



ICEbreakers: Unlocking Australia



Hot topics

- **US tax reform:** The enactment of US tax reform legislation could have significant effects on US multinationals with Australian operations, both in terms of the repatriation of profits and the ongoing taxation of the global supply chain. It will be important to take into account the impact of the Australian BEPS measures when considering whether to undertake reorganizations in response to US tax reform and/or when modelling the impact of the international tax measures.
- **Intragroup financing:** Described by senior Australian Taxation Office (ATO) leadership as the primary risk with regard to the taxation of multinationals, in December 2017, the ATO issued final guidelines on its compliance approach to tax issues associated with cross-border related party financing and similar transactions. The guidelines provide practical assistance to taxpayers to assess the risk of review or audit of their arrangements (and the risk of adjustments by the ATO). They follow on the heels of the ATO prevailing in the largest ever Australian transfer pricing case on intragroup debt in April 2017.
- **Diverted profits tax (DPT):** In December 2017, the ATO released its latest guidelines on the interpretation of the DPT. The DPT applies with effect for income years starting on or after July 1, 2017 and can result in a punitive 40% tax liability on intragroup transactions and financing arrangements that lack economic substance and take place with countries that have a corporate income tax rate of less than 24%. Under the DPT, the ATO is empowered to adjust (i.e. "re-price") a transaction or to restructure it entirely.
- **Significantly increased penalties:** The DPT legislation includes a doubling of general penalties for significant global entities (those within a group with more than AUD 1 billion in annual income) as from July 1, 2017. This aligns with the previous doubling of penalties for the MAAL (see below) and profit shifting schemes as from July 1, 2016. Penalties for failing to file documents on time are increased 500-fold from July 1, 2017. Returns and notifications, as well as documents, such as CbC reports and general purpose financial reports, are exposed to a maximum penalty of AUD 525,000 for failure to file on time.

Other developments

- **Multinational anti-avoidance law (MAAL):** The MAAL affects multinational groups that sell goods or services to Australian customers through a foreign entity with the support of an Australian affiliate. The ATO is continuing to follow a program of seeking detailed submissions from businesses on how the MAAL applies to them. As risk assessments emerge, it will be important to address how these may affect accounting disclosures with respect to uncertain tax positions.
- **Cross-border arrangements:** The ATO's focus on cross-border arrangements continues following successes in court cases, the impact of which should be considered by businesses investing into Australia. These include decisions affecting the determination of the residence of a company incorporated outside Australia; whether a limited partnership is validly formed in Australia; when interest is "paid" for withholding tax purposes; and decisions affecting related party cross-border financing arrangements.
- **CbC reporting and transfer pricing documentation:** Measures giving effect to the OECD standards under action 13 of the BEPS initiative (CbC reporting and the transfer pricing master file/local file) apply as from January 1, 2016. CbC reports are required, for example, from an Australian subsidiary of a US multinational group, unless an exemption is sought and obtained from the ATO.

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Legislative updates

- **Anti-hybrid core rules:** The government released exposure draft legislation in December 2017 that contains anti-hybrid rules that will be effective six months from enactment (anticipated to be late 2018/early 2019). The measures largely follow OECD recommendations and, therefore, address both direct arrangements and imported mismatches.
- **Anti-hybrid additional measures:** Rules will be released addressing branch mismatches and a potentially far-reaching integrity rule aimed at "synthetic hybrids" (e.g. funding through low tax jurisdictions) that may prevent certain responses aimed at circumventing the anti-hybrid rules in the UK from being effective in Australia.
- **Foreign resident capital gains tax withholding regime:** As from July 1, 2016, the buyer of a direct or an indirect interest in Australian real property from a foreign resident is required to remit 10% of the purchase price to the ATO as a nonfinal withholding tax on behalf of the seller. Purchasers, including those in group reorganizations, should consider the use of declarations or clearance certificates to ensure compliance with these rules, since penalties apply for noncompliance.

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