TA 2005/5 - Use of an outbound offshore re-invoicing arrangement to avoid or evade Australian tax

This cover sheet is provided for information only. It does not form part of *TA 2005/5 - Use of an outbound offshore re-invoicing arrangement to avoid or evade Australian tax*

This Alert contains references to Part XI of the *Income Tax Assessment Act 1936*, which has been repealed and will not apply to taxpayers from the 2010-11 income year. For further information, please refer to the Foreign income return form guide 2011-12 (NAT 1840).

Generated on: 4 June 2026, 10:40:52 PM

Australian Government
Australian Taxation Office

Taxpayer Alert

TA 2005/5

The ATO view on the arrangement described in this Taxpayer Alert is set out in ATO Interpretive Decision ATO ID 2007/47, Taxation Determination TD 2007/20, Taxation Ruling TR 2007/13 and Law Administration Practice Statement PS LA 2007/7.

This Alert contains references to Part XI of the *Income Tax Assessment Act* 1936, which has been repealed and will not apply to taxpayers from the 2010-11 income year. For further information, please refer to the Foreign income return form guide 2011-12 (NAT 1840).

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging higher risk tax planning issues or arrangements that the Tax Office has under risk assessment.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform tax officers of new and emerging higher risk tax planning issues. Not all potential tax planning issues that the Tax Office has under risk assessment will be subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the Tax Office.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which the Tax Office considers give rise to taxation issues. These issues will generally require more detailed analysis to provide the Tax Office view to taxpayers.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the ATO's position through a Private Ruling. (It should be noted that the Taxation Administration Act 1953 sets out circumstances where the Commissioner may decline to issue such a ruling). Such taxpayers might also contact the tax officer named in the Alert and/or obtain their own advice.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: Use of an outbound offshore re-invoicing arrangement to avoid or evade Australian tax

This Taxpayer Alert describes arrangements to artificially depress profits, and resulting Australian tax, from sales of goods or services to overseas third parties. Under such arrangements an Australian resident provides goods or services to an offshore structure below market value. Subsequently the offshore structure provides the same goods or services to a third party customer at market value. The Australian resident does not disclose their interest in the offshore structure and pays no Australian tax on the profits.

DESCRIPTION

This alert applies to arrangements generally marketed to micro and small businesses that exhibit some or all of the following features:

1. The taxpayer establishes an offshore structure, or uses an existing structure, in a tax haven or country with bank secrecy with the assistance of a promoter. The promoter may provide a 'paper trail' of documents designed to conceal the true nature of the transactions and the taxpayer's interest in the offshore structure.

2. The offshore structure may include one or a combination of the following types of entity, which are promoted on the basis of not being subject to attribution under Australia's anti-deferral regimes:

   a) An offshore trust, including bare, blind or discretionary trusts;

   b) An offshore company, including tax haven entities known as international business companies;

   c) Another type of entity, including Anstalts or Stichtings.

3. The taxpayer claims to provide goods or services to a third party. This occurs through a re-invoicing arrangement via the offshore structure.

4. A typical re-invoicing arrangement involves:

   a) An agreement for the taxpayer to provide goods or services to the offshore structure at a price **substantially below** market value;

   b) An agreement for the offshore structure to provide the same goods or services to a third party at market value.

5. The taxpayer declares income from the claimed provision of goods or services. The income is lower than would be derived if the goods or services were provided at market value directly to a third party.

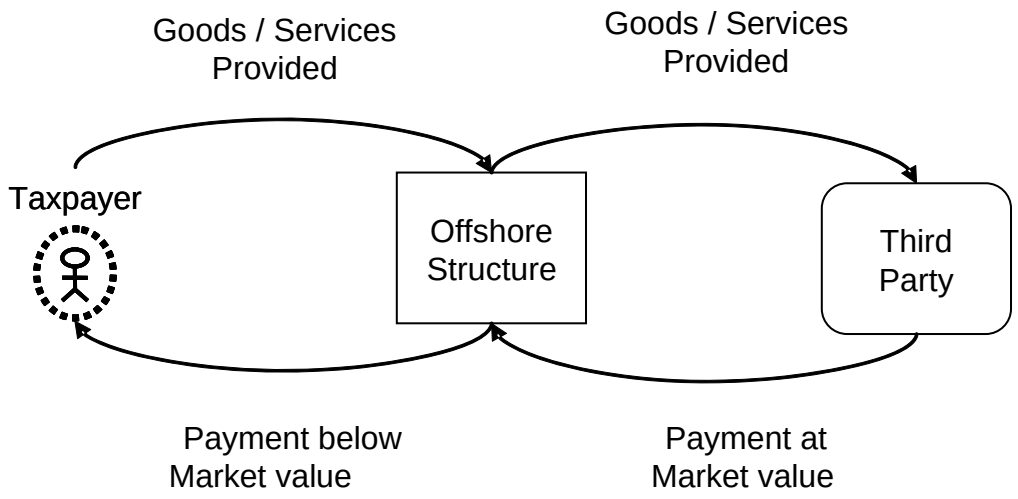
6. The offshore structure accumulates the profits on the price differential.

7. The taxpayer may access these profits, often in a disguised form.

8. The taxpayer does not disclose their involvement with the offshore structure and does not pay Australian tax on the profits accumulated in the offshore structure or when they access those profits.

9. In some arrangements, the documentation supporting the above transactions is absent, incomplete or falsified and the valuations used may be highly questionable. In addition, such documents do not disclose the Australian resident's interest in, or involvement with, the offshore structure.

DIAGRAM OF A TYPICAL ARRANGEMENT



FEATURES WHICH THE TAX OFFICE CONSIDERS GIVE RISE TO TAXATION ISSUES

The Tax Office considers that an arrangement of this type gives rise to taxation issues that include whether:

(a) such an arrangement or crucial parts of it may be a sham;

(b) any entity within the offshore structure was a resident of Australia under subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);

(c) any entity within the offshore structure, the promoter or other persons involved with the structure's operation, management and administration:

   i) are acting as agents for the taxpayer as principal in relation to the activities of the offshore structure; or

   ii) are acting as trustees for the taxpayer as beneficiary in relation to the activities of the offshore structure;

(d) the income of the offshore structure was attributable to the taxpayer under Australia's anti-deferral regimes within Part X, Part XI or Division 6AAA of Part III of the ITAA 1936;

(e) the income of the offshore structure is assessable to the taxpayer under any other provision of the tax law;

(f) the transactions may be subject to Division 13 of Part III of the ITAA 1936;

(g) the general anti-avoidance provisions in Part IVA of the ITAA 1936 may have application as:

   i) the arrangement seems artificial and lacks an ordinary business purpose in its design and execution; and

   ii) it appears that the dominant purpose of entering into the arrangement is to obtain tax benefits.

Note 1: Up to 50% penalties can apply to underpaid tax where Part IVA is applied. Base penalties for intentional disregard for the tax law start at 75% of the tax unpaid. Reductions in base penalties may be available if the taxpayer makes a voluntary disclosure to the Tax Office.

Note 2: In appropriate cases possible sanctions under criminal law may also apply.

The Australian Taxation Office is examining these arrangements.

---

subject references:
- tax havens

legislative references:
- subsection 6(1) ITAA 1936
- Part X ITAA 1936
- Part XI ITAA 1936 (repealed)
- Division 13 of Part III ITAA 1936
- Part IVA ITAA 1936

related practice statements:
- PS LA 2008/15

related rulings/determinations:

related taxpayer alerts:
- TA 2005/6
- TA 2005/7
- TA 2005/8

related media releases:

file references:

Date issued:	**21 December 2005**
Authorised by:	**First Assistant Commissioner Stephanie Martin**
Contact Officer:	**Graham Whyte**
Business Line:	**Large Business & International**
Section:	**International Strategy & Operations**
Phone:	**(03) 927 52566**