

On a page... Multinational Anti-Avoidance Integrity Law

Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015

In a nutshell...

A Bill introduced into the Australian Parliament on 16 September 2015 contains new anti-avoidance measures designed to counter the erosion of the Australian tax base by multinational entities that seek to avoid the attribution of business profits to Australia by avoiding a taxable presence in Australia. The Bill is part of a package of OECD BEPS related measures that also include the new Country by Country reporting regime (see separate On a Page). As an anti-avoidance measure, MAAL involves a lower threshold test to be met of 'one or more of the principal purposes' and it will allow foreign tax purposes to be considered. The new anti-avoidance measures apply from 1 January 2016 in connection with a scheme, whether or not the scheme was entered into before that time.

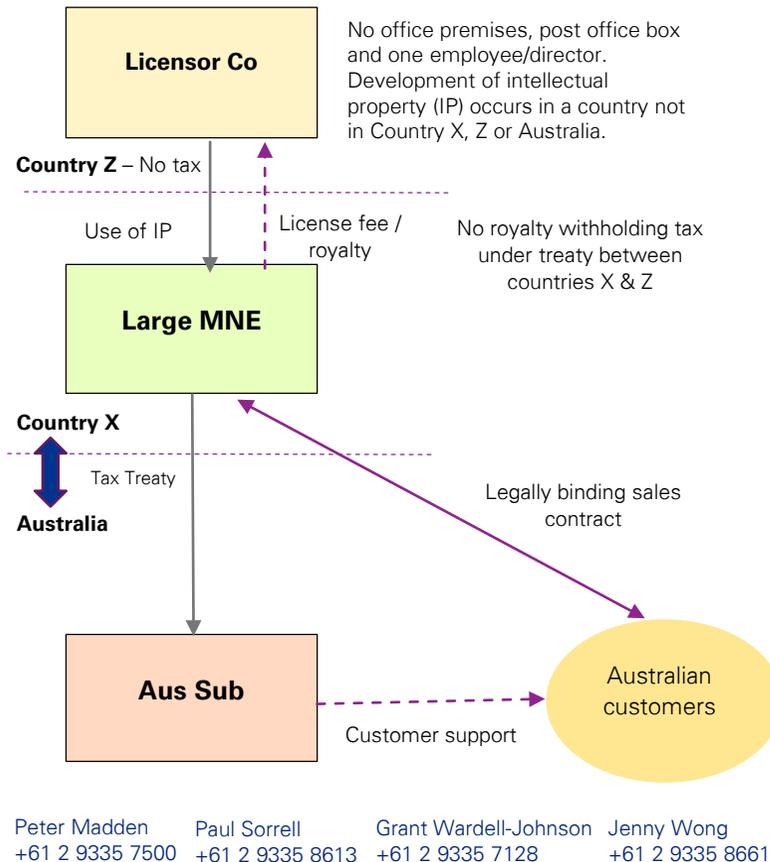
Which entities will be subject to MAAL?

Taxpayers who obtain a tax benefit, or reduce or defer a tax liability under a foreign law under a scheme involving the avoidance of taxable presence in Australia by a foreign entity that is a significant global entity (i.e. part of a global group that has annual global income greater than A\$1 billion for the relevant income year).

Schemes that MAAL captures

The new law will apply to a scheme if under the scheme or in connection with the scheme:

1. A foreign entity makes certain supplies to an Australian customer
2. Activities are undertaken in Australia in connection with the supply
3. Some or all of those activities are undertaken by an Australian entity (or an Australian PE of an entity) that is an associate of or is commercially dependent on the foreign entity
4. The foreign entity derives ordinary or statutory income from the supply
5. Some or all of that income is not attributable to an Australian PE of the foreign entity.



Principal purpose test

The main driver for the MAAL provisions to apply is the 'principal purpose' test where the person entered into the scheme for the principal purpose, or for more than one principal purpose of obtaining a tax benefit and to reduce or defer one or more of the taxpayers' liabilities to tax under a foreign law in connection with a scheme. In this example:

- Royalty withholding tax would have applied to the license fee if the fee was an outgoing incurred by Large MNE in carrying on a business through a permanent establishment (PE) in Australia. No Australian assessable income to Large MNE as there is no Australian PE.
- Large MNE carried out a scheme for a principal purpose of enabling it and Licensor Co to obtain a tax benefit in this scenario.

KPMG observations

An exposure draft (ED) on these measures was first released on 12 May 2015 and a number of submissions were made on this draft. Concepts such as 'significant activity', and 'low tax jurisdiction' in the ED have been removed. Although the final legislation is simpler, there are less exclusions, hence greater potential application and greater pressure on 'a principal purpose' test (which has a difficult etymology). Many taxpayers would have welcomed the more complex, but narrower ED. It is expected the ATO will publish draft guidance on MAAL before the end of the year and will be consulting with stakeholders on what topics they would like the guidance to cover. We welcome this. To be a part of the conversation, contact your KPMG Tax Advisor.