



## AUSTRALIAN TRANSFER PRICING ALERT

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### TRANSFER PRICING TRANSPARENCY MEASURES PASSED BY PARLIAMENT

The Australian Federal Parliament has passed the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 which gives effect to Australian Country-by-Country (CbC) reporting requirements (i.e. Action 13 of the BEPS project).

In addition, the legislation amends the laws governing the Australian Taxation Office's (ATO) public disclosure of information and introduces the new Multinational Anti-Avoidance Law (MAAL) which targets schemes that limit a taxable presence in Australia.

#### Australian CbC reporting requirements

The requirements apply for accounting periods commencing on or after 1 January 2016 and is due within one year of an entity's year end.

- The Australian CbC reporting requirements apply to all Australian residents and non-residents operating in Australia who are members of a significant global entity, defined as a corporate group with annual global revenue of at least A\$1 billion, even if the local operations are small
- The requirements apply for financial years commencing on or after 1 January 2016 and reporting is due within one year of an entity's year end
- Under the new rules a statement by the taxpayer is required to be lodged with the ATO covering one or more of a:
  - **CbC report** - reporting of high-level information relating to the global allocation of a multinational group's income and taxes paid, as well as information about the location and main business of each constituent entity within the group
  - **Master file** - overview of the multinational group's business operations to enable tax authorities to place the group's transfer pricing practices in their global economic, financial, legal and tax contexts. Consists of the group's organisational structure, its intangibles and intercompany financial activities, financial and tax positions and a description of the group's businesses
  - **Local file** - focuses on specific transactions between the reporting entity and their associated enterprises in other countries. It requires identification of relevant related party transactions, the value of those transactions, and the entity's analysis of the transfer pricing outcomes and positions

#### New penalties regime for large MNEs

- Penalties - For taxpayers with annual global revenue of at least A\$1 billion, where transfer pricing adjustments result in additional tax the maximum penalty for tax avoidance and profit shifting arrangements has been doubled and is applicable for income years commencing on or after 1 July 2015

#### SPECIALISATION

Transfer pricing

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- For practical considerations in relation to the above, refer to our previous Transfer Pricing Alert – [Australia leads in the way in enshrining OECD transparency measures into local law.](#)

### **Requirement to lodge General Purpose Financial Statements (GPFS)**

- New requirement to lodge GPFS relate to taxpayers that are members of a 'significant global entity' (i.e. entities captured under the Australian CbC reporting requirements above)
  - For financial years commencing on or after 1 July 2016, all taxpayers that are members of a 'significant global entity' are required to lodge GPFS with the ATO who will subsequently share this information with ASIC
  - This measure is designed to prevent foreign multinational enterprises that operate in Australia as a subsidiary, branch or permanent establishment (PE) from avoiding more detailed financial disclosures
  - The GPFS will need to be prepared in accordance with accounting principles or commercially accepted principles relating to accounting and whether the GPFS are required to be audited is a matter for further consideration.

### **Other measures introduced**

- Amendments were made to the tax transparency measures previously introduced to require the ATO to now publicly disclose information obtained from income tax returns for entities that:
  - Have total income equal to or exceeding \$100 million and is a wholly or majority owned subsidiary or PE (excluding Australian private companies)
  - Australian private companies where turnover is greater than \$200 million.
- The new MAAL will apply to foreign entities that are either parent entities (or members) of a multinational group with global revenues of A\$1 billion to target schemes that limit a taxable presence or permanent establishment (PE) in Australia
  - The new law targets profit on sales activities occurring offshore where the activities of a related entity in Australia are integral to generating those sales
  - The law requires a principal purpose (not sole principal purpose) to either obtain an Australian tax benefit or reduce or defer foreign tax
  - Where these rules apply, the foreign entity will likely be deemed to have a notional PE in Australia, with Australian sales revenue and allowable deductions being attributed to the notional Australian PE (based on Australian PE transfer pricing principles). The new rules will apply on or after 1 January 2016 regardless of whether the business operating model was established before 2016.

Australia is an early adopter of BEPS Action 13 CbC Reporting by enacting legislation so quickly. These new transparency measures provide the ATO with increased information about a group's global supply chain which will be used for risk assessment purposes. Companies who are part of a 'significant global' group will need to act quickly to ensure they can comply with these new requirements.

We strongly recommend a 'dry run' using FY2015 data to identify issues or inconsistencies which will be highlighted in the CbC report to be filed. This should allow time for groups to address any issues during 2016 which may improve the disclosures and resolve any issues prior to filing. As Australia's rules are likely to be more onerous than many overseas jurisdictions, subsidiaries of foreign multinational groups will need to ensure the parent/head office is aware of the local filing requirement (Master file and Local file) so that such reports are available by the due date and reconciled to local documentation requirements.

We now await the ATO's guidance on how it will implement the new CBCR legislation including what, if any, exemptions will be available.

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