MINERALS COUNCIL OF AUSTRALIA

SUBMISSION TO TREASURY:

IMPLEMENTING A DIVERTED PROFITS TAX

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The proposed DPT is a unilateral action that significantly departs from the OECD BEPS process and Australia's commitment to a global co-ordinated response. Introducing new tax rules beyond the BEPS recommendations risks harming trade, provoking retaliatory actions from other jurisdictions and undermines the OECD's multilateral approach.

Tax rules should be targeted …

The MCA has consistently argued that tax integrity changes should be clearly targeted at the 'tax mischief' identified. The policy purpose of the DPT needs to be more clearly articulated to ensure a properly targeted and well-developed policy is implemented. In doing so, the perceived gaps in the existing tax integrity rules would need to be explained. Poorly designed integrity measures will impose compliance costs and impact legitimate activity and investment.

The proposed DPT would have very broad application…

Around half of all international related party transactions are potentially within scope of the DPT, creating significant uncertainty, a large compliance burden and a potential impact on investment attractiveness of Australia. Normal commercial transactions with offshore related parties which are disclosed to the ATO should not be brought within its scope.

The major design features of the proposed DPT require further consideration. The 'effective tax mismatch' test is not properly targeted. Due to Australia's relatively high corporate tax rate, large numbers of transactions involving countries that are not 'low tax' jurisdictions will be within scope. The 'insufficient economic substance' test is too subjective and uncertain in its application.

A better approach…

The proposed DPT should be targeted at situations involving clear elements of artificial arrangements and unco-operative behaviour of multinationals in delaying resolution of transfer pricing disputes.

The MCA recommends the DPT have clear gateways, safeguards and safe-harbours to ensure it does not have over-reaching and unintended consequences. A tighter 'gateway' for transactions that come within scope of the DPT will target transactions where taxpayers are obstructionist in their interactions with the ATO. The MCA suggests a safe harbours model to reduce compliance costs, impacts on legitimate transactions and improve certainty of the application of the DPT.

1. PURPOSE OF THE DIVERTED PROFITS TAX

Australia's tax integrity regime

The MCA supports strong, balanced tax laws to preserve the integrity of the tax system. Australia has strict tax integrity rules including strong CFC rules, transfer pricing, thin capitalisation and Part IVA general anti-avoidance rule. Australia's suite of tax integrity measures have been significantly strengthened in recent years including through:

- New transfer pricing rules;
- Tightened thin capitalisation safe harbours;
- Strengthened Part IVA laws; and
- The new Multinational Anti-Avoidance Law (MAAL).

The multilateral and co-ordinated international effort through the Organisation of Economic Cooperation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project is the most effective way to ensure meaningful action is taken to address aggressive tax practices by multinationals. The proposed DPT is a significant departure from the OECD BEPS process and Australia's commitment to a global co-ordinated response. Unilateral actions are less likely to be effective and potentially result in double taxation.

Where new tax integrity rules are required to combat instances of tax abuse, the MCA has consistently argued changes should be clearly targeted at the 'tax mischief' identified. Poorly designed integrity measures will impose compliance costs and impact legitimate activity and investment. Legislative changes should therefore be measured, targeted and certain.

The policy purpose of the DPT needs to be more clearly articulated to ensure a properly targeted and well-developed policy is implemented. In doing so, the perceived gaps in the existing tax integrity rules would need to be explained. As currently set out in the consultation paper, the DPT would have very broad application and is not properly targeted. Almost half of all international related party transactions are potentially within scope of the DPT[1], creating significant uncertainty, a large compliance burden and a potential impact on investment attractiveness of Australia for no tax integrity outcome.

A tighter 'gateway' for transactions that come within scope of the DPT is required to target it at transactions where taxpayers are obstructionist in their interactions with the Australian Taxation Office (ATO). The severity of the penalty imposed by the DPT (40 per cent tax incorporating a 10% penalty component over the corporate tax rate) demands clarity on when it would apply and should reflect the culpability of the taxpayers actions. Therefore, such a power must be used by the ATO only in limited circumstances (i.e. when other integrity rules are not available).

The MCA recommends the DPT have clear gateways, safeguards and safe-harbours to ensure it does not have over-reaching and unintended consequence.

The policy rationale of the DPT

The purpose of the DPT has not been clearly articulated. It would appear from the consultation paper that it is to encourage greater openness with the ATO in order to speed up dispute resolution and increase compliance with Australia's transfer pricing rules. Australia is recognised as having some of the strongest measures (if not the strongest) of any country to ensure compliance with the arms-length standard and to allow reconstruction of inappropriate connected party cross border transactions using s815B ITAA1997. This legislation is relatively new (2013-14 tax year) and there has been limited examples of it been applied in practise. Therefore there appears to be little reason to

[1] Based on ATO data, ATO Tax Statistics 2013-14.

add to this powerful arsenal available to the ATO. In addition Australia is in the process of legislating the revised OECD transfer pricing guidelines arising from BEPS as announced in the 2016 budget.

As a general proposition, the MCA supports that ATO should be able to obtain sufficient information from taxpayers to be able to make appropriate assessments under existing legislation. Indeed, Australia's self-assessment taxation regime relies on open transparency with the ATO.

A case is therefore warranted to target instances of deliberately uncooperative approaches by taxpayers in dealing with the ATO during transfer pricing audits. The DPT should be targeted squarely at these situations. This is in the context that the DPT is attempting to target what appears to be a fairly limited set of circumstances. The ATO has acknowledged that Australia's corporate tax system is characterised by a high degree of compliance but there are instances of obstructionist approaches by some taxpayers in dealing with audits. The Commissioner of Taxation has noted that compliance by large taxpayers is generally high:

> I [The Commissioner of Taxation] have said many times that the majority of large corporates, especially Australian owned companies, pay the right amount of tax in Australia and are open and transparent in their dealings with us. There are however, a *minority* of large corporates who try to avoid their obligations, and we act - we do act - on this behaviour.[2] (Emphasis added).

A clear gateway should be implemented so that the DPT is targeted appropriately at taxpayers who deliberately do not co-operate with the ATO in providing information. Australia's existing transfer pricing rules already apply to the underlying transactions (see below). The DPT is intended to be a deterrent to recalcitrant behaviour. Normal commercial transactions with offshore related parties which are disclosed to the ATO should not be brought within its scope.

Australia's existing transfer pricing rules

Australia's updated transfer pricing regime (legislated in 2013), has significantly bolstered the ATO's powers to deal with international profit shifting. The new rules require greater documentation in relation to company transactions with offshore related parties, ATO reconstruction powers in line with the OECD Guidelines and stronger penalties for non-compliance. Australia's transfer pricing guidance is also being updated in line with OECD recommendations. In addition, the ATO's ability to monitor aggressive tax practices and identify profit shifting has been vastly improved with the implementation of country-by-country reporting from 1 July 2016.

A case has not been made that Australia's existing and recently strengthened transfer pricing rules and information gathering powers are inadequate. The ATO has acknowledged that these recent changes, amongst others, bolster the ATO's ability to deal with aggressive tax practices. As Commissioner Chris Jordan noted at Senate Estimates in February 2016 '…there are a whole host of things that over the course of 2016, some into 2017, will have a dramatic change in our ability to get that fair share, that right amount of tax, paid here in Australia.'[3]

Australia's transfer pricing measures should be given the opportunity to work and be assessed as to their effectiveness before further new and broad powers such as those proposed in the DPT are legislated.

Unilateral actions

A multilateral and co-ordinated international effort is the best way to ensure meaningful action is taken to address aggressive tax practices by multinationals. The OECD has warned countries against taking unilateral actions stating:

[2] Commissioner of taxation, Chris Jordan, Senate Hansard, 10 February 2016.
[3] Commissioner of Taxation, Chris Jordan, Senate Hansard, 10 February 2016.

> [this] would have a negative impact on investment, growth and employment globally. There is therefore a need to provide an internationally coordinated approach which will facilitate and reinforce domestic actions to protect tax bases and provide comprehensive international solutions to respond to the issue.[4]

Previous Treasury and Government commentary has supported the case for multilateral action as the most effective way of dealing with international profit shifting. In 2014, the then Parliamentary Secretary to the Treasurer, and the now Minister for Trade and Investment, Hon Steve Ciobo MP said:

> [G]iven the cross-border nature of BEPS, national efforts need to be complemented by appropriate, coherent international responses. These are needed for two reasons. Firstly, to prevent new gaps and arbitrage opportunities from emerging; and secondly, to help prevent individual countries putting in place damaging unilateral measures.[5]

Treasury's 2013 Scoping Paper on Risks to the Sustainability of Australia's Corporate Tax Base concluded:

> There are some actions Australia can and has taken unilaterally; these are primarily focused on improvements that can be made without significant divergence from international tax settings. But the key focus of Australia's efforts should be working multilaterally through international organisations to modernise international tax rules.[6]

The proposed DPT is a departure from OECD BEPS process and Australia's commitment to a global co-ordinated response. The Consultation paper suggests that DPT would provide 'More options to reconstruct the alternative arrangement' and appears to allow reconstruction where it is not provided for under existing transfer pricing law or OECD principles. If not designed properly, it will impose a significant level of uncertainty as to its application and associated compliance costs for little real gain to the integrity of Australia's tax system.

[4] http://www.oecd.org/ctp/beps-frequentlyaskedquestions.htm, accessed 17 June 2016.
[5] The Hon Steve Ciobo, Parliamentary Secretary to the Treasurer, Address to Clayton Utz BEPS Workshop, 16 May 2014.
[6] The Treasury, 'Scoping Paper on Risks to Australia's Corporate Tax Base', July 2013.

2. TRANSACTIONS SUBJECT TO THE DIVERTED PROFITS TAX

The 'Effective tax mismatch' test

The effective tax mismatch test as set out in the consultation paper is very broad and results in the DPT being poorly targeted. It will bring a very large number of related party transactions within the scope of the DPT involving a number of countries that do not come within any generally accepted definition of a 'low tax' jurisdiction.

The consultation paper proposes that the DPT apply to cross border transactions with a related party that result in less than 80 per cent tax being paid overseas than would have been paid in Australia. In effect, this means that any transaction an Australian taxpayer has with a related party in a jurisdiction with a tax rate of 24 per cent and below will be within the scope of the DPT.

With the OECD average company tax rate now below 25 per cent (and falling). Australia has the fifth highest headline corporate tax rate of all the 34 OECD countries, with 15 countries having a corporate tax rate of less than 24 per cent. This is starkly different to the UK's DPT, which only affects one jurisdiction within the OECD. Further, in the 2013-2014 income year, more than 50 per cent of Australia's international related party trade was conducted with countries with a headline tax rate of less than 25 per cent (18 per cent in respect of OECD countries with a headline tax rate of less than 24 per cent).[7] This is a function of Australia's comparatively high corporate tax rate of 30 per cent.

The effective tax mismatch test will result in transactions with a large number of OECD countries being caught in the DPT net. This will include routine transactions with parent companies (and their subsidiaries) in the UK and other countries not considered to be a 'tax haven' or a 'low tax' jurisdiction.

The MCA recommends that the effective tax mismatch test be set at 80 per cent of the OECD average and the eventual company tax rate (25 per cent). This will more accurately target transactions that should be brought within scope of the DPT.

The 'Insufficient economic substance' test

The insufficient economic substance test is highly subjective and unclear. The consultation paper proposes that the DPT apply to transactions that have 'insufficient economic substance' where it is 'reasonable to conclude' that the transaction(s) were 'designed to secure the tax reduction' based on the information available at the time to the ATO.

The introduction of untested concepts into the law will impose potentially heavy compliance burdens on taxpayers to prove economic substance. To be effective, the test must be made very clear to provide taxpayers with certainty as to exactly when the ATO can reasonably conclude that a transaction is tax driven.

Although there is very little detail on how the 'insufficient economic substance' concept will work in practice, the consultation paper makes clear that this rule will be similar to the UK's. We note that for the purposes of the 'insufficient economic substance condition', the UK legislation provides that the non-tax financial benefits 'for the first party and the second party (taken together)' and across all relevant accounting periods can be taken into account in assessing whether such benefits exceed the financial benefit of the relevant tax reduction.

Valuing the non-tax financial benefits may in practice be extremely difficult and burdensome, particularly where this is not undertaken for business decision making purposes. If a broad approach is taken with the DPT, taxpayers would not have certainty as to whether the DPT may apply or not, there may be significant expense and resources needed to undertake this non-tax financial benefit valuation without knowing whether this valuation would be accepted by the ATO.

[7] ATO Tax Statistics 2013-14

1) Concept of 'designed to secure a tax benefit'

Rather than objectively determining the purpose of a person who entered into or carried out the scheme the DPT requires the purpose of the scheme itself to be assessed. In addition the standard or burden to be satisfied includes an unacceptable and ambiguous threshold that is 'where it is reasonable to conclude'.

It is of great concern that an undefined and subjective term is proposed to be used. Particularly as it varies significantly from the existing principles established in Part IVA, which uses 'dominant purpose' and the OECD's recommended threshold of 'principal purpose' which the MAAL also adopts.

If the purpose of the scheme itself is to be assessed, we recommend that 'it would be reasonable to conclude' be replaced with 'it would be concluded'.

It is noted that a similar 'designed to' requirement was in the Exposure Draft legislation of the MAAL, but was subsequently discarded.

2) Concept of 'reasonable to conclude'

The wide use of the phrase 'reasonable to conclude' throughout the consultation paper is of concern. This provides considerable degree of discretion to the ATO.

The test to be applied should be to examine the transactions actually implemented to determine what those transactions (objectively) were designed to achieve, rather than examining the motivations of those involved in the implementation of them to ask what those persons (subjectively) intended to achieve. Further, an ex post facto subjective judgment does not and should not feature in a truly objective test.

In addition, the Commonwealth's taxing power does not permit the Commonwealth to impose 'arbitrary exactions'. To be valid under the Constitution, a tax law must be imposed by reference to ascertainable criteria of sufficiently general application and capable of being known in advance by taxpayers, to enable them to assess these criteria and legitimately order their affairs accordingly. We consider that, as currently drafted, particularly in relation to the phrase 'it is reasonable to conclude', the DPT does not meet the required standard of legal certainty.

3) Contrived and Artificiality

As a general comment, we support measures that target contrived and artificial arrangements. Indeed Australia's existing tax laws provide the Commissioner with powers to reconstruct under Subdivision 815-B and under the Part IVA general anti-avoidance provision.

Therefore, if the DPT is to be implemented it should be targeted to these arrangements. In the UK, guidance issued by HM Revenue and Customs confirms that it is not intended that the DPT legislation will apply purely because a company decides to take advantage of lower tax rates offered by another jurisdiction by means of a wholesale transfer of the economic activity needed to generate the associated income. Given that Australia's DPT is designed based on the UK's, we recommend that this be made clear so as to not interrupt legitimate business reorganisations. It can also be said that in arrangements that are designed to secure the tax reduction, there will be some degree of contrivance.

Given the potential broad application of this measure, it is imperative that the legislation sets out clear parameters for the DPT to apply only where there are elements of artificiality and that it is not intended to apply where businesses operate in jurisdictions with considerable economic activity and presence.

We strongly recommend that a specific reference is made in the DPT legislation itself that the DPT is targeted at 'abusive' and 'contrived arrangements'. The purpose of such wording will provide

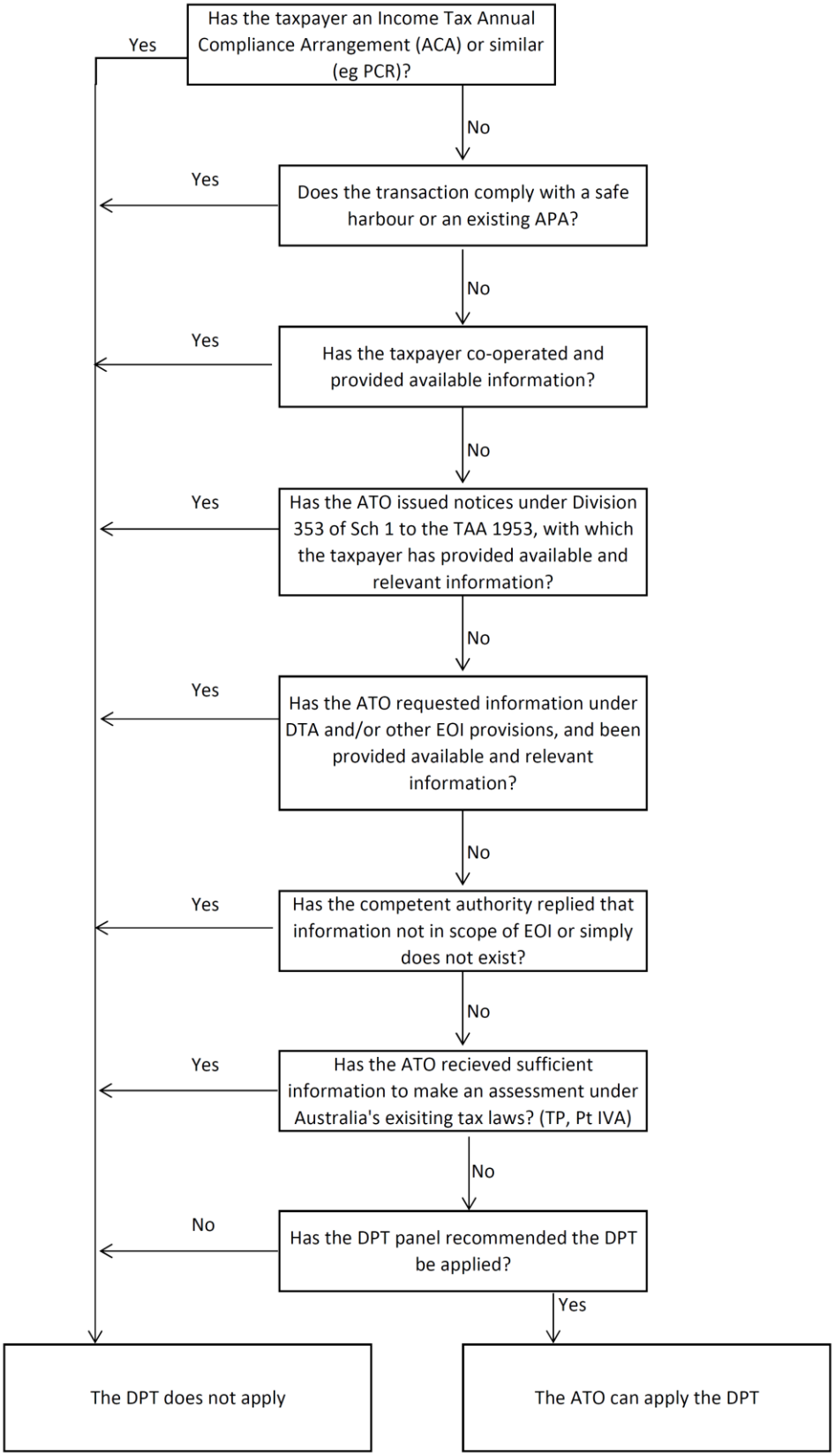
increased clarity for both taxpayers and ATO in so far that if a case were to be litigated; such clear wording within the legislation would help to ensure the statutory interpretation of the law was in line with the intention. This will also help ensure that the DPT is not inconsistent with Australia's treaties.

DPT process flow chart – gateways, safeguards and safe-harbours

Because the DPT has the potential to cause uncertainty and disruption to Australia's international trade and the attractiveness of doing business in Australia, it is imperative that appropriate safeguards are included to ensure it is not broadly and inappropriately applied.

Set out below is a proposed gateway and safe harbours model which would better target the DPT at the areas of concern for the Government, reduce compliance costs and impacts on legitimate transactions and improve certainty of the application of the DPT.

Figure A - The DPT process flowchart



Flowchart elements

Income Tax Annual Compliance Arrangements and Pre-lodgement Compliance Reviews

The DPT should not apply where the taxpayer has entered into an Income Tax Annual Compliance Arrangement (ACA) with the ATO which is developed to manage the compliance relationship between the ATO and the taxpayer in an open and transparent environment.

We consider that in order to maintain the incentive to enter into an ACA, taxpayers who already operate in an open and transparent way with the ATO should not be subject to the DPT.

The ACA encourages an environment where the taxpayer can raise compliance risks and other technical and administrative matters and resolve issues in a constructive, efficient manner. Taxpayers who operate a 'closed-book' approach with the ATO are not eligible to enter into an ACA.

Similarly, Pre-lodgement Compliance Reviews (PCRs) require contemporaneous disclosure of information to the ATO. Again, compliance risks and other technical and administrative matters can be raised and resolved in a constructive, efficient manner.

This gateway will encourage taxpayers to adopt an open and transparent relationship with the ATO. This will also ensure that that the ATO has sufficient information about the taxpayer and arrangements to apply Australia's taxation integrity laws, such as Divisions 815-B, Part IVA and other specific anti-avoidance provisions.

Advance Pricing Arrangements (APA)

Where a business has been involved in APA discussions with the ATO, then a vast amount of information will have already been shared on the relevant transactions. This ensures the ATO has sufficient information to assess whether the Australia business is appropriately compensated for the specific Australian functions assets and risks.

A gateway should therefore be included which specifies that a taxpayer should not fall within the DPT in a case where a transaction between an Australian company and a foreign company that is part of the supply chain for the good or service concerned is being discussed with the ATO with a view to reaching an APA (or is covered by an APA).

Existing safe-harbours

Transactions that are covered by existing safe-harbours should be excluded from the DPT. These would include the following:

- Safe-harbours agreed to under an ACA
- Where a 5% mark-up has been applied for routine low value service arrangements
- Transactions that are excluded from the transfer pricing local file reporting
- Transactions not required to be documented under the ATO's transfer pricing safe-harbours.

Taxpayer cooperated and provided information

There are many other times where a business will have already disclosed transactions/operations to the ATO as part of either formal clearance procedures in relation to the income tax Act or as part of an ongoing open dialogue, pre-compliance compliance review, risk review or audit.

In these situations, where a taxpayer has already made full disclosure, a taxpayer should not be subject to the DPT. Certainly, as a minimum, the ATO should be able to conclude on finalising the income tax return that the arrangements are low risk or have adequate information to make any necessary assessment under existing legislation.

Use of existing information request channels

Consistent with a policy of the DPT being a sanction for unco-operative taxpayers, the ATO should exhaust all information request avenues before seeking to apply the DPT provisions. This would include all powers available under the current taxation laws and exchange of information provisions that are contained in Australia's Double Taxation Agreements (DTAs) and Taxation Information Exchange Agreements (TIEAs).

Division 353 of Schedule 1 to the Taxation Administration Act 1953 (Division 353)

Australia's taxation laws include powerful information gathering provisions. In addition to informal requests, the ATO has the power to access, examine and copy a taxpayer's documents and to require taxpayers or other persons to provide information, evidence or documents. The access powers under Division 353 enable the Commissioner to conduct wide-ranging enquiries for information concerning the income or assessment of a taxpayer.

Tax information exchange programs

Australia has an extensive network of tax information exchange programs. Australia's 43 DTA's include information exchange provisions and has separately signed TIEAs with a further 36 jurisdictions, including many tax havens.

Australia is one of 96 jurisdictions that have signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which is designed to promote international co-operation for a better operation of national tax laws, and provides for all possible forms of administrative co-operation between the parties in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion.

We recommend that it should be a condition that before the ATO can apply the DPT that these should all be exhausted.

Information is 'foreseeably relevant' and or available

The general principle of 'foreseeably relevant' in Article 26 of the OECD Model Treaty that governs the exchange of information provisions needs to be incorporated to ensure that the ATO is not making unreasonable information requests. The Commentary to the Article provides that the standard of 'foreseeable relevance' is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that jurisdictions are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

Furthermore, checks and balances need to be put in place to ensure that the DPT cannot be applied because information just simply does not exist a taxpayer is not unco-operative if it fails to provide requested information that does not exist.

Sufficient information to assess under existing tax laws

Where the ATO has sufficient information to pursue matters under Australia's existing tax laws, the DPT should not be able to be applied. That is, it should be reserved for instances where the ATO is not able to obtain any meaningful information to apply the laws.

It is concerning that without a targeted gateway there is potential for misuse of power by the ATO applying the DPT. Therefore, where the taxpayer has provided relevant and available information to the ATO and the issue at hand is around the interpretation of the facts to give the appropriate arm's length outcome, the DPT should not apply. Instead the ATO should be able to make an assessment under existing legislation, for example Subdivision 815-B, Part IVA and other specific laws.

Assessing whether a taxpayer has provided sufficient information will be on a case-by-case basis. We recommend that where the ATO is looking to apply the DPT based on having insufficient information that an application be made to an independent DPT panel.

Independent DPT panel

We recommend that before the ATO can issue a DPT assessment, it must satisfy an independent panel of taxation experts that the arrangement is worthy of being subject to the harsh penalty.

This could be based on a similar concept used to administer and apply Part IVA, the General Anti-Avoidance Rules (GAAR) Panel. The GAAR Panel is made up of ATO officers and external experts who consider Part IVA and other general anti-avoidance matters. It ensures that decisions about applying these provisions are objectively based and well-considered.

Without such an independent panel, there are no appropriate checks and balances for the ATO to apply the DPT in appropriate circumstances.

Related party loans

Unlike the UK, related party loans are not excluded from the DPT. Furthermore, the 'diverted profits amount' will only take into account the pricing of debt – not the amount of debt – provided the amount of debt is within the thin capitalisation 'safe harbour debt amount' – as opposed, it seems, to the other methods of satisfying the thin cap provisions. This appears to be inconsistent in that the Australian thin capitalisation rules provide three distinct methods of calculating the maximum allowable debt, whereas the DPT seemingly excludes two of them.

Therefore, we recommend that the DPT include all three methods and if an entity satisfies either the worldwide gearing debt amount or the arm's length debt test, the DPT can only be assessed on pricing of debt (consistent with 'safe harbour debt amount').

3. DPT ASSESSMENTS

The proposed default method for issuing a DPT assessment based on 'inflated expenditure' is an example of the DPT's broad and potentially harsh approach. The following example outlines the potential implications of default DPT assessments.

Australian company, A Co, purchases $1 billion of widgets annually from its overseas parent, P Co which is a listed company located in the UK. A Co employs hundreds of Australians, has minimal assets and its function is restricted to selling the widgets from Australian shop fronts to Australian customers, and is remunerated by P Co resulting in A Co obtaining a net margin of 3%.

After lodgement of A Co's tax return, The ATO considers the purchase of the widgets is inflated compared to an arm's length amount. The ATO issues a DPT assessment for the seven previous years.

Under the method of issuing a DPT assessment of 30 per cent of expenses, the DPT assessment over the seven years is calculated as:

- Diverted Profits Amount of $2.1billion (30 per cent x $1b inflated expenses x 7 years)
- DPT Assessment = $840million (40 per cent x Diverted Profits Amount).

A Co and P Co strongly disagree with the ATO however, under the proposed DPT application method, have no recourse and must pay $840m plus interest within 21 days.

A Co does not have sufficient money or assets to pay the assessment – A Co becomes insolvent. On news of the announcement by P Co that it is required to pay the ATO $840m plus interest, P Co's share price decreases significantly. P Co does not have the required cash to lend A Co the money and must borrow the money externally. The ratings agency downgrades P Co, increasing the borrowing costs and significantly impacting ability to borrow funds.

This would occur before A Co has any right of defence or a legal right to an appeal.

Administrative arrangments

There should be a reduction in time limit for DPT assessment. Given penal nature of DPT and the policy aim of encouraging quick resolution of disputes with taxpayers, seven years is an unreasonably long period. The transaction by transaction detail the ATO will be receiving through Country-by-Country reporting (particularly detailed information in the local file) will provide the ATO with the information necessary to challenge transactions within a short time frame. A two year period would be more in line with the policy rationale and would provide more certainty as to whether the ATO will seek to apply the DPT.

Draft Guidance and consultation

The MCA strongly supports the consultation papers commitment that the ATO provide draft guidance to taxpayers at the time of introduction of the DPT legislation to Parliament.

Further detailed consultation will be required to minimise the risk of unintended consequences of the DPT. The MCA would appreciate the opportunity to provide input to this process. However the draft guidance needs to be issued well in advance of the legislation and Explanatory Memorandum (EM) being finalised to ensure sufficient time for consultation to ensure the ATO guidance is in line with the legislation and EM and any unintended consequences or interpretation can be dealt with appropriately.