



23 January 2017

File: OBPR ID 20855

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Dear Ms Cvijanovic

REGULATION IMPACT STATEMENT – FINAL ASSESSMENT SECOND PASS – IMPLEMENTING A DIVERTED PROFITS TAX (DPT)

Further to Robert Jeremenko's letter of 3 January 2017 submitting the Regulation Impact Statement (RIS) prepared for implementing a Diverted Profits Tax (DPT) for first pass to your office, I am resubmitting the RIS for final assessment.

I believe the RIS meets best practice requirements and is consistent with the ten principles for Australian Government policy makers.

- *The nature of the problem:* – the international tax system needs to adjust to the rapid pace of change, leading to increased opportunities for tax avoidance where some taxpayers seek to avoid tax by shifting profits from jurisdictions where the economic activity occurred to a lower taxing jurisdiction in which they may have little economic activity.
- *Policy options considered:* – The first of the three policy options considered is to maintain Australia's current multilateral anti-avoidance regime to further assess the impact of earlier amendments and to monitor international anti-avoidance developments. The second option considered is to amend Australia's transfer pricing legislation to align with the OECD's latest guidelines to ensure Australia's existing rules remain international best practice. The third option considered is to adopt a diverted profits tax similar to the United Kingdom to provide the Commissioner with extra powers under the general anti-avoidance rule to deal with taxpayers who transfer profits to offshore associates using arrangements with a principal purpose of avoiding Australian tax.
- *The net benefit of each option:* – Maintaining the current multilateral anti-avoidance regime will give further time to assess the impact of Australia's 2012/13 multilateral anti-avoidance regulation. Adopting the OECD Guidelines conforms with Australia's strong support for the BEPS recommendations and ensures our transfer pricing regime keeps pace with international developments. Adopting a DPT strengthens the Commissioner's power to pursue profit shifting under Australia's general anti-avoidance rules.
- *The consultation process:* – Treasury has released public consultation papers on both the adoption of the OECD transfer pricing guideline recommendations and the nature and application of a DPT. Treasury released the draft DPT legislation for public comment on 29 November 2016 with final

submissions due by 23 December 2016. As the adoption of the OECD transfer pricing guidelines is legislatively straight forward no further consultation is intended on the legislation.

- *The preferred option:* – the RIS conclusion is that both the second and third options should be adopted as they are complementary. Australia’s transfer pricing regime, implemented in accordance with international efforts to address profit shifting, is central to Australia’s multinational tax regime. The DPT provides the Commissioner with greater powers to ensure the Australian tax paid by significant global entities properly reflects the economic substance of their activities in Australia and prevent the diversion of profits off-shore through contrived arrangements. The DPT will also encourage significant global entities to provide sufficient information to the Commissioner to allow for the timely resolution of disputes.
- *Implementation and evaluation:* – Legislation is required to implement the preferred options and is planned to be enacted before 1 July 2017. The ATO will issue relevant guidance for affected businesses. The ATO is well placed to monitor the effectiveness of the measures. Multinationals that may be affected are likely to either already be engaging, or will engage early on, with the ATO and will continue to be monitored by the ATO in the event of any restructuring undertaken to be compliant under the transfer pricing or diverted profits measures.

In addition the RIS addresses the issues raised in Mr Wayne Poels’ response to the first pass RIS. Specifically the RIS:

- clarifies why adopting a DPT is a preferable option even though the practical effects of reforms to the general avoidance and transfer pricing rules in 2013 have not all been tested,
- provides a more detailed description of how the legislation has taken into account, within the policy parameters, the results from stakeholder consultation, and
- includes a broader discussion on how the DPT and transfer pricing options are consistent with and support Australia’s international tax arrangements and are unlikely to deter foreign investment, but will increase confidence among taxpayers in the fairness of the system.

Mr Poels also requested background on the status of the Regulatory Impact Statement at the major decision making points. The RIS explains that the DPT and transfer pricing measures were part of the Government’s [re:Think] discussion paper which was accepted as the interim RIS in the case of the DPT. In the case of the transfer pricing amendments, OBPR agreed on the basis of a preliminary assessment that a final RIS would not be required (the OBPR reference number is 20417).

Regulatory burden estimates were provided and agreed by OBPR for both the DPT and transfer pricing proposals.

Accordingly, I am satisfied that the RIS now meets best practice consistent with the Australian Government Guide to Regulation.

I submit the RIS to the Office of Best Practice Regulation for formal assessment.

Yours sincerely



Robert Raether

Acting Deputy Secretary
Revenue Group