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INTERNATIONAL TAX FACTSHEET: HYBRID ARRANGEMENTS FACE TOUGHER SCRUTINY

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THE AUSTRALIAN GOVERNMENT HAS ISSUED GUIDANCE ON THE APPLICATION OF ITS TOUGH NEW MEASURES DESIGNED TO PREVENT EXPLOITATION OF SO-CALLED 'HYBRID MISMATCHES'.

Multinational groups operating in Australia face greater scrutiny for so-called 'hybrid mismatch' arrangements, following the introduction of tough new measures designed to prevent the exploitation of differences in tax treatment under the laws of two or more countries.

The Federal Government introduced the measures in May 2018 that will apply from 1 January 2019 to the tax benefits which can be utilised by with Australian branches or Australian-based companies to reduce corporate tax.

The new rules are based on the Organisation for Economic Cooperation and Development (OECD) rules designed to neutralise the effects of hybrid mismatches so that unfair tax advantages do not accrue for multinational groups compared to domestic groups.

WHAT IS A HYBRID ARRANGEMENT?

Hybrid arrangements include financial instruments or entities that may not be treated equally in different tax jurisdictions.

So for example the financial instrument may be treated as equity in one jurisdiction but as debt in another or an entity that is treated as taxable in one jurisdiction is considered 'flow through' in another. Hybrid arrangements provide multinationals with tax

benefits because it may allow deductions to occur in one jurisdiction, but not be assessable or assessable at a lower tax rate in another jurisdiction. In some cases, payments may be deductible in both.

WHEN CAN A 'HYBRID MISMATCH' OCCUR?

A "hybrid mismatch" arises if tax benefits result from the exploitation of differences in the tax treatment of an entity or a financial instrument under the laws of two or more countries.

WHAT DO THE NEW RULES MEAN FOR AUSTRALIAN ENTITIES OR BRANCHES?

The Australian Government is seeking to neutralise the tax benefits to either remove the tax deductions for Australian entities or include an additional amount in their assessable income.

The new rules may also remove the ability to apply non-assessable, non-tax exempt treatment to the recipients of income from a hybrid branch, dividend income, and the ability to frank or receive franking benefits from hybrid payments. There will also be no grandfathering of the existing rules for hybrid arrangements.

WHEN ARE THE NEW RULES DO TO APPLY?

The new rules are due to be applicable from 1 January 2019.

WHAT SHOULD AUSTRALIAN ENTITIES WITH HYBRID ARRANGEMENTS DO?

The Australian Tax Office has issued its draft compliance guide that sets out the ATO's views on the steps that Australian taxpayers take are likely to be seen as low or high risk.

For example, simply removing the hybrid arrangements is likely to be seen as low risk, whilst replacing them with new arrangements that comply with the new laws yet preserve the tax benefit are likely to be seen as high risk.

From our point of view, it's important for Australian

entities and branches to fully understand the new rules and the risks within their current structures and to review any such arrangements with a cross-border specialist to ensure they don't fall foul of the ATO.

TALK TO OUR INTERNATIONAL TAX TEAM

Contact us on 02 9957 4033 or email our International tax specialists for further guidance on how this may impact your orga

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ABOUT US

Our Expertise

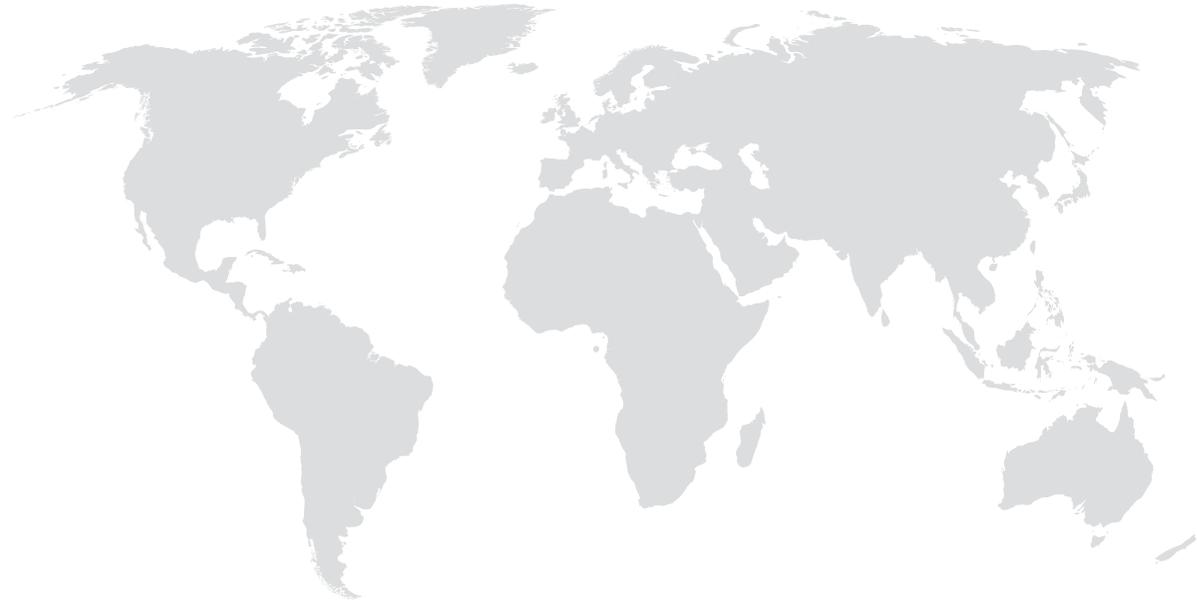
Domestically

Bates Cosgrave advises domestic and international businesses.

We provide highly personalised services across a wide range of industries with in-depth knowledge in real estate, renewable energy, import and distribution, health professionals, inbound and outbound investments, and innovative/start-up businesses.

Internationally

Although we are a boutique firm based in Sydney, we have access to a strong global network and specialise in advising cross-border transactions and global structuring.



OUR TEAM

Directors



MATT ZHOU

DIRECTOR

CA, B. COMM, M. ACC, M
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Matt joined Bates Cosgrave in April of 2007 as a manager and was promoted to Director from 1 July 2009. Matt has a reputation for his technical expertise and experience in specialist advice to professionals including medical doctors, professional investors and family offices, multinational companies.

His diverse knowledge on International tax, expatriates tax, employee share schemes, business structuring including cross border issues, CGT and GST is formidable.

His industry knowledge is broad and includes medical services, real estate, pharmaceuticals and technology companies. As tax advisors, we must think ahead and consider not just the current situation but the future.

Good advice reflects not simply value now, but lasting value.



GLENN COSGRAVE

DIRECTOR

CA, B.COMM, FTIA

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Glenn is passionate about business improvement and works with our clients to get the fundamentals of their business right, serving as a mentor through their business journey of establishment, growth and exiting when the time is right. His approach has helped many businesses evolve from start-up to commercialisation and ultimately setting up their business in the best possible position for sale. He also specialises in tax-efficient structuring. Glenn's extensive experience as a strategic advisor ensures his clients have a clear focus for their personal and business goals, including a roadmap for future success and alignment of multidisciplinary advice to achieve best outcomes. Glenn is also a professional adviser to engineers, valuers, project managers, accountants, lawyers and high net worth individuals, with a strong portfolio of clients in import and distribution, professional advisory and innovative businesses.



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