



International Tax

Australia Tax Alert

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Draft diverted profits legislation to be released/GST to be extended

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After much media speculation, and just one day before the 2015-16 Federal Budget, Australia's Treasurer announced on 11 May 2015 that legislation will be introduced to address tax avoidance by multinationals in respect of diverted profits. Draft legislation for consultation is expected to be issued on 12 May, and if approved, the new rules are intended to apply as from 1 January 2016.

The Treasurer also announced that the goods and services tax (GST) will be extended to digital supplies made in Australia by offshore suppliers.

Diverted profits announcement

The diverted profits announcement follows from the recent collaboration announced by Australia and the UK to tackle the issue of profit shifting by multinational enterprises. The announcement targets 30 identified (but not publicly disclosed) multinational enterprises.

The announcement proposes changes to Australia's general anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* to address circumstances where multinational enterprises are "diverting profits earned in Australia away from Australia to no or low tax jurisdictions." It would target arrangements, including the "double Irish Dutch sandwich," that are being used to avoid paying Australian tax.

Importantly under Australian tax law, the general anti-avoidance provisions generally take precedence over Australia's tax treaties. The introduction of the measure by amending the anti-avoidance provisions presumably is intended to counter the treaty-based argument that a multinational does not have a permanent establishment in Australia, and so should not be liable to Australian tax on business profits.

Based on the limited details provided in the announcement, the measures would target multinational enterprises with global revenue in excess of AUD 1 billion where:

- Foreign multinationals supply goods or services to Australians;
- Revenue from Australian sales is booked offshore;

- Australian customers deal mainly with Australian employees;
- Australian sales revenue is channeled to tax havens; and
- A principal purpose of the scheme is to avoid a taxable presence in Australia.

Where the diverted profits provisions apply, income tax would be imposed on profits, withholding tax would be imposed on interest and royalties, and interest and draconian penalties would be levied on unpaid taxes.

GST on digital supplies

The Treasurer also announced that Australia will introduce measures to ensure that the supply by offshore suppliers of digital products and services (e.g. movies, games and e-books) in Australia will be subject to GST. The current GST rate is 10%.

The announcement references the work of the OECD under the base erosion and profit shifting (BEPS) project on similar issues and actions taken by a number of countries to address the indirect tax implications of the supply of intangibles and digital services online.

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