GILBERT
+TOBIN

INVESTING IN AUSTRALIA

WHY IS FIRB ASKING SO MANY TAX QUESTIONS?

2021

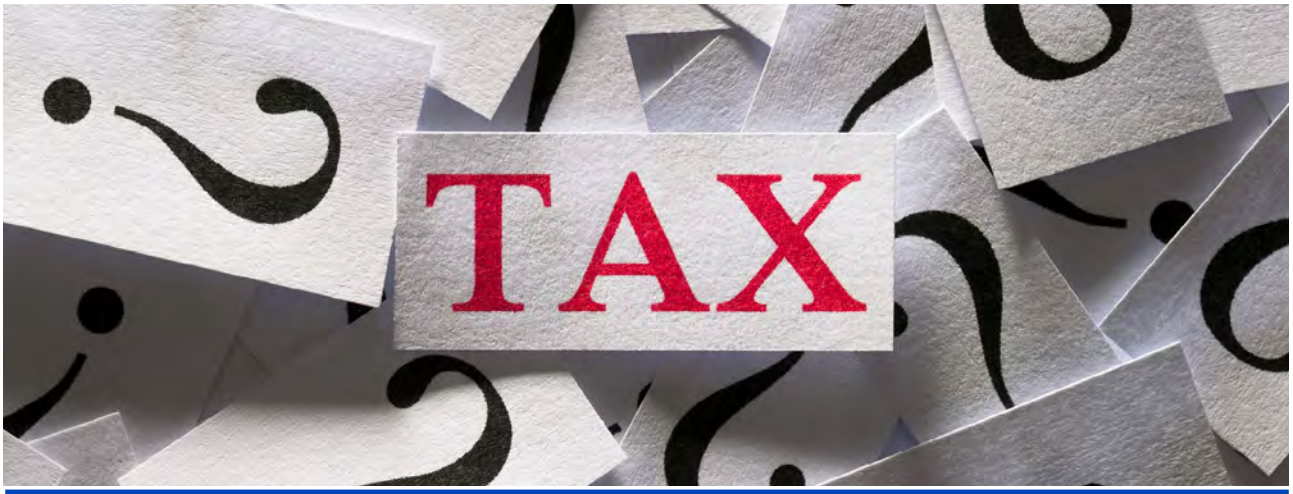
GTLAW.COM.AU

FIRB'S TAX QUESTIONS

In our October 2018 publication (Investing in Australia - FIRB's Tax Conditions), we outlined the standard tax conditions that Australia's Foreign Investment Review Board (**FIRB**) was imposing on foreign investors investing in Australia.

Since then, FIRB (and the Australian Taxation Office (**ATO**)) has moved to allow transactions to proceed, but subject to a special condition that requires applicants to provide detailed tax-related information within a period of time following completion of the transaction.

Responses often have to be provided within 90 days of the transaction completing. This guide provides an explanation of the most frequently asked questions to help applicants determine areas they need to focus on.



	QUESTION*	EXPLANATION
1	In your response, reference the FIRB ID and provide a copy of the No Objection Notification Letter.	The ATO uses these details to easily identify the application and expedite the process.
2	Where a new Australian entity associated with the transaction has been incorporated, please provide the Tax File Number (**TFN**) or Australian Business Number (**ABN**).	The ATO uses these details to easily identify the newly incorporated entities involved in the transaction.
3	Provide the details (name, position and firm) of any adviser/s who advised on Australian tax matters in relation to this transaction, FIRB application and/or request for information.	The ATO views certain tax advisers as more aggressive than others. The ATO will use the response to form an initial view of the likelihood that an aggressive structure has been or will be implemented. They may also use past experiences with the particular advisers to undertake targetted questioning or review.
4	Provide a copy of the most recent audited financial statements for the Target, or, if audited financial statements are not available, the latest financial records or unaudited financial statements.	This information will give the ATO a profile for the Target, its size (and thus risk to the Australian revenue), its current tax profile and possible future tax profile.
5	Provide an overview of the acquisition/restructure (**Transaction**) step plan including a diagram of the pre and post Transaction organisational structures of the Target that includes the flow of funds used to finance the Transaction, as well as the legal form and tax residency of the ultimate investor(s) or shareholder(s) (**Investors**) and all of the entities interposed between them and the Target.	The structuring paper or step plan is often the most useful document for summarising all of the tax considerations underlying the structure. This document allows the ATO to assess the applicant's and its advisers' awareness of, and planning for, hot button tax issues such as treaty shopping, hybrid entities and arrangements, and possible cash repatriation strategies.
6	State if the Investors (either directly or indirectly via a wholly owned subsidiary or associate) propose to borrow from a third party for the purpose of financing part or all of the proposed acquisition. If yes, provide the following information for each third party loan: the lender's name, the amount, the currency used and the rate of interest (including AUD equivalent interest rate).	The ATO will use any third party borrowings used for the Transaction to benchmark related party borrowings used in the Transaction. Often, where money is borrowed overseas, AUD equivalent interest rates will not be considered by taxpayers. Therefore, it is important for treasury functions to consider this factor when obtaining the third party debt. Alternatively, a transfer pricing analysis may also be able to provide a suitable guide.

*The questions are largely reproduced verbatim but have been modified slightly for grammar, formatting, readability and style.

	QUESTION	EXPLANATION
7	Using the below table, provide details of the existing and/or proposed debt and equity arrangements of Australian entities, including Australian Bid/Hold Co(s) used for the purpose of acquiring Target Co/ Group. Provide details of existing and/or proposed debt and equity arrangements of any non-resident direct beneficiaries/unitholders of Division 6 trusts, to the extent that they are expected to give rise to deductible amounts against the distributions from Division 6 trusts.	The ATO uses these details to understand the debt and equity financing arrangements of the Australian group. Importantly, they are asking for information on both new and existing financing.

Key terms	Arrangement 1	Arrangement 2
Legal characterisation (e.g. loan, note, ordinary shares, preference shares etc)		
Tax treatment (per Division 974 of the *Income Tax Assessment Act 1997* (**ITAA 1997**))		
Tax treatment for counterparty in foreign jurisdiction		
Confirm whether treatment is different for income tax purposes and accounting purposes		
Borrower		
Tax residency of the Borrower		
Lender (clearly state if the Lender/s are a related party or not)		
Tax residency of the Lender/s		
Amount		
Tenor		
Ranking (i.e. senior, subordinate, mezzanine)		
Currency		
Interest rate (if currency is not AUD, also equivalent AUD rate)		
Credit rating of the Borrower		
Other features (security, restrictive covenants, guarantees, guarantee fee, contingencies, payment in kind, convertibility, options, etc.)		

	QUESTION	EXPLANATION
8	For any related party debt disclosed at question 7 above, having regard to Schedule 1 of the Practical Compliance Guideline 2017/4 (**PCG 2017/4**), advise for each: (a) The risk rating; (b) How each price and behavioural indicator was scored; and (c) Which of the comparison options at paragraph 61 of Schedule 1 of PCG 2017/4 was used and the key terms of the debt (as set out in the table at question 7).	The ATO released the scoring system set out in PCG 2017/4, which it considers to be an objective risk assessment tool. The financing arrangements are given a risk score. A high risk score can result in further review following implementation of the Transaction or additional conditions as part of FIRB's approval. It is not uncommon for risk ratings to be quite high - appropriate explanations should be provided as part of this response.
9	Where international transfer pricing documentation has been prepared and/or provides further details on demonstrating the arm's length principles for any of the above related party dealings, please provide a copy and detail if this information has been previously provided to the ATO.	The ATO is looking to access any transfer pricing work undertaken on the arrangements described above. Generally, this is only applicable to restructures (rather than acquisitions).
10	Where a financing arrangement disclosed at question 7 above has an associated related party derivative arrangement, provide the following information for each arrangement: (a) A description of the derivative arrangement and its characterisation; (b) The name and residency of the parties to the derivative arrangement; (c) A summary of the key terms, including the consideration payable and the methodology used to calculate it; and (d) Having regard to PCG 2017/4 Schedule 2, advise the risk rating for each related party derivative arrangement associated with a financing arrangement disclosed above at question 7.	Some derivative arrangements are artificial and obtain a beneficial tax outcome, generally by converting an arrangement that, in substance, would give rise to Australian tax consequences into one that, in form, does not. The ATO is assessing whether the Transaction results in such tax benefits.
11	Where a financing arrangement disclosed at question 7 above involves a third party (**the Lender**) providing debt funding to an Australian resident entity to finance the acquisition/restructure, provide the following information: (a) The credit rating of the Investor(s); (b) A statement as to whether a side letter, side agreement or any other arrangement was contemporaneously contemplated or entered into with the Lender(s) or their associates by the Investors (either directly or indirectly via a related entity, associate or agent); and (c) If you answered yes at question 11(b), the commercial purpose for such an arrangement, the name and residency of the parties involved and the key terms of the arrangement.	The ATO will use any third party borrowings used for the Transaction to benchmark related party borrowings used in the Transaction. It is also looking at whether there is any artificiality in the third party arrangements. In particular, this question is looking at arrangements between third party lenders and the ultimate investors, although sometimes this question is phrased to refer to the Australian entities.
12	Advise if any part of your Transaction has features or an arrangement covered by one or more of the Taxpayer Alerts referred to in the Schedule.	The ATO has released a range of taxpayer alerts that raise awareness of artificial arrangements that potentially result in tax benefits. Taxpayer Alerts are merely general warnings but reflect the ATO's awareness and scrutiny of schemes.

	QUESTION	EXPLANATION
13	Provide for each distribution expected to be made by an Australian entity to an offshore recipient after the Transaction's completion: (a) The tax treatment of the payment for the Australian entity making the distribution; (b) The tax treatment of the receipt for the non-resident entity receiving the distribution; (c) The proportion of the payment subject to withholding tax; and (d) If the withholding tax rate is less than 10% or the payment is not subject to withholding tax, the reason(s) why.	This question is focused on ensuring that distributions from Australia are receiving the correct tax treatment as, often, the withholding regime provides the only recourse the ATO may have to collect tax. The ATO is also assessing risk by comparing the tax treatment in the recipient's country with the Australian treatment, including any indication the distributions are subject to hybrid treatment. Note distributions typically means dividends paid by companies and distributions by trusts.
14	Provide for each arrangement where an interest payment is expected to be made to the Investors or a non-resident associate of the Investors after the Transaction's completion: (a) The name and residency of the recipient; (b) A description of the payment's characterisation for tax purposes in the hands of the recipient; (c) The proportion of the payment subject to withholding tax; (d) If the withholding tax rate is less than 10% or the payment is not subject to withholding tax, the reason(s) why; (e) The tax treatment of the receipt of interest for the recipient, including the effective tax rate it will be subject to; (f) If the interest payment is subject to a foreign tax rate of 10% or less, confirm if the hybrid integrity rule in Subdivision 832-J of the ITAA 1997 applies; and (g) If deductions are not denied under Subdivision 832-J of the ITAA 1997, advise the reason for this.	This question is focused on ensuring that interest payments from Australia are receiving the correct tax treatment. The ATO is also assessing risk by comparing the tax treatment in the recipient's country with the Australian treatment, including any indication the interest payments are subject to hybrid treatment but not caught by specific hybrid integrity rules.
15	Confirm which (if any) entities in the post-acquisition structure will be members of a "Tax Consolidated Group" in accordance with the consolidation rules contained in the ITAA 1997 and provide the name of the head entity for each tax consolidated group.	Tax consolidation enables certain beneficial tax outcomes that are design features. However, it also enables certain unintended benefits. This information allows the ATO to assess the opportunities for such benefits to arise and the risk that post-acquisition restructures could reduce Australia's tax collections.
16	For each entity that will be required to lodge an Australian income tax return: (a) Will it be subject to the Thin Capitalisation rules in Division 820 of the ITAA 1997? (b) What method will be applied to determine their respective maximum allowable debt amount post the completion of the Transaction? (c) If it will rely on any exemption from the Thin Capitalisation rules, which exemption(s) will be relied on and the reasons why they apply.	This question assists the ATO determine whether any entity's debt deductions should be denied. The thin capitalisation regime affects: + Australian entities which are foreign controlled; + Foreign entities with Australian permanent establishments; + Australian investments (inward investing entities); or + Australian entities that are not foreign controlled, where they have international operations or are associate entities of such entities (outward investing entities). Under the thin capitalisation regime, interest and other debt deductions will be reduced to the extent that an entity's adjusted average debt exceeds the entity's maximum allowable debt.

SCHEDULE TO QUESTION 12

TAXPAYER ALERT	SUMMARY
2020	
(a) TA 2020/4 – Multiple entry consolidated (**MEC**) groups avoiding capital gains tax (**CGT**) through the transfer of assets to an eligible tier-1 company (**ETOC**) prior to divestment	These arrangements attempt to reduce or avoid CGT on the disposal of certain assets of a group by way of an internal restructuring using the MEC group rules followed by an ETOC leaving the MEC group. This alert sets out further arrangements related to those discussed in TA 2019/1 in paragraph (f) below. The ATO is concerned that some arrangements may be unnecessarily complex or involve commercially unnecessary steps to restructure Australian assets within a MEC group in anticipation of a divestment of assets in a way which reduces or avoids CGT. ● Should not apply if 1. There is a direct disposal of the underlying assets without any intra-group transfer of the underlying assets or other assets to an ETOC; 2. There is a disposal of the shares in a subsidiary member of the group which holds the underlying assets without any intra-group transfer of the assets to an ETOC; or 3. Ancillary or other incidental assets are transferred out of an existing company, rather than transferring a significantly larger or more complex set of assets to a new ETOC. ● May apply if 1. Steps are implemented to cause a company to become an ETOC of an existing MEC group; 2. There is an internal restructure within a MEC group to enable the underlying assets to be disposed of by way of an ETOC (not necessarily the company that became an ETOC in earlier steps) leaving the MEC group; 3. The disposal of the underlying assets might reasonably be expected to have been achieved in a more convenient or straightforward manner resulting in the inclusion of a capital gain in the assessable income of the MEC group; or 4. The stated justification for additional steps under the internal restructure lacks substance or real probative weight.
(b) TA 2020/3 – Arrangements involving interposed offshore entities to avoid interest withholding tax	These arrangements use offshore related entities to facilitate the avoidance of withholding tax in relation to interest expenses deducted against Australian-sourced income derived by a non-resident and paid to other non-residents, usually related to the payer. ● Should not apply if the arrangement involves a structure where deductible interest payments by a non-resident are merely incidental to what can be evidenced as ordinary and commercially appropriate business decisions. ● May apply if a non-resident derives Australian-sourced income and incurs interest expenses (commonly from debt sourced from a related party) deductible against that income. The arrangements typically feature an Australian trust deriving Australian sourced income, a non-resident beneficiary resident in a non-treaty country interposed between the trust and the ultimate non-resident investor, where the interposed beneficiary claims deductions against its share the Australian source income for interest paid on high cost related party debt.

TAXPAYER ALERT	SUMMARY
(c) TA 2020/2 – Mischaracterised arrangements and schemes connected with foreign investment into Australian entities	The tax character of these arrangements does not reflect their true substance. The ATO is concerned that they may be equity investments that result in debt deductions, reduce withholding tax payable, avoid certain gains arising in connection with mining or prospecting interests, have elements of hybridity between jurisdictions or not be covered as debt for thin capitalisation purposes. ● Should not apply if the arrangements are not deliberately structured to avoid Australian tax outcomes having regard to the substance of the arrangements. ● May apply if 1. The Australian resident entities are unable to obtain capital from traditional debt finance sources on normal terms; 2. The foreign investor either already participates, or starts to participate, in the management, control or capital of the Australian operations; 3. The investment is not a vanilla debt or equity investment; or 4. The foreign investor secures a return (whether as an ongoing profit or a gain on disposal) that is directly linked to the economic return of a particular business or asset.
(d) TA 2020/1 – Non-arm's length arrangements and schemes connected with development, enhancement, maintenance, protection and exploitation (**DEMPE**) of intangible assets	These arrangements may not reflect the Australian contribution to the DEMPE of intangible assets by being non-arm's length or structured to avoid or improperly comply with tax obligations. ● Should not apply if the arrangements correctly characterise Australian activities connected with the DEMPE of intangible assets and where intangible assets that are developed or co-created in Australia are not transferred to foreign jurisdictions. ● May apply if there is a misalignment between the Australian contribution to the DEMPE of intangible assets, and the renumeration of those activities, or there is an in-substance disposal of the assets to non-residents.

TAXPAYER ALERT	SUMMARY
2019	
(e) TA 2019/2 – Trusts avoiding CGT by exploiting restructure rollover	These arrangements involve a trust at least partially selling assets with unrealised capital gains by using a specific rollover. This alert is concerned about the implications for the seller, not the buyer. ● Should not apply where there is a simple sale of assets or where the entities involved are not trusts (but note TA 2019/1 referred to in paragraph (f) below). ● May apply if: 1. A trust declares a new trust over some or all of its assets and relies on the rollover in Division 126-G of the ITAA 1997, which allows assets to be transferred between two trusts with the same beneficiaries without triggering CGT; 2. A loan is created between the two trusts that is substantially the same value as the transferred assets; 3. A third party subscribes for interests in the new trust, substantially diluting the interests held by the original beneficiaries. The alert focusses on unit trusts, but it is conceivable that the arrangements could be replicated with other trusts; 4. The proceeds from the subscription are used to repay the inter-trust loan; and 5. The third party may purchase the original interests in the new trust for nominal consideration.
(f) TA 2019/1 – MEC groups avoiding CGT through intra-group debt	These arrangements involve a MEC at least partially selling assets with unrealised capital gains by transferring those assets to an ETOC. This alert is concerned about the implications for the seller, not the buyer. ● Should not apply where there is a simple sale of assets or where the entities involved are not members of a MEC (but note TA 2019/2 referred to in paragraph (e) above). ● May apply if: 1. A member of a MEC group transfers some or all of its: (a) Assets; or (b) Shares in another member of the MEC group that holds the relevant assets, to an ETOC of the same MEC group; 2. A loan exists or is created between the two entities that is substantially the same value as the transferred assets; 3. The shareholders of the ETOC sell the shares to the buyer for nominal consideration (reflecting the debt); and 4. The buyer procures that the ETOC repays the debt to the MEC group. The alert focuses on non-resident shareholders in the ETOC, although it could equally apply to resident shareholders with different consequences. Also, the alert does not look at a subscription-type scenario (unlike TA 2019/2 referred to in paragraph (e) above), but such a scenario could also be of concern.

TAXPAYER ALERT	SUMMARY
2018	
(g) TA 2018/4 – Accrual deductions and deferral or avoidance of withholding tax	These arrangements enable tax deductions on an accruals basis (usually in respect of interest) but defer withholding tax. ● Should not apply where withholding tax is paid at about the same time as the deductions. ● May apply if a financing arrangement involves deferring withholding tax liability but bringing forward tax deductions, usually involving the following: 1. Funds are lent by a non-resident entity to a related party in Australia (the legal form of the arrangement may vary); 2. The funds are repayable at the end of the term of the arrangement; 3. The return is calculated on the funds provided; 4. Entitlement to interest is deferred (such as at the end of the arrangement); 5. Tax deductions can be claimed on the interest on an accruals basis (for example, under the taxation of financial arrangements regime); and 6. Withholding tax is not due (if at all) until interest is actually paid.
(h) TA 2018/3 – GST implications of certain development lease arrangements	Where property developers acquire land from a government entity in exchange, at least in part, for development works, the ATO is concerned that the parties are not reporting the value of their respective supplies and acquisitions consistently, which results in an underpayment of GST. This should not generally be of concern in other industries or in share acquisitions (subject to the precise wording of question 12).
(i) TA 2018/2 – Mischaracterisation of activities or payments in connection with intangible assets	These arrangements typically involve Australian entities purchasing tangible goods with embedded intellectual property. Typical examples include soft drink manufacturing or bottling in Australia using ingredients purchased from offshore entities. However, the alert also purports to extend to the purchase of services. In such arrangements, no consideration is attributed to the intellectual property or services, thereby resulting in no withholding tax being paid. The ATO will be concerned about post-acquisition restructuring which enables the arrangements to be implemented. ● Should not apply where there is a reasonable attribution of consideration to embedded intellectual property and royalty withholding tax is paid accordingly. The alert also suggests that it should not apply where the parties are unrelated, but we are aware that the ATO is examining such circumstances as well. ● May apply if payments made by Australian entities to offshore entities are said to be solely for tangible goods or services, but the activities of the Australian entities necessarily involve the use of intellectual property.
(j) TA 2018/1 – Structured arrangements that provide imputation benefits on shares acquired on a limited risk basis around ex-dividend dates	These arrangements allow Australian shareholders to artificially obtain access to imputation benefits (franking credits). They use an existing holding of shares to access franking credits on newly purchased shares in the same company to which the shareholder has little or no economic exposure. Due to the nature of the surrounding arrangements, the shares are typically in listed companies.

TAXPAYER ALERT	SUMMARY
2017	
(k) TA 2017/1 – Re-characterisation of income from trading businesses	These arrangements divide the assets of a single business into two or more separate businesses in order to re-characterise trading income into more favourably taxed passive income. This was common with businesses with significant assets eligible for tax depreciation and other deductions, and was common in infrastructure businesses – the assets were separated from the trading activities, and housed in a trust to obtain access to tax-free cash flows. Legislation has also been introduced to minimise the effectiveness of these arrangements. The alert does not apply to Australian real estate investment trusts that derive all or most of their rental income from unrelated third party tenants.
2016	
(l) TA 2016/12 – Trust income reduction arrangements	These arrangements shift taxable income of a trust from a beneficiary that has a high tax rate to a beneficiary with a low tax rate, but the former beneficiary (or trustee) retains the economic benefits of the trust's income. This is unlikely to be of concern in a share or unit acquisition. ● Should not apply in widely held trusts or trusts within consolidated groups as it is harder to achieve the tax benefits that are of concern to the ATO. Should also not apply in respect of taxable income that is not ordinarily considered part of trust income (such as capital gains and franking credits). ● May apply to closely held trusts where: 1. There is a significant and artificial discrepancy between accounting (trust) income and taxable income, either by amending the definitions of those terms or the trustee exercising its discretion in relation to the determination of those amounts (and not merely because of proper accounting); 2. The beneficiary who is made presently entitled to the trust income either has a low tax rate or is a private company; and 3. The trustee retains the economic benefits or they flow to a different beneficiary in a non-taxable form.

TAXPAYER ALERT	SUMMARY
(m) TA 2016/11 – Restructures in response to the Multinational Anti-Avoidance Law (**MAAL**) involving foreign partnerships	These arrangements purport to circumvent the application of the MAAL. See also TA 2016/8 and TA 2016/2 at paragraphs (p) and (t) below, respectively. This should not be of particular concern in a share acquisition unless the target has an exposure under the MAAL. ● Should not apply where the MAAL would not otherwise apply and this particular alert should not apply provided the foreign entity making sales to Australians does not enter into a partnership with an Australian entity, with the partnership becoming the new distributor to Australian customers. ● May apply where a foreign entity makes supplies to Australian customers, establishes a partnership with an Australian partner (generally with only a small interest in the partnership) and the partnership commences making sales to Australian customers (fulfilled by the foreign entity).
(n) TA 2016/10 – Cross-border round robin financing arrangements	These arrangements involve an Australian entity funding an overseas entity or operations (usually in a low tax jurisdiction), where the funds are subsequently provided back to an Australian associate in a way which generates Australian tax deductions while not generating corresponding Australian assessable income.
(o) TA 2016/9 – Thin capitalisation – Incorrect calculation of the value of "debt capital" treated wholly or partly as equity for accounting purposes	This alert should not apply if the taxpayer's financial arrangements that are treated as debt for tax purposes are not also treated wholly or partly as equity for accounting purposes (for example, redeemable preference shares).
(p) TA 2016/8 - GST implications of arrangements entered into in response to the MAAL	These arrangements involve an Australian entity entering into contracts with Australian customers over intangible products or services, but with such products and services being delivered by a non-resident related entity acting as agent of the Australian entity. The non-resident entity also collects payments from customers on behalf of the Australian entity. The ATO is concerned that these arrangements are treated as not giving rise to GST. See also TA 2016/11 and TA 2016/2 at paragraphs (m) above and (t) below, respectively. This should not be of particular concern in a share acquisition unless the target has an exposure under the MAAL.
(q) TA 2016/7 – Arrangements involving offshore permanent establishments	These arrangements involve an Australian income tax consolidated group using an offshore permanent establishment to enter into intra-group transactions with other members of the tax consolidated group. The alert may apply if there is a mismatch between the deductions claimed in the foreign jurisdiction that are attributable to goods and services provided from the Australian head office or associates and the income that is attributed to Australia on account of the Australian contribution to that permanent establishment. This should not be of particular concern in a share acquisition unless the target is engaged in such activity.
(r) TA 2016/4 – Cross-border leasing arrangements involving mobile assets	These arrangements involve a cross-border lease or sub-lease over mobile assets from a non-resident entity to an Australian entity (which could be a related party) where there is insufficient attribution of income to Australia. This should not be of particular concern in a share acquisition unless the target is engaged in such activity. ● Should not apply where entities are not interposed between the ultimate owner or head lessor and the end lessee/customer or, if there are interposed entities, they are in the same jurisdiction as either the head lessor or the end lessee/customer. Should also not apply if the asset is not "substantial equipment" under an applicable double tax treaty. ● May apply where entities in one or more treaty jurisdictions are interposed between the head lessor and the end lessee/customer and the asset is substantial equipment (which would be a permanent establishment under an applicable treaty). May also apply where the interposed sub-lessor provides services to the end lessee/customer in connection with the operation of the asset.

TAXPAYER ALERT	SUMMARY
(s) TA 2016/3 – Arrangements involving related party foreign currency denominated finance with related party cross currency interest rate swaps	These arrangements increase the effective debt-related costs borne by Australian entities using a cross currency interest rate swap with a related party without a corresponding increase in interest payments. Their form may also mean that thin capitalisation, transfer pricing and withholding tax implications are avoided.
(t) TA 2016/2 – Interim arrangements in response to the MAAL	This alert identifies one example but relates broadly to interim arrangements implemented in the wake of the introduction of the MAAL to avoid the MAAL applying. See also TA 2016/11 and TA 2016/8 at paragraphs (m) and (p) above, respectively. This should not be of particular concern in a share acquisition unless the target has an exposure under the MAAL and implemented arrangements to avoid its operation.
(u) TA 2016/1 – Inappropriate recognition of internally generated intangible assets and revaluation of intangible assets for thin capitalisation purposes	These arrangements involve the valuation or revaluation of internally generated intangible assets, which then have a favourable impact on the maximum permissible debt. Such assets are generally not recognised for accounting purposes. This will not apply if the taxpayer has not revalued or recognised (as assets) internally generated intangible items, or such assets are recognised for both accounting and tax purposes at largely the same value. Examples of inappropriately recognised intangible items are market related items such as "customer relationships" or "customer loyalty"; human resource items, including "skilled staff", "management" or "key employees/training"; organisational resource items, including "internal policies", "internal meeting protocols", "procedures" and "manuals"; and assets not owned and controlled by the taxpayer.

TAXPAYER ALERT	SUMMARY
2009	
(v) TA 2009/15 – Payment of inflated insurance premiums to a related party	These arrangements involve payments of amounts described as insurance premiums which are excessive by reference to the coverage provided and feature no significant transfer of insurance risk. This should not be of particular concern in a share acquisition unless the target is engaged in such activity.
(w) TA 2009/9 – Contrived cross-border arrangements that seek to generate debt deductions for non-assessable non-exempt income	These arrangements involve cross-border financing arrangements that are designed to generate a deduction under section 25-90 of the ITAA 1997 for costs incurred in deriving certain types of income that are not taxable in Australia. These arrangements can exhibit various features, such as: 1. Financial accommodation is provided to an unrelated party which is then converted into a non-portfolio dividend from a related party; 2. The interposition of an Australian entity between two non-resident entities; 3. The interposition of a non-resident entity between two Australian entities; or 4. A deliberate matching of non-taxable income with the deductible costs.
(x) TA 2009/2 – Certain cross-border prepaid forward purchase agreements	These arrangements convert what is, or otherwise might be, taxable interest income paid by a foreign related entity to an Australian entity into a non-taxable economic gain using a counterparty. They result in the counterparty providing financial accommodation to the foreign entity at interest, but that arrangement is backed by a prepaid forward purchase agreement under which the Australian entity agrees to purchase the loan from the counterparty, with consideration paid upfront and settlement in the future. The consideration reflects a discount to the face value of the loan reflecting the interest to be paid by the foreign entity.

KEY CONTACTS

MUHUNTHAN KANAGARATNAM
PARTNER
T +61 2 9263 4184
E mkanagaratnam@gtlaw.com.au

JULIAN CHENG
PARTNER
T +61 3 8656 3355
E jcheng@gtlaw.com.au

MARK GOLDSMITH
SPECIAL COUNSEL
T +61 2 9263 4342
E mgoldsmith@gtlaw.com.au

MATTHEW CHARMAN
LAWYER
T +61 2 9263 4153
E mcharman@gtlaw.com.au

PATRICE ELIAS
LAWYER
T +61 2 9263 4091
E pelias@gtlaw.com.au