



1 February, 2013

Senator the Hon Bill Heffernan
Chair
Standing Committee on Rural Affairs & Regional Affairs and Transport
Parliament House Canberra 2600

Dear Senator

INQUIRY INTO THE FOREIGN INVESTMENT REVIEW BOARD NATIONAL INTEREST TEST - TAX MINIMISATION BY FOREIGN INVESTORS

On behalf of the Secretary I am writing to you in response to your letter dated 21 December 2012 which noted that your Committee was concerned by potential tax minimisation options available to foreign investors in Australia. You requested the Treasury provide the Committee with policies that have been developed to protect the integrity of Australia's tax base from potential tax minimisation practices of foreign investors, as well as the potential risks that these practices will undermine Australia's sovereignty.

Australia's tax laws have rules to prevent taxpayers from inappropriately shifting profits and gains out of Australia, especially to low tax jurisdictions, including:

- the transfer pricing rules – that ensure arm's length prices apply to cross-border transactions for the supply or acquisition of goods and services;
- the thin capitalisation rules – that limit or cap interest expense deductions;
- the interposed entity rule in the non-resident capital tax provisions – that capture the sale of offshore entities that are considered to be Australian 'land-rich' entities; and
- Part IVA of the *Income Tax Assessment Act 1936* – the general anti-avoidance rules for income tax.

Australia's transfer pricing rules have recently been the subject of review. The second tranche of legislation to modernise these rules is expected to be introduced into Parliament in the Autumn Sitzings.

Australia also contributes to the international efforts against tax avoidance and evasion, including through its membership (and until recently as Chair) of the Global Forum on Transparency and Exchange of Information for Tax Purposes, various OCED committees on tax policy and administration and through the Joint International Tax Shelter Information Centre.

Australia also has an extensive network of Tax Information Exchange Agreements and Comprehensive Tax Agreements in place that provide the Commissioner with the ability to request information from, and share information with, other jurisdictions.

On 10 December 2012 the Assistant Treasurer and Minister Assisting for Deregulation, the Hon David Bradbury, announced that Treasury would produce a 'scoping paper that will set out the risks to the sustainability of Australia's corporate tax base from multinational tax minimisation strategies and identify potential responses'.

This paper which will be informed by input from a specialist reference group (made up of business representatives, tax professionals, academics and the community sector) is intended to be released for public consultation in mid-2013. The first meeting of the reference group is expected to occur in late February.

We will provide a copy of the scoping paper to the Committee as soon as it is available.

Yours sincerely

Jim Murphy
Acting Secretary
The Treasury