

30 June 2015

General Manager
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The Treasury
Langton Crescent
PARKES ACT 2600

Via email: taxlawdesign@treasury.gov.au

Tax Integrity: Multinational Anti-avoidance Law – Exposure Draft Additional example of unintended scope of proposed measure

Dear Sir/Madam

We refer to the joint submission made by EY and Corporate Tax Association (**CTA**) on the Exposure Draft of the *Tax Laws Amendment (Tax Integrity Multinational Anti-avoidance Law) Bill 2015 (Exposure Draft)* on 15 June 2015 and in particular section 3.6 titled “Definitions relying on GST Act” (on page 9).

We have identified an additional example illustrating the unintended consequence of adopting the definition of “supply” as contained in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act)*, this being that it could potentially apply to arrangements such as the sale of shares or lending by non-residents.

Such a broad ambit of the Exposure Draft is clearly not intended and goes against Australia’s acceptance of internationally accepted tax norms on the taxation of non-residents.

An example could include non-resident holding shares in an Australian company. The non-resident shareholder divests its interests by selling its shares to an Australian resident, and some activity related to the sale was undertaken by an Australian resident, eg the company being sold. The broad wording of draft law creates risk of Australian tax to the non-resident investor – which is clearly not intended.

As such transactions are not intended to be covered, EY submits that the Exposure Draft should not utilise the definitions contained in the GST Act which were developed for a different policy purpose. If Treasury still believes that it is necessary to retain the GST Act definition of “supply” in the proposed law, then EY submits that “financial supplies” should be specifically carved out from the definition of “supply” for the purposes of applying section 177DA.

If you have any questions, please do not hesitate to Sue Williamson on 03 9288 8917 or Michelle DeNiese of CTA 03 9600 4411.

Yours faithfully



Sue Williamson
Partner