

## **Australia Introduces Draft Anti-Avoidance Legislation**

*By Sean Faulkner*

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**News:** On May 12, 2015, Australia's Treasury Department released draft legislation aimed at targeting multinationals that are suspected of using artificial or contrived arrangements to avoid a taxable presence in Australia. The Tax Laws Amendment (Tax Integrity Multinational Anti-avoidance Law) Bill 2015 stems from Australian Tax Office investigations which identified 30 multinationals as having tax schemes in place to avoid paying their full Australian tax liability.

**Views:** The ATO continues to be aggressive and at the forefront of unilaterally drafting and implementing transfer pricing regulations that are designed to ensure that the Australian tax base is not artificially eroded. According to BNA, Treasurer Joe Hockey stated that "under this new law, when we catch companies cheating, they will have to pay back double what they owe, plus interest."

The draft of the legislation proposes changes to Part IVA of the Income Tax Assessment Act 1936, targeting situations in which:

- A foreign multinational supplies goods to Australian customers and books revenue offshore;
- The activities of an Australian entity are critical to customer decision making on purchases;
- Profits from Australian sales are subject to low or no global tax; and
- One of the principal purposes is to obtain a tax benefit.

The draft legislation is highly focused, only applying to tax schemes that meet the above conditions and where the company's annual global revenue exceeds AUD 1 billion (approx. USD 770 million). This is welcome news as the majority of multinationals would not be subject to the draft legislation, as most operate through related party distributors, rather than commissionaires, in Australia. However, taxpayers that have a presence in Australia should review their intercompany arrangements and if the Australian entity is transacting with a related party in a highly tax favorable jurisdiction, determine if the other factors would put it at risk of having Australian tax benefits cancelled and penalties applied.

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