Diverted profits tax 'draconian'

Corporate Tax Association executive director Michelle de Niese. *Sahlan Hayes*

by **Joanna Mather**

Australia's version of the so-called Google tax goes well beyond the British model on which it was based and will snare more than $200 billion worth of financial transactions between companies here and their operations overseas.

The Turnbull government is introducing a 40 per cent penalty for multinationals found to be shifting profits and assets offshore to reduce their tax bills here.

But accountants and lawyers are worried Treasury has not written enough protections for law-abiding companies into the legislation, making it more "draconian" than the UK version.

They say that as it is currently drafted, the Australian Diverted Profits Tax will place a chill on investment into Australia and crimp the appetite of local multinationals to expand offshore.

"Greater guidance is needed in the bill on the DPT's scope, purpose and offensive transactions," Chartered Accountants Australia and New Zealand said.

"The exposure draft and explanatory memorandum provide little insight into the types of transactions it is intended to target and why."

The DPT will apply to companies with global turnover of $1 billion or more. It was announced in last year's federal budget and is due to come into force on July 1 of this year.

All "related party" dealings between Australia and countries with a tax rate lower than 24 per cent will be caught in the DPT net.

Up to 10,000 transactions, or nearly 60 per cent, of related party dealings a year will fall within the scope of the DPT, according to estimates based on Australian Tax Office data.

That is more than $202 billion worth of revenue and expenses flowing between companies in Australia and their counterparts overseas.

Treasury has released draft legislation and invited feedback.

Tax advisory firm Greenwoods & Herbert Smith Freehills said it was "very concerned" about the draft because it did not carry the same protections and limitations afforded under the UK version of the tax. That made Australia's proposal "more uncertain and draconian for both foreign and Australian multinationals".

Under a 'pay first, argue later' approach, companies will have 21 days to settle any outstanding debt once the Tax Commissioner has issued an amended assessment.

The vast majority of related party dealings occur with Singapore, the UK, Hong Kong, Switzerland and Ireland, all of which have lower headline rates than Australia.

Twenty-four per cent is the magic number because the DPT will apply to companies that make transactions with "insufficient economic substance" so as to reduce the tax paid on the profits generated in Australia by more than 20 per cent (80 per cent of Australia's headline rate of 30 per cent is 24 per cent).

Singapore, with its headline rate of 17 per cent, is the go-to country for multinationals seeking a low-tax jurisdiction in Asia.

Australian mining companies are under intense scrutiny by the Australian Tax Office for their marketing hubs in Singapore.

In 2013-14, the latest figures available, Australian multinationals had $108 billion worth of related party dealings with offices in Singapore.

The Corporate Tax Association, which represents the nation's biggest taxpayers, said "widely drawn anti-avoidance rules which have unpredictable outcomes will be detrimental to all companies operating in Australia".

"In our view, the proposed DPT falls into the 'widely drawn' category," CTA executive officer Michelle de Niese said.

"It also changes the onus of proof by requiring payment up front and significantly limits taxpayer's appeal rights.

"Given this, it is absolutely imperative that the law makes it very clear at the outset the gateways that will be applied in determining whether the DPT will apply."

Chartered Accountants said the DPT needed to be viewed in a global context.

"[As a result of Donald Trump's tax policies] leading non-US companies may be enticed to re-domicile, not just to the USA but also to countries such as the United Kingdom, where a 17 per cent rate is proposed by 2020," it said in a submission to Treasury lodged just before Christmas.

"Our political leaders cannot ignore such global trends simply because the DPT enjoys popular support within some parts of the community."

The Australian DPT is expected to raise a modest $200 million over four years.

Coupled with the Multinational Anti-avoidance Law, it is part of an aggressive response to profit shifting by Australia which goes beyond the OECD's base erosion and profit shifting action plan.

Australian Financial Review – Jan 17 2017 at 6:43 PM