How the Australian company tax system works

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What this booklet is about

The corporate tax system and the laws underpinning are extremely complex. There are currently around 110 taxes in Australia and a number of them are borne wholly or partly by business. The laws which govern these taxes can seem almost impenetrable to the average person.

A lack of understanding of how our system works inevitably leads to misunderstandings around how the system operates and whether it is collecting the right amount of tax from large corporates. The Corporate Tax Association (CTA) has produced publications that outline some of the facts about the corporate tax system. These documents also detail the current levels of tax transparency that apply to corporates in Australia:

- *Building a strong corporate tax system*
- *Public tax transparency - what the numbers do and don't mean*
- *Tax transparency - where Australia currently stands*

This booklet has a complimentary but slightly different role. It explains how the Australian corporate income tax rules operate by outlining some of the key building blocks of the corporate tax system and how they work in practice. Its aim is to explain some of the more misunderstood concepts underpinning the corporate income tax system and how corporates operate within it.

We hope this document will support and inform the public debate on the corporate tax system and contribute to building a stronger understanding of how our corporate tax system works and how that system ensures that corporates operating within it pay the right amount of tax.

By its nature, this booklet is a general summary and doesn't deal with the many thousands of pages of tax law. It probably goes without saying readers should always seek professional advice on how the tax rules may apply to their specific circumstances.

The building blocks of the Australian company tax system

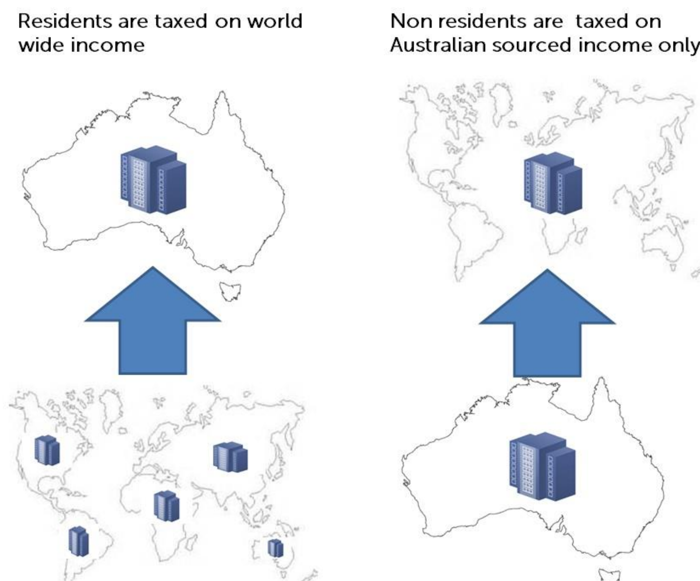
1 Tax is payable on taxable income not total income

Gross income, total income, revenue or gross turnover are terms used interchangeably but essentially describe the gross amount derived from selling goods and services before taking into account the expenses incurred in deriving that amount. Thus simply applying 30% to this amount and concluding this is the amount of company tax that should be paid is very misleading as it doesn't take into account costs such as wages, the cost of goods sold or other expenses that are incurred to derive that gross amount. It is more sensible to talk about an income tax rate applying to accounting profit as a guide to the amount of tax that may be payable.

It should be borne in mind however that although there are similarities between how accounting profit and taxable income are determined, they are very different concepts and should not be confused. The different treatments between the tax system and accounting principles also mean effective tax rates calculated will likely differ from the 30 per cent statutory rate. These differences can result in effective tax rates both above and below 30 per cent. Therefore to suggest a company is engaging in tax avoidance because its effective tax rate differs from 30 per cent is misleading. We have produced a document Public tax transparency - What the numbers do and don't mean which provides more detail on the differences between accounting profit and taxable income.[1]

2 Tax is payable where profits are earned or income is sourced

Australia like many countries taxes its residents on their world-wide income and non-residents on their Australian sourced income.[2] This rule applies to companies as well as individuals.



Although this all sounds quite sensible, it can result in tax being paid in two countries on the same income without other rules to delineate how taxing rights are allocated between them.

For example, an Australian resident company may have a branch operating in New Zealand (NZ) which generates $100 of NZ sourced profits. This profit could be taxed both in Australia (as the company is an Australian resident) and in NZ (as the company is a non-resident but with NZ sourced income) without rules to prevent double taxation. Most domestic tax laws and tax treaties allocate taxing rights to either one country or the other by either exempting income from tax in the home country where it has already been taxed in a foreign country or giving tax offsets (or tax credits) for taxes paid in the other country to offset tax otherwise payable at home.

In our example, NZ would have primary taxing rights on the $100 business profits as Australia exempts such profits from Australian tax. This rule is an example of the "territorial system" of tax adopted by the vast majority of economies around the world.[3] In essence a territorial system subjects business profits earned in a particular country to tax in that country and generally does not tax them again in the home jurisdiction. The exemption from further tax in the home jurisdiction is generally only available for active business activity. Income from controlled passive activity (such as interest on a related party loan) is generally taxable in the home jurisdiction as it accrues with tax offsets given for any foreign taxes paid.

In the simple case of a company with immoveable property such as a factory or a mine operating solely in one country it is generally not that difficult to determine where business profits are earned as the source of profits would generally be where the factory or mine and/or staff are physically located. However, where supply chains are disaggregated (meaning they are spread over different countries and thus business activity, assets and risk are geographically dispersed) it can be more complex to determine where profit is earned and which country has taxing rights and then how much it can tax. Take the example of a company that is headquartered in the UK, develops an internet platform to conduct sales to final consumers in Ireland but sources products sold from all over the world - determining the source of this company's business profits and what component of those profits should be taxed won't necessarily be a straightforward task.

These issues are generally solved for companies by rules that essentially say that if a company has a "permanent establishment" (or a taxable presence) in a country it can be subject to tax in that country.[4] Once a permanent establishment exists, other globally accepted transfer pricing rules operate to determine how much profit can be taxed in that country.

The taxation of business profits

As mentioned above, residency and physical location of activity are key determinants of the allocation of taxing rights between countries on business profits.

<u>Residence</u>

A company's residence is generally determined by its place of incorporation, central management and control and whether it is carrying on business in Australia. This is not necessarily where the board sits but where the day to day management of the company

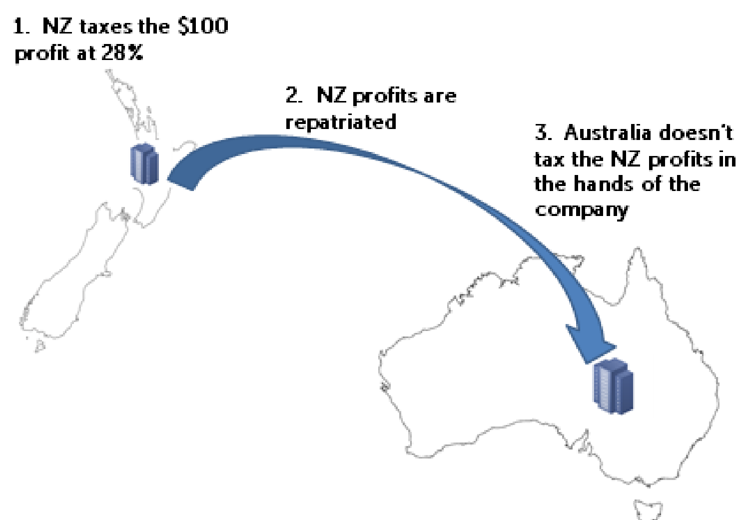
actually abides. Australia rules also ensure that if a country is incorporated in Australia, it will be a resident regardless of where its central management and control occurs or whether it is carrying on a business in Australia. It is also considered a resident if it carries on business in Australia and the companies voting power is controlled by shareholders who are residents of Australia. Once a company is considered a resident, it is generally taxed on its worldwide income.

Permanent Establishments

Where a company has its effective management and control in one country but has a physical location or substantial activity (a permanent establishment) in another country, it is generally taxed on the business profits (income less expenses) accruing in that country that are effectively connected to that permanent establishment (PE).

For example, if an Australian incorporated company which is centrally managed and controlled in Australia operates a factory in New Zealand (NZ) that produces widgets and sells them in NZ and generates a profit of $100, NZ will retain the right to tax the $100 profit as the Australian company has a PE in NZ. However as the Australian company is also an Australian resident, it is subject to Australian tax on its worldwide income and could also be taxed in Australia on the same $100. To avoid double tax, Australian rules exempt the $100 NZ profits from Australian tax and also prevent the Australian company claiming Australian tax deductions (such as interest) for expenses incurred in generating that exempt income.

Similarly, if the Australian company was to establish a subsidiary in NZ rather than operate through a branch, NZ would retain the right to tax the subsidiary's $100 profit and Australia would not tax the $100 earned or when the NZ subsidiary pays a dividend to it.



The simple case of a factory producing and selling widgets wholly in one country can be contrasted to an internet company headquartered in the UK with sales to Australian and other customers having a sales support team based in Singapore, with a server in the US, with staff cutting code in India, dealing with customers via a marketing function in

Switzerland, with intellectual property owned in the Ireland and where final sales contracts are concluded in the Netherlands. Who has taxing rights here – the UK, Singapore, US, India, Switzerland, Ireland, the Netherlands or Australia?

A rule that says income tax should be paid on where the customer is located might sound like a solution. In fact this is exactly what a consumption tax (such as GST) is all about and what the OECD and Inclusive Framework are currently considering as a potential change to international tax rules to deal with the impact of digitalisation.[5] Currently however, income tax has different rules that essentially tax profits (sales less expenses) attributed to the functions, assets and risks attributed to a country.

Thus in our example, it is most likely all countries in the value chain will have the right to tax a slice of the value generated where there is a PE in that country. The next question is how much.

How much of the value chain activity is taxed in each country?

Once a PE status is determined, *how* much that can be taxed is generally determined by understanding the functions, assets and risks that are attributed to the particular country.

To reduce the chance of fiscal evasion (and to also avoid double tax), the amount of profit that can be taxed by each country relies on transfer pricing rules and international tax treaties which determine the amount of business profits that should be taxed. This requires an analysis of what functions are undertaken, the assets employed and risks assumed in each country by the PE and then determining a value on the assumption of what would be the outcome if the related parties where at arm's length and arm's length conditions applied.

Some further detail of how Australia applies the arm's length standard (or our transfer pricing rules) is provided in Section 3.

Taxes on income flows that are not business profits

Although the general rule is tax is only determined by reference to whether there is a PE, certain types of income can be taxed in a host jurisdiction regardless of whether a PE exists.

This is generally accomplished by the host country imposing withholding taxes on certain income flows paid to non-residents. The most common form of cross border flows subject to withholding tax include interest, royalties and dividends. Similar to business profits, in order to prevent these income flows from double tax, a tax offset (or foreign tax credit) is generally given in the home country for the withholding tax paid to the host country.

As a general rule Australia imposes a 30% withholding tax on payments made to non-residents, however where the recipient of any payment is a resident of a tax treaty country, the rate of withholding Australia applies is generally reduced to 15% for unfranked dividends and 10% for interest and royalties.[6]

3 Transfer pricing rules

Australian transfer pricing rules are effectively the codification of globally accepted OECD transfer pricing standards and require all related party transactions between Australian and related foreign entities be priced in accordance with what is known as the arm's length principle. The arm's length principle seeks to determine the conditions at which comparable transactions by unrelated parties occur and then price the related party transaction based off those arm's length conditions taking into account the functions undertaken, assets employed and risk assumed. Substantial penalties are imposed if the price charged or income received is not arm's length and detailed transfer pricing documentation is not prepared to support the dealing.

In some cases, practical difficulties can arise in determining an arm's length price as it is not always possible to find a comparable uncontrolled price or views on the basis by which the price is determined may differ between a taxpayer and the ATO. The fact that a taxpayer and the ATO do not agree on a transfer price is not necessarily a sign that a taxpayer is involved in tax minimisation activity. There are inherent complexities associated with determining a price where components of the value chain are located in different countries and involve the pricing goods or services that may not have a third party comparable – reasonable minds can disagree.

In order to minimise the chance of such disagreements, detailed globally accepted transfer pricing guidelines exist which assist in the task of determining the arm's length price.[7] Many countries such as Australia also allow a taxpayer and the tax authority to enter into Advance Pricing Agreements (APA). APAs allow a taxpayer and a tax authority to agree in advance the price for a related party transaction and have procedures in place for potential, disagreements on transfer pricing between treaty partners to be resolved. Many countries also allow bi-lateral or multi-lateral APAs which involve agreement being reached by a taxpayer and more than one tax authority on the same matter as a means of ensuring the chance of dispute and double taxation is minimised. Of course in cases where there is no

agreement between a taxpayer and the ATO, these matters can be resolved by the judicial process and where there is disagreement between treaty partners via mutual agreement procedures contained in tax treaties.

It is worth noting that an Australian headquartered company with a subsidiary in a low tax jurisdiction, where that subsidiary receives passive income (such as interest or rent) from a related party (such as from its Australian parent), will be subject to Australian tax under Australian controlled foreign corporation rules (see Section 5 below). Thus where the price is equivalent to an arm's length one, the income is fully taxed in Australia as it accrues.

As most other jurisdictions adopt the same transfer pricing standard, the potential for transfer pricing being a source of tax evasion or avoidance only really arises from those that deliberately misprice international related party transactions. In such cases, Australia's general anti avoidance rule, the multinational anti-avoidance rule (the MAAL), the diverted profits tax and penalty regime also operate as a significant deterrent for those that wish to inappropriately take advantage of such mismatches. We have outlined how the general anti avoidance rule operates in Section 9 below.

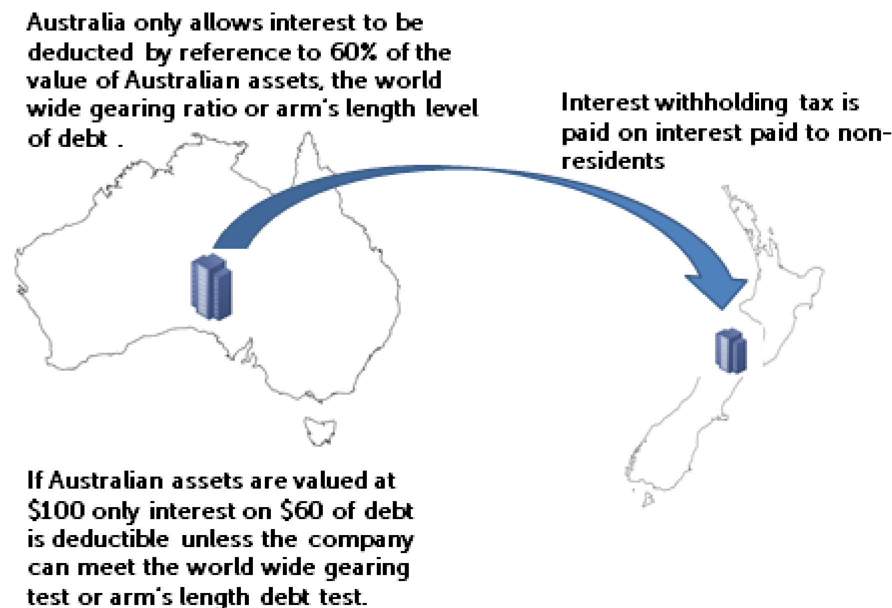
4 Thin capitalisation rules

The general rule is that interest incurred in carrying on a business is tax deductible as it is incurred, unless the interest is of a capital nature or incurred in the derivation of certain exempt income. So as to not disadvantage Australian companies who may need to access debt funding to finance overseas expansion, interest is also generally deductible, subject to a limit, if it is incurred in generating certain exempt foreign source dividends.

However, as interest is deductible, there is a risk to the tax base if taxpayers fund their operations with excessive amounts of debt. To deal with this risk, Australia has "thin capitalisation" rules which place a limit on the level of debt funding. Australia's thin capitalisation rules deny interest deductions by reference to the amount of debt that an unrelated party would lend to an unrelated borrower. This is known as the arm's length debt test and applies to related party and unrelated party debt.

Australian rules also provide two "safe harbours" which can operate to limit debt deductions by reference to a group's world-wide gearing ratio or to 60% of the value of a group's Australian assets. Special rules apply for banks which limit debt funding to 94% of their risk weighted Australian assets.[8]

Australian rules also limit the interest rate that can be charged by reference to the arm's length interest rate that would be charged in such cases. Furthermore, interest is only deductible in Australia if withholding tax that may be payable has been paid to the ATO.[9]



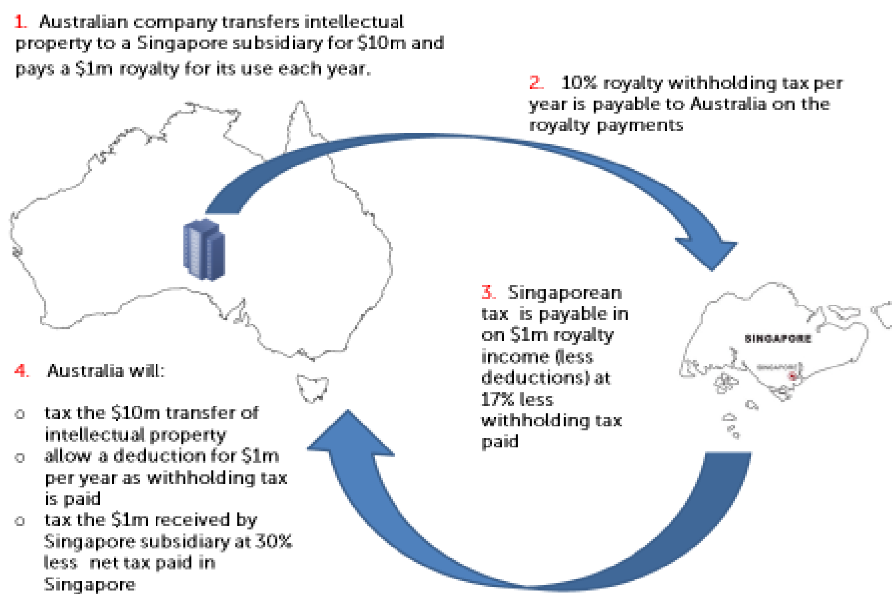
5 Controlled foreign corporation rules

As mentioned in section 2, Australia like most countries, adopts a territorial basis of taxation subjecting Australian sourced profits to Australian tax and exempting from Australian tax dividends derived from an active foreign sourced income. The policy behind exempting certain foreign profits from Australian tax is similar in concept to imputation as aimed to ensure that there is no (or minimal amounts of) double taxation of those profits when received by an Australian parent.

However, it is possible that by exempting some foreign profits from Australian tax, there could be an erosion of the Australian tax base by simply placing moveable sources of income into a low or no tax jurisdiction and never repatriating the profit. For example, placing money on deposit in a subsidiary in a low tax jurisdiction rather than having that money on deposit in Australia could lead to the interest earned not being subject to tax. To ensure that the Australian tax base is protected tax integrity rules called the controlled foreign corporations (CFC) rules operate to subject certain types of foreign passive income to Australian tax as that income accrues in the foreign subsidiary rather than when the dividend is received.

Essentially the CFC rules operate to tax foreign sourced income from a controlled passive source (such as interest on an intercompany loan or royalties from intellectual property) as it accrues. For example, if an Australian company has a subsidiary in a low tax jurisdiction with equity funding of $100 and that subsidiary lends $100 to a related foreign subsidiary generating interest income of $5, the Australian parent would be subject to Australian tax on the $5, less any tax the company paid in the low tax jurisdiction each year as it accrues. These rules effectively place the Australian company in the same position it would have been if it had lent the money directly to its foreign subsidiary and paid 30% tax on the $5 interest income.

These rules ensure there is no tax advantage for an Australian company transferring intellectual property (IP) to a lower taxed jurisdiction, such as Singapore, and charging a royalty back to Australia for its use. Although the royalty paid by the Australian company would be tax deductible in Australia, the income received by the Singapore company would also be subject to Australian tax. The end result is the Australian tax saved from the royalty deduction equals the Australian tax paid (less any Singapore tax paid on that income) on the equivalent royalty income and tax would generally be payable on the gain made from the sale of the IP to Singapore.



Australian CFC rules do not tax the profits derived by a non-resident entity that is not controlled by an Australian parent. However in such cases, the amount of any payment to a non-resident would generally be subject to Australian withholding tax and not tax deductible in Australia until the withholding tax is paid. Furthermore, the amount of any payment to the non-resident must not be greater than the amount that would be payable had it been paid to an unrelated party under arm's length conditions as required by Australian transfer pricing rules (see Section 3 above).

6 Tax consolidation

As a general rule companies in Australia are taxed on a stand-alone basis. Thus if one company makes a taxable profit of $200 and the other a loss of $100, our rules operate so that even if the companies are owned by the same person, you cannot offset the $100 loss in one company against the $200 taxable profits in the other. Thus $60 tax (30% of $200) would be payable by the profitable company and the loss company can carry forward the $100 loss for use by it in future years.

However, a resident Australian head company and its wholly owned Australian resident subsidiaries can make an election to be taxed as a single consolidated group. Under these rules, transactions between members of the consolidated group (such as dividend payments, asset and liability transfers and liquidations) are generally ignored for income tax purposes. The head company of the consolidated group lodges one tax return and pays tax instalments for the consolidated group, maintains one franking account and pools tax losses and other tax attributes.[10] If the consolidation election is made, the $100 loss company and the $200 profitable company would be treated as a single consolidated entity and would pay tax of $30 on a $100 consolidated taxable profit ($200 profit less the $100 loss), but would not have any carry forward losses.

7 Tax losses

Australian tax rules distinguish between the treatment of income losses and capital losses. Where a capital loss is generated, that loss is only available to offset capital gains (not income gains) however income losses can offset either income or capital gains. Unlike individuals and superannuation funds, companies do not get the benefit of a capital gains tax discount but instead pay tax on the full net capital gain. Some gains derived on the disposal of foreign assets can be exempt from Australian income tax.

Where income or capital losses are generated in a year but are not fully utilised in that year, they can be carried forward to future income years and be available to offset future income or capital gains. Carry forward capital losses can only be used to offset capital gains.

Integrity rules ensure that losses can only be used if there is a sufficient continuity of ownership of the company that incurred the loss when the loss is recouped by that company or where the company meets a very rigid same business test.[11] Other integrity rules operate where a consolidated group acquires another consolidated group with losses.[12]

8 Dividend imputation

Australia's dividend imputation system is aimed at ensuring there is no double tax on underlying Australian company profits by providing a tax (or imputation) credit to resident Australian shareholders who receive a franked distribution. Where a resident company receives a franked distribution from another Australian company it also does not pay additional income tax on those dividends to the extent they are franked. This ensures there is no double tax on Australian sourced profits. Imputation also removes the bias that would otherwise exist to fund with debt rather than and equity for Australian companies.[13]

As the imputation system creates a bias towards paying franked dividends to Australian shareholders and unfranked dividends to non-resident shareholders, very tight tax integrity rules exist to ensure companies cannot "stream" the benefits of franked dividends to resident shareholders and unfranked dividends to those that don't benefit from the franking credit.

As mentioned in Section 2, unfranked dividends paid to residents are generally subject to Australian withholding tax.

It is worth noting that if an Australian company receives dividends from abroad and these profits are distributed as a dividend to its Australian resident shareholders, they will generally be received by the shareholder as an unfranked dividend at some point in time. This means the resident shareholder eventually pays tax on those dividends at their marginal tax rate. This can result in the underlying profits from overseas operations being taxed at rates that are higher than an individual shareholder's marginal tax rate if tax is paid on underlying profits in the country where the underlying profits are generated.[14]

9 General anti-avoidance rules

Apart from the specific tax integrity rules such as transfer pricing, thin capitalisation and CFC rules described above, Australia also has a myriad of specific anti-tax avoidance rules which are aimed at protecting the Australian tax base. To list all the specific rules is beyond the scope of this booklet, however, overarching these specific rules is a general anti avoidance rule (GAAR) which is aimed at striking down tax avoidance schemes which have a dominant purpose of generating a tax benefit.[15]

The policy behind the GAAR is to ensure tax benefits are cancelled for schemes which are blatant, artificial and contrived. The rules are aimed at striking a balance between ensuring ordinary family and commercial dealings are not impacted by legitimate tax planning whereas schemes which have a dominant tax driven purpose result in the denial of any tax benefit.

As you can imagine, there can be a spectrum of activity that could potentially fall foul of this rule. Along this spectrum it becomes a question of fact as to whether the GAAR should apply. Some cases have reached the courts, including the High Court, where the GAAR rules have been held to apply (and to not apply) to certain arrangements.

The ATO has published many rulings where it outlines instances it believes the GAAR can apply. It has also established administrative arrangements including a panel consisting of eminent internal and external tax experts to assist ATO officers in cases where they seek to apply the GAAR. Where the GAAR applies, the tax benefit generated is cancelled and non tax deductible penalties of up to 100% of the tax benefit can also be imposed.

It is worth noting that in the area of transfer pricing, where there is a potential avoidance of a taxable presence in Australia or in franking streaming arrangements, there is no requirement for a dominant purpose of avoiding tax to be present before the GAAR rules can apply.

10 Tax assessments and the settlement of disputes

Australia operates a self-assessment tax regime whereby the lodging of a tax return is seen as an assessment to income tax. The ATO and companies have four years to amend an assessment of tax, or in cases involving transfer pricing, six years.

For many large corporates the ATO conducts reviews of tax returns before they are lodged as part of the ATO's justified trust initiative in relation to the top 1,100 corporate groups.[16] Apart from ensuring that the ATO is across the company's positions on significant tax issues, it also has the added advantage of enabling the ATO and companies to resolve any differences of view in real time, so there is no disagreement down the track and no need for amended assessments to issue.

There can be in some cases a genuine difference of view between the ATO and a company on how the income tax law applies to a particular transaction. Just because a company's view differs from that taken by the ATO does not mean that the company has been involved in tax avoidance.

Where there is a difference of view that can't be resolved before amended assessments are issued (for example the evidence may show the arm's length range of interest on a related party loan should be between 5% and 6%, but the taxpayer may have lodged its tax return based on 6% and the ATO's position is it should 5%) the ATO may issue an amended assessment for the 1% difference, and impose penalties and interest. Normally when tax is due on an amended assessment and the taxpayer objects to that assessment, the ATO and the taxpayer will enter into a 50% payment arrangement pending the outcome of the resolution of the matter by the courts or via some other form of dispute resolution. This may lead to a settlement deed being entered into between the ATO and the taxpayer.

As the outcomes can be uncertain for the ATO and the taxpayer and court processes can be long and expensive for both parties, there can be instances where the parties may wish to consider settling a matter. That being said, not every matter will result in the ATO or taxpayer wishing to settle before the issue is heard by a Tribunal or Court. Some issues may have precedential value, meaning the outcome will have an impact beyond the facts of the particular case or it may involve a question of law that requires a Court to decide what the law means.

Although settlements may to some be seen as giving rise to the potential for "sweet heart" deals between the ATO and taxpayers, this is far from the reality of what happens in practice. The ATO have a Code of Settlement[17] which sets out the principles on which it will settle matters, with settlements for large matters having to undergo an independent review before they are agreed to by the ATO.

The ATO does not do settlement "package deals", but looks at each matter on a case by case basis as well as the impact the settlement may have on the wider community to ensure consistency. The ATO also has an obligation to administer the taxation system in an efficient and effective way balancing competing considerations (such as the precedential value of the issue at hand) and applying discretion and good sense. The ATO also have an independent panel for four former Federal Court judges that review large settlement cases.[18]

Inevitably there will be cases where the amount due on the amended assessment differs from the amount finally agreed to by the ATO on settlement. For example, it may be that the interest rate difference in our example is resolved at a figure of 5.5%, subject to the taxpayer agreeing to this figure for future years. The fact that there is a difference between what the ATO had issued in the amended assessment and the final settled amount does not mean that the ATO has waived or "split the difference" – rather it is a recognition that there is uncertainty of outcome for both parties. It is important to recognise that in any dispute, whether it be in the tax or commercial world, the final settlement figure is rarely all that either party had hoped to achieve.

End Notes

[1] The ATO has also produced some explanatory material as well.
See https://www.ato.gov.au/general/tax-and-corporate-australia/tax-is-not-simply-30--of-profit/

[2] Some countries only tax income sourced from that country or tax based off citizenship (such as the US) regardless of source.

[3] 28 of the 34 OECD countries have adopted some form of territorial tax system. Other countries, notably the US, adopt a foreign tax credit system to avoid double tax, although recent changes adopt an effective territorial tax system.

[4] The definition of permanent establishment varies slightly depending on the relevant tax treaty but generally does not treat the physical warehousing of stock in a country as a permanent establishment unless other factors are present. Recently the definition of permanent establishment has been changed by the OECD's Multilateral instrument. Australia is a signatory to the MLI and will incorporate changes to the PE definition in most of Australia's Double Tax Agreements

[5] See: http://www.oecd.org/tax/beps/oecd-invites-public-input-on-the-secretariat-proposal-for-a-unified-approach-under-pillar-one.htm

[6] Australia has 46 tax treaties currently in place. The details of Australia's treaty network can be found at the Treasury website at: https://treasury.gov.au/tax-treaties/income-tax-treaties/

[7] See OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators at http://www.oecd.org/ctp/transfer-pricing/transfer-pricing-guidelines.htm

[8] Australia's thin capitalisation rules where tightened from 1 July 2014. Previously the rules allowed debt to the level of 75% of Australia assets for non-banks and 96% of Australian risk weighted assets for banks or up to 110% of worldwide gearing. For the 2013-2014 year ATO data shows that debt deductions of approximately $1.6 billion were denied. Further changes to thin capitalisation rules seeking to limit the use of off-balance sheet asset revaluations are currently before the Senate.

[9] To assist taxpayers to access to foreign debt markets, rules exist that can exempt interest paid to non-residents from Australian withholding tax on certain debt instruments issued to the public.

[10] The consolidation rules also allow "multiple entry consolidation" (MEC) groups to be formed. MECs are tax groups which may have more than one entry point into Australia.

[11] Draft law is currently before the Federal Parliament to introduce a "similar business" test for losses incurred after 1 July 2015.

[12] Losses can only be used according to a formula known as the available fraction.

[13] Interest is tax deductible and dividends paid are not. Assume a company makes $100 profit and is equity funded with $100. It would make more pre-tax profit than a company that is debt funded by $100 equal to the amount of the interest expense on the $100 borrowed and could pay a bigger dividend. However the company would also pay more tax but passes this tax on as a franked dividend.

[14] Special rules do not tax certain "conduit foreign income". These rules are aimed at making Australia an international holding company locale for non-residents who invest in non-resident companies via an Australian holding company by not subjecting the foreign income received by the Australian company to further Australian tax.

[15] The general anti-avoidance rules were recently amended to deal with cases where one of the principal purposes of a tax arrangement is the avoidance of a permanent establishment in Australia,the Multinational Anti

Avoidance Law (the MAAL) and the 40% Diverted Profits Tax (the DPT) that can be applied if a taxpayer pays or receives an amount from a country with a tax rate 80% of the Australian rate (ie 24%) and there is no economic substance supporting that payment. The ATO have indicated that over $100 million in extra income tax per annum has been generated under the MAAL.

[16] See the ATO's explanation of the Top 100 and Top 1000 justified trust programs at: https://www.ato.gov.au/business/large-business/in-detail/business-bulletins/articles/assessing-tax-governance-for-large-public-and-multinational-businesses/

[17] See: https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Settlement/Code-of-settlement/

[18] See: https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Settlement/Independent-Assurance-of-Settlements-program/

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