Taxpayer Impact Statement

- ▶ The revenue threshold and the low/no tax condition in the Part IVA measure limit the number of taxpayers to which these measures will apply.
- ▶ Guidance will be developed in consultation with industry where needed.
- ▶ The coordinated implementation of OECD reforms will increase compliance costs for multinational enterprises in the short term (e.g. developing a Master and CbC file). Local file requirements are broadly in alignment with existing documentation expectations. Over time, we will build efficiencies as these reports will be rationalised with other transparency/disclosure measures (e.g. international dealings schedule requirements).
- ▶ Improved transparency and intelligence should enhance compliance and allow for more targeted ATO interventions in the future.

Resource Bids

Country by Country reporting

Actual Funding Received

Financial year	2015-16	2016-17	2017-18	2018-19
FTE	3.7	11.0	8.3	6.7
Operating (\$m)	0.9	3.3	1.5	1.2
Cap Exp (\$m)	0.0	4.4	0.0	0.0

Additional funding requested

Financial year	2015-16	2016-17	2017-18	2018-19
FTE	3.8	11.1	8.3	6.7
Operating (\$m)	0.9	3.3	1.5	1.2
Cap Exp (\$m)	0.0	4.4	0.0	0.0

Part IVA and Penalties

- ▶ The ATO will absorb the costs of implementing these measure.

Presentation to OECD: Australian Budget 2015-16 — Multinational integrity measures

- The Australian Government has announced a package of measures in its 2015-16 Budget to combat multinational tax avoidance.
- The package includes:
 - **three new domestic measures;**
 - (1) **A new Multinational Anti-avoidance Law:** which strengthens Australia's General Anti-Avoidance Rules.. The rest of this presentation will be focused on the MAAL.;
 - (2) **Increased Penalties:** for tax avoidance schemes and transfer pricing adjustments, the maximum administrative penalties will be doubled for large corporates (from 50% to 100% of the tax benefit obtained).
 - (3) **Application of GST to imported digital goods and services:** to ensure that supplies of digital products and services supplied to Australian consumers by foreign entities receive the same GST treatment as equivalent supplies made by Australian entities. These amendments are broadly modelled on similar rules currently in operation in the European Union and Norway **and draws on the work being undertaken by Working Party 9.**
 - (a) Products and services covered include streaming or downloading of movies, music, apps, games, e-books as well as **other services** such as consultancy and professional services
 - action on **four of the BEPS action items** that were delivered last year;
 - (1) **CbC:** Australia will require large companies to provide a CbC, master file and local file from 2016, consistent with the OECD's implementation guidance.
 - (2) **Treaty Abuse:** Australia will adopt the OECD's recommendations into our treaty negotiation policy. They will provide Australia's starting point for future treaty negotiations.
 - (3) **Hybrid Mismatches:** the Board of Tax will consult on how to implement the OECD's recommendations in the Australian context, reporting by March 2016.
 - (4) **Harmful Tax Practices:** the ATO has already started exchanging rulings on preferential regimes.
 - an announcement of **three further processes.**
 - (1) **Consultation on further measures to address profit shifting:** The Government has announced a consultation process focused on schemes where transfer pricing is the main issue. The recently announced diverted profits working group established with the UK will feed into this consultation process.

(2) **Development of a public tax transparency code with business:** The Government has asked the Board of Tax to lead the development of a voluntary public tax transparency code for large corporates.

(a) Australia already has laws that mandate public disclosure by large companies of their turnover, taxable income and tax paid. But we think a voluntary code for greater disclosure will help build confidence in the majority of Australian companies that do the right thing. A voluntary code will provide a framework for corporates to take the lead, to become more transparent and help educate the public about their compliance with Australia's tax laws.

(3) **Signing of MCAA for CRS:** Australia has committed to sign the OECD's Multilateral Competent Authority Agreement for the implementation of the common reporting standard.

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