

02 September 2015

General Manager
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email taxlawdesign@treasury.gov.au

Dear Sir/Madam

Multinational Tax Avoidance - Country-by-Country reporting and stronger penalties

The Australian Bankers' Association (**ABA**) welcomes the opportunity to provide feedback on the exposure drafts and explanatory materials and provides the comments below.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Balancing flexibility with certainty

The draft legislation requires taxpayers to give a statement to the Commissioner in the approved form. The concept of approved forms is used in taxation laws to provide administrative flexibility. This flexibility needs to be balanced with providing taxpayers with certainty.

The Explanatory Memorandum (**EM**) states that:

“The approved form may require information to be provided that is relevant to the Commissioner making a decision under Division 815 of the ITAA 1997 as to whether an entity has received a transfer pricing benefit. The approved form may also require information relevant to performing a function or exercising a power related to making such a decision, or that enables the Commissioner to make such a decision – for example, by carrying out a transfer pricing risk assessment.”

Such information is likely to be in excess of or different to information required to meet the OECD transfer pricing documentation standards outlined in Action 13 and implemented through the new Chapter V of the OECD Transfer Pricing Guidelines.¹

Clarity regarding what information is required will provide certainty to taxpayers. This allows taxpayers to commence projects to address the reporting requirements.

¹ The draft legislation looks to implement Action 13 of the G20 and Organisation for Economic Co-operations and Development's (OECD) Action Plan on Base Erosion and Profit Shifting (BEPS action plan). The deliverable of Action 13 was an updated Chapter V to be included in the OECD Transfer Pricing Guidelines.



Clarity could be achieved by aligning the requirements in the draft legislation with those in Chapter V of the OECD Transfer Pricing Guidelines. Such alignment would ensure consistency with global standards, allow for changes adopted by the OECD to flow through to Australian requirements and provide increased certainty to taxpayers.

Recommendation

The legislation for Country-by-Country (**CbC**) reporting should set a maximum information requirement that aligns with Chapter V of the OECD Transfer Pricing Guidelines.

Increased compliance burden

The draft legislation introduces requirements that overlap with existing compliance requirements. Under the current draft legislation taxpayers will be required to provide duplicative information in different formats. This will increase the compliance burden faced by taxpayers without increasing the type or quality of information provided to the Australian Taxation Office (**ATO**) for risk assessment and audit purposes.

The draft legislation should recognise the possibility of duplications and allow for flexibility in requirements to remove unnecessary overlap.

Two key areas of overlap are:

1) Record keeping requirements under Subdivision 284–E and local file requirements

The record keeping requirements for transfer pricing are outlined in Subdivision 284-E. A taxpayer can only have a reasonably arguable position in relation to a transfer pricing matter if they meet the documentation requirements in section 284-255 of Schedule 1 to the *Tax Administration Act 1953*.

The EM acknowledges that there is a degree of overlap between the documentation standards in Subdivision 284-E and the local file. The EM also indicates that the local file can go beyond the requirements of Subdivision 284-E, however there is no clarification as to whether the local file will be sufficient for taxpayers to provide reasonably arguable positions.

The impact of this is that for taxpayers to protect themselves against penalties they will need to produce a local file and Subdivision 284-E documentation for the same transaction.

Recommendation

The legislation for CbC reporting should enable taxpayers to use the local file as support for reasonably arguable positions.

2) Existing international dealing schedule within tax returns and local file requirements

Taxpayers with international related party dealings of over A\$2 million are required to lodge an international dealing schedule (**IDS**) with their tax return. The IDS contains information on the types of international related party transactions, the tax transfer pricing methods adopted to price these transactions and the level of tax transfer pricing documentation in place to support the pricing of the transactions.

The local file provides detailed information relating to intercompany transactions. This information includes the quantum as well as a transfer pricing analysis of the transactions.

Most, if not all information provided in the IDS will also be provided in the local file. Gathering and disclosing IDS information will overlap with information presented in the local file requirements. This further increases the compliance burden facing taxpayers without providing additional information to the ATO.



Strong banks – strong Australia

Recommendation

Taxpayers required to lodge an Australian master file and local file should get an exemption from having to lodge the international dealing schedule with the tax return.

Global consistency in reporting and information sharing obligations

On a more general matter, the ABA notes that currently not all countries have information sharing arrangements in place. The issue is of particular concern to any local Australian affiliate of a USA head-quartered multi-national entity.

Treasury should ensure that the design of any reporting regime has flexibility so the impact on Australian industry, due to this lack of global consistency, is mitigated. Accordingly, the ABA recommends that an exemption be provided by legislative instrument to exempt those local affiliates of a foreign multi-national parent from the application of Division 815E in circumstances where they have neither access nor legal right to obtain either the CbC Report or the master file information.

Yours faithfully

A handwritten signature in black ink, reading 'Aidan O'Shaughnessy'. The signature is written in a cursive style with a large, sweeping 'A' and 'S'.

Aidan O'Shaughnessy
Policy Director, Industry Policy
02 8298 0408
aidan.oshaughnessy@bankers.asn.au