

TA 2015/5 - Arrangements involving offshore procurement hubs

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Taxpayer Alert

TA 2015/5

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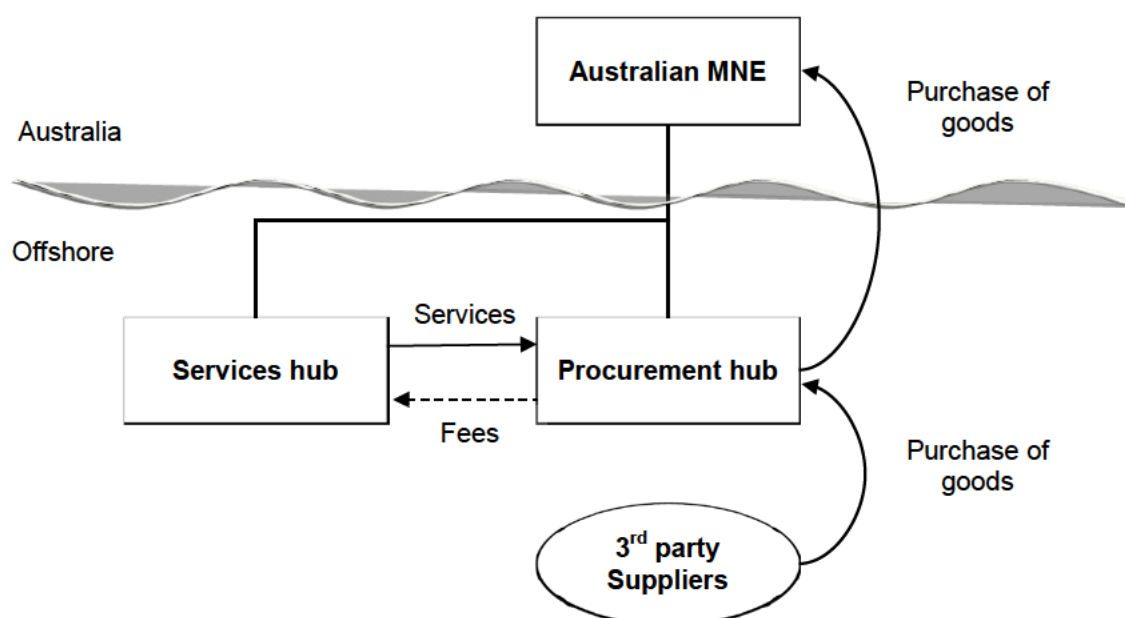
Alerts provide a summary of our concerns about new or emerging higher risk tax or superannuation arrangements or issues that we have under risk assessment.

While an Alert describes a type of arrangement, it is not possible to cover every potential variation of the arrangement. The absence of an Alert on an arrangement or a variation of an arrangement does not mean that we accept or endorse the arrangement or variation, or the underlying tax consequences.

Refer to [PS LA 2008/15](#) for more about Alerts. See [Alerts](#) issued to date.

Description

We are currently reviewing arrangements involving the use of offshore entities which source goods (**procurement hub**) on behalf of Australian resident multi-national enterprises (**MNEs**). In these arrangements, the procurement hub receives services from a related offshore entity (**services hub**). Our concerns about these arrangements primarily relate to the application of the controlled foreign company (**CFC**) rules, the transfer pricing rules and Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936).



These arrangements typically display all or most of the following features:

- A procurement hub and a services hub are established offshore. The hubs are CFCs of the MNE. A lower rate of tax or concessionary tax treatment may apply to the hubs in the relevant foreign jurisdiction(s).
- In procuring goods, the procurement hub enters into contracts with third party suppliers for or on behalf of the MNE. The procurement hub may or may not take title to or physical possession of the goods on the transfer of the goods. It does not substantially transform the goods it buys on behalf of the MNE.
- The procurement hub may have few or no employees and assets.
- The services hub provides services to the procurement hub in exchange for a fee which may be calculated as a percentage of sales or profits. The pricing methodologies adopted may not result in outcomes which could be expected to be observed between parties dealing at arm's length.
- There is little or no commercial justification for the separation of the procurement function into two separate CFCs/entities.

What are our concerns?

We are concerned that Australian resident MNEs are entering into offshore procurement structures where there is a bifurcation of the procurement function between two separate offshore entities. We are concerned that such structures are being used by MNEs for the purpose of, or for purposes which include, minimising tainted income under [section 447](#) and [section 448](#) of the ITAA 1936.

Alternatively, these arrangements may attract the application of the general anti-avoidance rules in [Part IVA](#) of the ITAA 1936.

We are also concerned with the substance and pricing of some of these arrangements from a transfer pricing perspective.

Arrangements involving the outbound supply of goods by offshore hubs may also attract these concerns.

What are we doing?

We are currently reviewing these arrangements and have commenced compliance activities in relation to a number of cases. Compliance activity will continue and we are developing our technical position on the arrangements.

We will canvass our concerns in further detail at upcoming professional forums.

What should you do?

If you have entered into, or are contemplating entering into, an arrangement of this type we recommend that you seek independent advice, review your arrangement or discuss your situation with us by emailing offshorehubs@ato.gov.au

References

Subject References:

Arm's length conditions
Controlled foreign companies

Part IVA
Procurement hubs
Profit shifting
Transfer pricing

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