



Friday, 5 June 2015

General Manager  
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Dear General Manager,

### **TAX INTEGRITY: MULTINATIONAL ANTI-AVOIDANCE LAW**

The American Chamber of Commerce is writing in response to the Announcement by the Treasurer on 11 May 2015 announcing that the Government will introduce a tax integrity multinational anti-avoidance law to stop multinational entities using artificial or contrived arrangements to avoid a taxable presence in Australia.

As background, the American Chamber of Commerce in Australia - better known as AmCham - was founded in 1961 by Australian and American businesses to encourage the two-way flow of trade and investment between Australia and the United States, and to assist its members in furthering business contacts with other nations. In pursuing this goal, AmCham has grown and diversified. It finds itself not only representing the American business view, but also speaking increasingly for a broad range of members involved in the Australian business community. Indeed, the majority of AmCham's members are actually Australian companies.

That said, AmCham often represents the interest of American companies undertaking business activity in Australia. American investment accounts for 24 per cent of all foreign investment in Australia which makes it, by far, the single largest foreign investor in Australia.

AmCham is concerned that the Treasurer's announcement will have a material adverse impact upon many of its members. It may significantly erode the level of foreign investor confidence in Australia. In addition to introducing what would be an entirely new tax, the draft multinational anti-avoidance legislation to enact the changes includes several new and untested concepts into Australian taxation law and features elements of retrospectivity which run counter to the objective of fostering international business confidence.

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Commerce in Australia**

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### ***Multinational anti-avoidance law***

AmCham recognises that globalisation has profoundly impacted how multinational corporations are organised and the way they conduct business. Multinational companies seek to be competitive in an international market and their investments are likely to be made where profitability is the highest. As profitability is impacted by the taxes paid, it follows that a country's tax system will impact where multinational companies will invest.

AmCham acknowledges that Australia should be entitled to tax the profits that are attributable to an Australian permanent establishment. It is a well-accepted principle in Australia's existing tax laws that Australia will not seek to tax the profits of foreign companies doing business with Australian customers, unless those companies actually have a permanent establishment in Australia. The proposed multinational anti-avoidance law appears to be a significant departure from this well-accepted principle. It is AmCham's view that this departure creates significant uncertainty for American multinational investors, both current and future investors. AmCham hopes, and expects, that all companies, including U.S. companies, will be treated fairly and in accordance with international norms of taxation. The introduction of the multinational anti-avoidance law appears to be inconsistent with the international norms of taxation.

The members of AmCham are aware of, and strongly support, the efforts of the Organisation for Economic Co-operation and Development ("OECD") and the G-20 in working towards a unified movement of tax reform to ensure that global tax rules remain current with business evolution.

AmCham believes that the Australian Government's unilateral actions (introducing the multinational anti-avoidance law) in advance of the OECD's tax reform projects presents the risk of other countries undertaking a similar unilateral action. It is our view that a series of unilateral actions by a number of separate governments and tax administrators is unlikely to be effective and may have negative consequences. In this respect, it is disappointing that the Australian Government is proposing unilateral action ahead of the finalisation of the OECD process with the introduction of its multinational anti-avoidance law designed to avoid a permanent establishment. This is simply because Australia should be consistent with the rest of the world.

On a related note, AmCham acknowledges that the increasing interaction of principles and tax rules of different countries may create incentives and opportunities for base erosion and profit shifting and that the discretion of a multinational company to set its transfer price may provide an opportunity to allocate global profits to group members in a way that does not accurately reflect the economic contribution of the member. Accordingly, AmCham supports proposed changes to Australia's transfer pricing measures to address the potential mismatch between profit allocation and the distribution of risks, assets and functions across the group. However, consistent with our comments above, it is our view that changes to Australia's transfer pricing measures should be made in line with the OECD tax reform process, rather than unilaterally.

## **Conclusion**

Australia is a foreign capital-dependent country and it is important to ensure there are not inadvertent signals sent to foreign investors, including American investors that would cause potential or actual investors to question the governance and fairness of the Australian market. AmCham is concerned that the focus of these efforts appears to be very much directed towards foreign companies.

AmCham believes that Australia's tax laws are already among the best in the world. Australia has one of the most rigorous transfer pricing regimes, one of the most highly efficient and respected tax administrations, and a general anti-avoidance rule that has worked effectively for over 30 years.

AmCham is supportive of reforming Australia's tax system and the global tax system. We believe effective reform of the global tax system will only be achieved if all of the key global economies participate in a cooperative, coordinated and consistent way.

Yours sincerely,



**Niels Marquardt**  
Chief Executive Officer

On behalf of  
the American Chamber of Commerce in Australia