

Business
Council of
Australia



Submission to the Department of the
Treasury on the Exposure Draft
Legislation for the Tax Integrity
Multinational Anti-avoidance Law

JUNE 2015

The Business Council of Australia (BCA) is a forum for the chief executives of Australia's largest companies to promote economic and social progress in the national interest.

About this submission

This Business Council of Australia submission provides feedback to the Department of the Treasury's exposure draft of the *Tax Integrity Multinational Anti-avoidance Law Bill 2015*.

The Business Council firmly believes that businesses in Australia must meet their tax obligations and do so in a transparent way. The community must have confidence in the integrity of the corporate tax system if it is to support broader tax reform. Where companies do not adhere to the law, authorities should act. Where company tax arrangements do not keep pace with community norms, governments need to respond, but changes must be carefully considered to achieve an appropriate balance between tax integrity and unduly deterring investment, reducing competitiveness or creating unnecessarily complex tax arrangements.

Global tax issues require global solutions, which is why the G20 has commissioned the Organisation for Economic Cooperation and Development (OECD) to act as the prime multilateral forum for progressing tax integrity reforms through the Base Erosion and Profit Shifting (BEPS) Action Plan. A multilateral solution is vital to dissuade countries acting alone, which could result in double taxation, much higher compliance costs and the undermining of legitimate commercial arrangements. Such outcomes would be to the detriment of global investment, trade, jobs and growth, and especially harmful for Australia as a medium-sized open economy heavily dependent on trade and foreign investment.

Key recommendations

The Business Council would like to make the following recommendations:

1. Consultation on the draft Bill should ensure the policy intent is met in a way that minimises compliance and administration costs, and avoids unintended consequences. The precise definition and operation of the various thresholds and terms in the draft Bill should be clarified.
2. The proposed law should not conflict with the OECD's BEPS project and should be reviewed following the BEPS project's completion.

Explanation for the BCA's recommendations

Extensive consultation to ensure the policy intent is met

The consultation period must be used to minimise complexity and compliance costs. The approach to consultation should ensure the proposed law is well targeted and sufficiently limited in scope, such that the policy intent is met and unintended consequences are avoided. Compliance and administration costs should also be minimised, for example, through a threshold for small transactions.

Consultation should clarify the precise definition and nature of the various thresholds and terms in the draft Bill. To not do so could expose the law to broader application than

originally intended. Examples include the definition of low corporate tax jurisdiction, substantial economic activity and tax benefit.

Consultation should also clarify how the proposed law will work in practice. For example, this may include how a taxpayer demonstrates substantial economic activity, or that there is no connection to the supply from a no or low corporate tax entity.

It will be important for consultation to produce an outcome that minimises the risks of potential unintended consequences from the proposed approach. These risks may include deterring investment, encouraging unilateral action by other countries or distorting genuine commercial activities.

Relationship with the OECD BEPS project

The OECD's BEPS project is the ideal multilateral forum through which to progress broader international tax reform, with the final recommendations due in the coming months. Any action Australia takes outside the BEPS project should be consistent with this process and comply with all international treaties and obligations.

To the extent there are similarities between the proposed law and the BEPS project, the proposed law should be reviewed against the ultimate outcomes of the BEPS process. This review should assess the proposed law against the holistic set of final BEPS recommendations, and amendments should be considered where appropriate.

BUSINESS COUNCIL OF AUSTRALIA
42/120 Collins Street Melbourne 3000 T 03 8664 2664 F 03 8664 2666 www.bca.com.au

© Copyright June 2015 Business Council of Australia ABN 75 008 483 216
All rights reserved. No part of this publication may be reproduced or used in any way without acknowledgement to the Business Council of Australia.

The Business Council of Australia has taken reasonable care in publishing the information contained in this publication but does not guarantee that the information is complete, accurate or current. In particular, the BCA is not responsible for the accuracy of information that has been provided by other parties. The information in this publication is not intended to be used as the basis for making any investment decision and must not be relied upon as investment advice. To the maximum extent permitted by law, the BCA disclaims all liability (including liability in negligence) to any person arising out of use or reliance on the information contained in this publication including for loss or damage which you or anyone else might suffer as a result of that use or reliance.