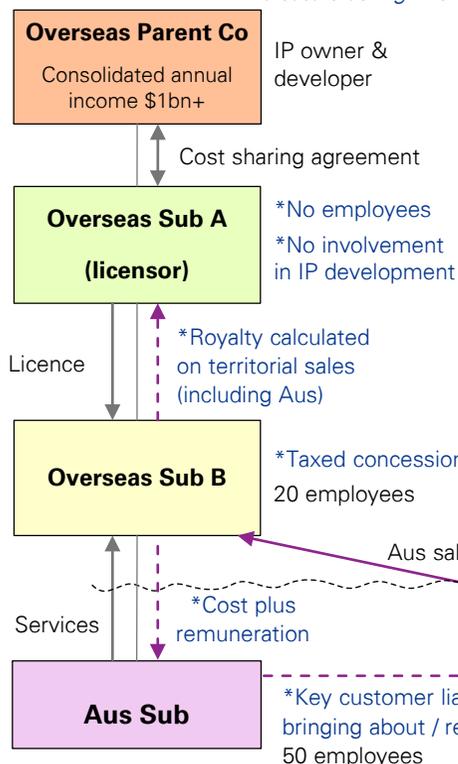


In a nutshell...

On 19 November 2015, the ATO issued Law Companion Guideline LCG 2015/2 containing guidance on when Australia's proposed MAAL rules may or may not apply. The ATO provides examples and framing questions to assist multinational entities (MNEs) assess whether they may face a high or low risk of the MAAL rules applying. LCG 2015/2 will convert to a binding public ruling if the MAAL rules are enacted without amendment. By way of background, the MAAL rules amend Australia's general anti-avoidance rules to counter the erosion of the tax base by MNEs, with AUD1 Billion or more global annual income, who seek to avoid a taxable presence in Australia. Where threshold conditions involving a scheme are met (refer previous KPMG On a Page OAP 15-128), the MAAL rules apply if one or more of the principal purposes of entering into the scheme are to obtain an Australian tax benefit, or both an Australian tax benefit and reducing/deferring a foreign tax liability. Parliament will re-consider the relevant Bill containing the MAAL rules next week, with the MAAL rules still expected to be passed for application from 1 January 2016. The ATO welcomes early engagement with MNEs.

High Risk Example

**denotes adverse indicators as high risk*



Principal purpose test (PPT) & foreign tax outcome

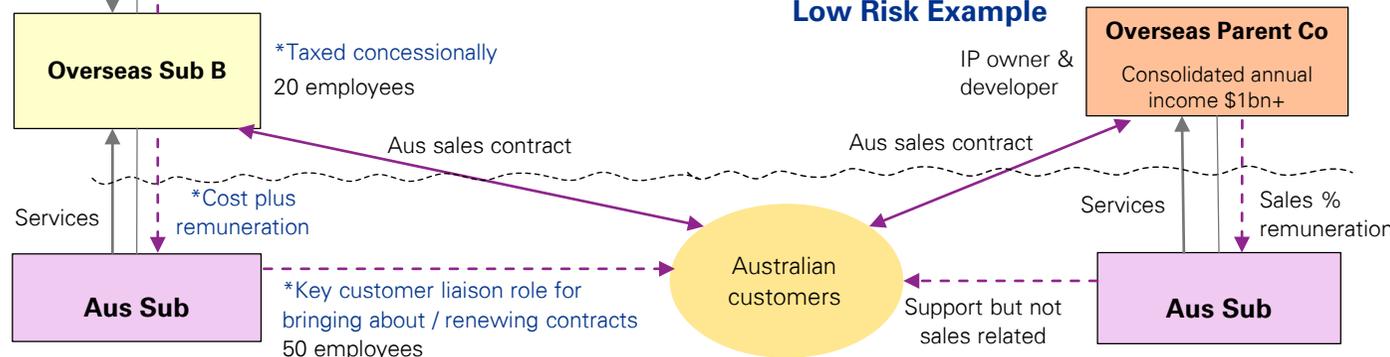
- PPT is likely met if scheme is more reasonably explained by Australian / foreign tax outcomes; unlikely met where scheme is straightforward and inextricably linked to core commercial activities.
- Foreign tax deferral is taken into account for consideration of PPT unless there are *reasonable commercial grounds* for deferral: consider length of delay; legal, prudential regulatory, contractual or administrative reasons and past patterns etc.

Australian tax benefit and Compensating Adjustment (CA)

In the high risk example, if the MAAL rules apply, the Australian tax benefit is cancelled such that:

- Either the whole or part of gross Aus sales income referable to the notional PE of Overseas Sub B is assessable income
- Australian withholding taxes (WHT) prima facie arises on royalty derived by Overseas Sub A from Overseas Sub B attributable to the notional PE
- CAs for deductible expenses referable to earning the notional PE's assessable income may be requested. Commissioner would make a CA where fair and reasonable (but onus is on the taxpayer to prove).
- Attributable royalty expenses are deductible only if WHT is paid.
- No credit for foreign taxes paid, must seek relief in foreign country.

Low Risk Example



What to consider

- Review business model and assess risk of the MAAL rules.
- The ATO has indicated it will contact 80+ MNEs it considers will likely be affected by the MAAL rules.
- Understand the mechanics of the gross tax benefit income inclusion and offsetting CA request.
- Consider early engagement (Still to come is guidance on ways to engage with the ATO to resolve tax positions).