Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2017 - 2018

Division/Agency: Australian Taxation Office
Question No: 129
Topic: DTA - Foreign owned multinationals
Reference: Written
Senator: Hanson, Pauline

Question:

In what way, if any, do foreign owned multinational companies avoid taxation through Double Tax Agreements?

Answer:

- Double Tax Agreements are formal bilateral treaties between two countries to allocate taxing rights in respect of taxpayers who are potentially able to be taxed in both countries. By doing this, they prevent double taxation and facilitate international trade and investment.
- The allocation of taxing rights under Double Tax Agreements closely follow the Organisation for Economic Co-operation and Development's (OECD) model tax convention, developed through international negotiation that Australia has been a part of.
- The Government has introduced strong tax integrity measures such as the Multinational Anti-Avoidance Law, the Diverted Profits Tax and the Multilateral Instrument, to help ensure that multinationals pay tax in the jurisdiction where the economic value is created. In addition, nothing in Australia's tax treaties or domestic legislation prevents the ATO from apply Australia's strong General Anti-Avoidance Rules to negate schemes designed to abuse treaty provisions.
- Taxing rights are allocated according to the principle that a country will generally tax its resident taxpayers on income earned in another country except where that taxpayer has had a substantial presence in the economy of the other country. That substantial presence is defined in Agreements as including, for example, where a company operates in the other country through a branch or a permanent establishment
  - Multinational companies have attempted to avoid having a taxable presence in Australia. The Multinational Anti-Avoidance Law allows the ATO to attack such schemes.
- Double Tax Agreements also have provisions designed to assist in the calculation of how much income should be allocated for taxation in each country where the transactions are between related parties in each country. These calculations require the countries to tax so much of the income as would have been available for taxation in their country if the transactions had been conducted between unrelated or arm's length taxpayers.
  - Multinational companies have attempted to manipulate the calculation of income to be assessed in Australia. Australia's transfer pricing provisions and the new anti-avoidance provision, the Diverted Profits Tax, allows the ATO to address such matters.

- Double Tax Agreements are designed to govern the taxation of income earned between two countries and encourage trade and investment between those two countries. Underlying any Double Tax Agreement is a series of mutual tax obligations between the two countries.
  - Multinational companies have attempted to avoid Australian taxation by claiming treaty benefits for entities resident in non-treaty countries. They do this through arrangements where the companies interpose entities or enter into other arrangements in order to obtain benefits under the Double Tax Agreement that are intended only for residents of the contracting countries. Australia uses its anti-avoidance rules to attack such arrangements.
- On 7 June 2017, along with 67 other jurisdictions, Australia signed the Multilateral Instrument[1]. This instrument is a tax treaty that will modify most of Australia's (and other jurisdictions') bilateral tax treaties to implement new integrity rules that will help prevent tax avoidance and the inappropriate claiming of treaty benefits, such as double non-taxation. Similar changes have been recently made to the OECD model include provisions disallowing schemes designed to abuse treaties.
- Australia's network of tax treaties strengthen tax administration, such as through enabling the exchange of tax information between tax authorities to ensure that multinationals and high wealth individuals cannot evade taxes. In addition, tax treaties can also facilitate the collection of outstanding tax debts from overseas.

[1] Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.