



CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

14 October 2015

The Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir/Madam

Inquiry into Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015

Chartered Accountants Australia and New Zealand welcomes the opportunity to make a submission to the Inquiry into Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 (the **Bill**).

Chartered Accountants Australia and New Zealand is made up of over 100,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over. Our members are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business. We focus on the education and lifelong learning of members, and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

Submission

Our comments on the Bill concern Schedule 2 – Multinational anti-avoidance and Schedule 4 – Country-by-Country reporting.

Chartered Accountants Australia and New Zealand

33 Erskine Street, Sydney NSW 2000,
GPO Box 9985, Sydney NSW 2001, Australia
T +61 2 9290 1344 F +61 2 9262 4841

charteredaccountantsanz.com

Schedule 2 – Multinational anti-avoidance law (MAAL)

Chartered Accountants Australia and New Zealand recognises that the Government wishes to introduce an anti-avoidance rule into the Australian tax legislation to target certain schemes used by a number of significant global entities designed to artificially avoid the attribution of business profits to Australia through a taxable presence in Australia. The proposal has bipartisan support.

Development of the MAAL has been the subject of extensive consultations over recent months. Chartered Accountants Australia and New Zealand has been an active contributor during this process. This has included our participation in the targeted confidential consultation conducted by Treasury prior to the announcement of the MAAL in the 2015 Budget, our submission on the exposure draft legislation for the measure on 16 June 2015¹ and follow up discussions with Treasury and the Australian Tax Office (**ATO**) prior to introduction of the Bill.

Need for ATO guidance

Given the above, we have now turned our attention to implementation of the proposed measure by the ATO, in particular, the need for published ATO guidance. This is a priority issue given that the MAAL is expected to apply from 1 January 2016.

We welcome the Commissioner's comments made during the joint press conference with the Treasurer on 9 October 2015.² In particular, the Commissioner indicated that the ATO will be proactively entering into discussions with around 80 multinationals potentially affected by the MAAL. In our view, the generic learnings from these discussions should form the basis of published guidance so that it can be conveyed to a greater audience. In addition to assisting entities to assess whether they may be impacted by the measures, such a process ensures transparency in regard to the ATO's processes. This in turn conveys a positive message internationally as to how the ATO is administering the MAAL, including how it is working with affected taxpayers.

Interaction with Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Project Outcomes

The MAAL measures are directed at certain arrangements that have been identified as part of the OECD's comprehensive 15-point BEPS Action Plan to address tax base erosion attributable to cross-border structures and transactions, in particular Action 7 "Prevent the artificial avoidance of PE status" and to a lesser extent Action 6 "Prevent treaty abuse".

Following the release of the OECD's final reports just last week, the Treasurer's media release indicated that Australia already adopts the recommendations for Action 7 in its negotiation of new/updated bilateral tax treaties and the recommendations in regard to Action 6 are to be adopted going forward. Moreover, the OECD work on development of a multilateral instrument (Action 15), scheduled for completion in late 2016, seeks to update existing tax treaties as a result of BEPS recommendations.

¹ Chartered Accountants ANZ submission 11 June 2015 <http://www.charteredaccountants.com.au/Industry-Topics/Tax/Exposure-drafts-and-submissions/Submissions/Treasury/220615-Submission-Multinational-antiavoidance-law.aspx>

² <http://sjm.ministers.treasury.gov.au/transcript/011-2015/>

We agree with these bilateral and proposed multilateral approaches which ensure consistency with other jurisdictions and address possible double taxation through mutual agreement procedures under tax treaties.

The outcomes in relation to the above may impact on the MAAL. We submit therefore that the Government should introduce the MAAL with a formal commitment to review the appropriateness of the law in say three years, when Australia's position on the planned multilateral instrument to amend double tax agreements is known.

Schedule 4: Country-by-Country (CbC) reporting

Chartered Accountants Australia and New Zealand supports the introduction of CbC reporting and the new transfer pricing documentation requirements into domestic law in line with the final guidance from the OECD in regard to Action 13.

As explained in our submission on the exposure draft legislation,³ we agree with the approach in the Bill requiring a statement, in the approved form to be provided to the Commissioner. This will allow administrative flexibility in the implementation of CbC reporting obligations, including the ability to adapt to changes as the new CbC reporting framework across jurisdictions evolves. If implemented effectively, we anticipate the benefits of this approach to include reduced compliance costs for affected entities due to more consistent reporting and also reduced costs for tax administrations in using that data to conduct transfer pricing risk assessments.

As with the MAAL, our attention has now turned to the implementation by the ATO of the CbC reporting measures in the Bill.

We consider it is crucial that the ATO develops strong, clear and practical guidance before the new CbC reporting regime commences on 1 January 2016. Key areas we see as requiring prompt guidance include:

- The circumstances in which the Commissioner will exempt specific entities or specified classes of entities from the reporting obligations;
- The level of detail to be disclosed e.g. materiality thresholds; and
- The filing requirement for Australian subsidiaries of multinational groups where the worldwide parent entity is not required to produce a CbC report in its home jurisdiction because that jurisdiction has not implemented CbC reporting or delays its introduction;

Other priorities will be to minimise overlaps with existing requirements to provide information to the ATO as well designing systems to enable reporters to transmit material to the ATO digitally.

We are pleased that the ATO has commenced consultation with Chartered Accountants Australia and New Zealand and other stakeholders in order to provide guidance on the proposed measures, including on the issues identified above.

³ Chartered Accountants ANZ submission of 4 September 2015.

<http://www.charteredaccountants.com.au/Industry-Topics/Tax/Exposure-drafts-and-submissions/Submissions/Treasury/040915-Submission-on-Multinational-tax-avoidance-CbC.aspx>

Confidentiality

The CbC report, master file and local file will contain very sensitive business information so there are significant concerns over how this data will be collected, used and disseminated across multiple jurisdictions.

Indeed, this was a major concern raised by businesses during consultation on the development by the OECD of the CbC guidelines contained in its final report of October 2015. These explain that tax administrations should take all reasonable steps to ensure that there is no public disclosure of confidential information and other commercially sensitive information contained in the documentation package.⁴

In this regard, we note that the interim report⁵ by the Senate Economic References Committee on its inquiry into corporate tax avoidance included a recommendation⁶ that the government should consider publishing excerpts from CbC reports.

We consider that a measured and considered approach to any public disclosures relating to CbC reporting is warranted. Although we appreciate and accept the need for increased transparency, it is crucial that multinational groups can be confident that sensitive business information will not be disclosed publicly.

Should you have any queries concerning the matters discussed in our submission, or wish to discuss them in further detail, please contact me via email at: xxxxxxx; or telephone xxxxxxx

Yours sincerely

Michael Croker
Tax Australia Leader

⁴ Section D.8 (paragraphs 44 and 45) on Confidentiality in the CbC Guidelines.

⁵ http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Report_part_1

⁶ Recommendation 6 of the Interim Report

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Report_part_1