

Tuesday 31 July 2012

Dear Secretary

We are writing in relation to the inquiry by the Senate Standing Committee on Economics into the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012 (the Bill).

Thank you for the opportunity to make submissions on this Bill. As you can appreciate, there is extremely strong opposition from taxpayers, industry bodies, the legal and tax profession and professional services firms in relation to this Bill which will introduce a new tax retrospectively. It is very important that this Bill is not passed by the Senate – the repercussions will be significant and need to be fully highlighted. The Senate needs to be aware that by passing this retrospective law, it will damage the administration of the Australian tax system. It will also be passing a retrospective law that was not clearly intended by Parliament and not anticipated by our tax treaty partners.

We appreciate that the time for submissions has closed. However, during the public hearing a number of issues/questions were raised by the Committee with respect to submissions. To assist the Committee with these issues/questions and reporting on the Bill, we kindly ask if it would be possible for us to provide the attached documents to the Committee.

In particular, we would like to submit the following documents (with relevant sections highlighted in yellow) to the Committee:

Explanatory memorandum to the Australia-UK tax treaty, which sets out Parliament's understanding of how tax treaties work, including their purpose (Exhibit A)

Speeches by the Commissioner and the Deputy Commissioner of Taxation which acknowledge that the law is uncertain (Exhibits B and C)

A decision of the Full Federal Court of Australia, where the Commissioner of Taxation was reprimanded for repeatedly applying the law in a way that he knew was determined to be incorrect by the courts (Exhibit D)

Journal article which discusses in detail numerous examples of bias and error in ATO tax rulings, including examples where the ATO sought to tax a taxpayer on the basis that its tax ruling was wrong (Exhibit E)

Explanatory documents to the Australia-US tax treaty and the model US tax treaty which confirm that the Australia-US tax treaty was never meant to and cannot apply to increase tax liability - as accepted by the Government when it signed the treaty and when it was passed into law (Exhibits F to H)

In addition, we would also like to bring to the Committee's attention that Treasury has not answered question 109 (on notice) raised by Senator Cormann during the Senate Economics Legislation Committee Budget Estimates (from 30 May 2012) on the amount of tax that is expected to be collected by this new retrospective law. The question was due to be answered by Friday last week. The link to the questions on notice is as follows:

http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=economics_ctte/e_stimates/bud_1213/Treasury/index.htm

Once again, thank you for the opportunity to make submissions on this fundamentally unjust Bill. We hope that you will be able to provide the attached to the Committee to assist it with its report on the Bill.

Please feel free to contact Pete Calleja, Paul McNab or me should you have any questions or would like to discuss any of the above.

Kind regards,

Peter
Peter Collins
Partner
International Tax Services
PwC Australia

Senate Standing Committee on Economics
Inquiry into the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012

Submission by PricewaterhouseCoopers

Exhibits

Exhibit	Description
A	<i>Explanatory Memorandum to the International Tax Agreements Amendment Bill 2003</i> (Australia-UK tax treaty)
B	<i>In the best interests of Australia</i> , speech by the Commissioner of Taxation, Michael D'Ascenzo, to the Corporate Tax Association Convention, Melbourne, 15 June 2009.
C	<i>Distinguishing between business driven and tax driven restructuring</i> , speech by the Deputy Commissioner (Large business and international), Jim Killaly, to The Tax Institute's Victorian State Convention on 9 October 2008
D	<i>Commissioner of Taxation v Indooroopilly Children Services (Qld) Pty Ltd</i> [2007] FCAFC 16
E	Scolaro, Diana (2006) "Tax Rulings : Opinion or Law? The Need for an Independent 'Rule-Maker'," Revenue Law Journal: Vol. 16: Iss.1, Article 7.
F	US Treasury, Technical Explanation of the Convention Between the Government of the United States of America and the Government of Australia Signed in Sydney on August 6, 1982 (Australia-US tax treaty)
G	<i>Explanatory Memorandum to the Income Tax (International Agreements) Amendment Bill 1983</i> (Australia-US tax treaty)
H	US Treasury, Technical Explanation of the United States Model Income Tax Convention of September 20, 1996