



**Institute of
Chartered Accountants
Australia**

10 May 2013

Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra
ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir

**Inquiry into the Tax Laws Amendment (Countering Tax Avoidance and
Multinational Profit Sharing) Bill 2013**

I refer to the Standing Senate Economics Legislation Committee public hearing into the above mentioned bill on Tuesday 30 April 2013.

Representatives of the Institute of Chartered Accountants Australia attended the hearing and gave evidence to the Committee. The ICAA delivered that evidence between 11am and 12.10pm at the same session as representatives of The Tax Institute. In the course of that session Senator Cameron asked the following question:

"How about taking on notice to give me a list of the types of documents you say should not be part of this process. Let us go the other way."

In responding to this question the Institute firstly refers to comments already made by Mr Seve, a representative of the Institute during the hearing:

"The issue is the degree of documentation. Obviously the smaller the enterprise the more onerous it is to have very comprehensive documentation. Some of the concerns that we have with the bill relate to the fact that it introduces very broad powers that are not clear and probably require some more specific restrictions to them. An example of that is replacement of the actual facts of a transaction with the facts that can be hypothesised by the ATO as to what an independent party would have otherwise done. So it actually requires taxpayers to start to second-guess what sort of hypothesis the ATO may come up with. There are very little restrictions as to how that hypothesising should occur. So it is in that context – the degree and the complexity of the documentation – that we raise our concern."

By way of further detail, documentation that would be onerous particularly for smaller taxpayers to compile includes functional analysis documentation outlining the arms length conditions of transactions in the context of the application of the powers under 815-130 (3) and (4) of the Bill.

Customer Service Centre
1300 137 322

NSW
33 Erskine Street
Sydney NSW 2000

GPO Box 9985
Sydney NSW 2001
Phone 61 2 9290 1344
Fax 61 2 9262 1512

ACT
L10, 60 Marcus Clarke Street
Canberra ACT 2601

GPO Box 9985
Canberra ACT 2601
Phone 61 2 6122 6100
Fax 61 2 6122 6122

Qld
L32, Central Plaza One,
345 Queen Street,
Brisbane Qld 4000

GPO Box 9985
Brisbane Qld 4001
Phone 61 7 3233 6500
Fax 61 7 3233 6555

SA / NT
L29, 91 King William Street
Adelaide SA 5000

GPO Box 9985
Adelaide SA 5001
Phone 61 8 8113 5500
Fax 61 8 8231 1982

Vic / Tas
L3, 600 Bourke Street
Melbourne Vic 3000

GPO Box 9985
Melbourne Vic 3001
Phone 61 3 9641 7400
Fax 61 3 9670 3143

WA
L11, 2 Mill Street
Perth WA 6000

GPO Box 9985
Perth WA 6848
Phone 61 8 9420 0400
Fax 61 8 9321 5141

In summary, these provisions require analysis of transactions that potentially differ from those actually entered into by the taxpayer.

Further, the Explanatory Memorandum to the Bill at paragraph 3.101 indicates that the structure of these transactions can be determined hypothetically with only limited restrictions as outlined at paragraphs 3.102 and 3.103. In absence of more comprehensive restrictions and clarity, this requirement is perceived to be onerous particularly for smaller taxpayers.

The Institute trusts that this information is of assistance.

Yours sincerely

Paul Stacey
Tax Counsel
The Institute of Chartered Accountants in Australia

Cc: Mr Anthony Seve, Partner, KPMG
Ms Karen Smith, Senior Tax Consultant, ICAA