

Australian Taxation Office issues guidance on GAAR and restructures of hybrid mismatch arrangements

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

On 25 October 2018, the Australian Taxation Office (ATO) released its final [Practical Compliance Guideline PCG 2018/7](#) (the PCG) dealing with the application of Part IVA (the general anti-avoidance rule) to restructures of hybrid mismatch arrangements.

The PCG follows the earlier draft and resulting EY discussions and input. We had sought a general ATO messaging for taxpayers restructuring their hybrid mismatch arrangements to mitigate the risk of ATO attack under Part IVA: so EY concurs with the issuance of the PCG.

The final PCG is similar to the earlier draft, with some changes and improvements responding to input.

It confirms more clearly that taxpayers using hybrid mismatches are likely to restructure as anticipated by the law, and sets out various scenarios where taxpayers might expect that their restructure will have a low risk of attack under Part IVA. The PCG states that a hybrid restructure would prima facie generate a tax benefit but "the Commissioner would not seek to apply Part IVA where the restructure merely removes the double non-taxation outcome and the arrangement is itself an ordinary commercial dealing or structure without contrived features that would otherwise attract Part IVA."

The ATO sets out five broad conditions for the low risk expectation including the commerciality of the restructure and its arm's-length features. The PCG states "low risk characterization is predicated on the replacement arrangement otherwise being an ordinary commercial dealing. This Guideline has no application to an arrangement that, regardless of the hybrid element, contains features that would otherwise have attracted the application of Part IVA."

Two earlier higher-risk scenarios have been removed, and two new scenarios added:

- ▶ *New Scenario 5 - removal of hybrid entity by election*
- ▶ *New Scenario 6 - removal of hybrid entity involvement*

The PCG does not cover all issues relevant to restructures of hybrid mismatches, for example thin capitalization outcomes. The PCG does however confirm the ATO is willing to deal directly with taxpayers about their restructures if they wish to have direct ATO interaction.

For additional information with respect to this Alert, please contact the following:

Ernst & Young (Australia), Sydney

- ▶ Sean Monahan sean.monahan@au.ey.com
- ▶ Stephen Chubb stephen.chubb@au.ey.com
- ▶ Lachlan Cobon lachlan.cobon@au.ey.com

Ernst & Young (Australia), Melbourne

- ▶ Brendan Dardis brendan.dardis@au.ey.com
- ▶ Peter Janetzki peter.janetzki@au.ey.com

Ernst & Young (Australia), Perth

- ▶ Andrew Nelson andrew.nelson@au.ey.com
- ▶ David S Browne david.browne@au.ey.com

Ernst & Young LLP, Australian Tax Desk, New York

- ▶ David Burns david.burns1@ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2018 EYGM Limited.
All Rights Reserved.

EYG no. 011633-18Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com